

Housing and Property Chamber First-tier Tribunal for Scotland



STATEMENT OF DECISION TO VARY THE REPAIRING STANDARD ENFORCEMENT ORDER UNDER SECTION 25 OF THE HOUSING (SCOTLAND) ACT 2006 (“THE ACT”).

Chamber Ref: RP/HPC/RP/18/0231

THE PROPERTY:

46, Fort Street, Ayr KA7 1DE being All and Whole: (I) 2 storey house at 46 Fort Street, Ayr, part of the subjects referred to in Disposition in favour of William Auld, recorded in the Division of the General Register of Sasines applicable to the County of Ayr on 12 November 1902 and (II) offices at 48 Fort Street, Ayr, referred to in Disposition in favour of Ayr Tyre Factors Limited, recorded in the said Division of the General register of Sasines on 4 January 1962.

THE PARTIES:

Mr Douglas Swan, residing at 46 Fort Street, AyrKA7 1DE (“the tenant”)

and

Mrs Sally Ward, Ward Properties, Allestree Mews, Southwood, Troon KA10 7EL, per her agent Mr Colin Duck, Solicitor, The McKinstry Company, Queen’s Court House, 39 Sandgate, Ayr KA7 1BE (“the landlord”)

THE TRIBUNAL:

David M Preston (Legal Chair) and Donald Wooley, Surveyor (Ordinary Member)

Decision:

The tribunal hereby further varies the Repairing Standard Enforcement Order dated 9 April issued on 12 April, both 2018 by extending the time limit specified therein for the works to be completed to a date three months from the date of issue of this Notice of Variation.

Background:

1. On 23 October 2018 the tribunal issued a Variation to extend the time limit for the landlord to carry out the outstanding works specified in the RSEO dated 9 April 2018 until 24 December 2018.

2. Subsequently the tribunal received a number of emails between the parties as follows:

(Note: references to 'the landlord' herein apply to the landlord's solicitor)

25 Oct 18	Landlord to tenant	Asking for dates on which the tenant intends to refuse access up to 24 December 2018
31 Oct 18	Tenant to landlord	Providing dates: Friday (sic) 24 Nov (9am – 4pm) for inspection; and Monday 17 – Friday 21 December (for work)
14 Nov 18	Landlord to tenant	Asking whether the tenant means Friday 23 Nov
3 Dec 18 (09:49)	Landlord to tenant	Notice of required entry on Thurs 6 and Fri 7 Dec and asking for confirmation if the tenant intends to deny or prevent this access
3 Dec 18 (12:34)	Landlord to tenant	Right of entry Notification attached with details of tradesman and again asking for confirmation if access is to be refused
7 Dec 18	Tenant to tribunal	Providing update; complaining that the emails of 3 December did not specify a time; he stayed in on both dates 8am – 5pm but nobody appeared; repeating that he had provided the dates of Fri 23 Nov and Mon-Fri 17-21 Dec;
14 Dec 18	Landlord to tenant	Notification of access for 17-21 Dec; explaining that tradesmen did not appear as tenant had not confirmed that access would be granted as requested in email of 3 December; confirming that they will attend on 17 Dec.
16 Dec 18	Tenant to landlord	Tenant complained that he had not received confirmation of suitability of 17-21 Dec; complained that the email of 14 Dec suddenly appeared informing of access the following Monday (17 th);
18 Dec 18	Application for further Variation	
21 Dec 18	Landlord to tribunal	Application for Right of Entry
14 Jan 19	Landlord to tribunal	Providing information in response to tribunal's request
17 Jan 19	Tenant to tribunal	Providing information in response to tribunal's response.

3. The tribunal did not find the terms of the correspondence between the parties to be helpful because of the tone adopted by both parties.
4. The landlord's email of 26 October sought confirmation of when access would be refused as opposed to which dates would be suitable, which led to confusion. In any event the tenant did not provide such confirmation but in his email of 31 October he did suggest a series of dates which would be suitable for him. He mistakenly referred to Friday 24 November which confused the issue further as 24 November was a Saturday. On 14

November the landlord therefore asked for clarification. The landlord did not revert to the tenant on the suitability of those dates but equally the tenant did not respond with the clarification as to 23 or 24 November, leaving the landlord in a difficult position as to whether to instruct tradesmen on Friday 23 November or Saturday 24 November.

5. On 3 December the landlord intimated an intention to attend on 6 and 7 December and again asked for confirmation of an intention to refuse or deny access. The tenant again did not respond which might suggest that he did not intend to deny access, but the landlord cancelled the tradesmen for those dates. The tenant stayed in on both dates expecting the tradesmen who did not appear.
6. On Friday 14 December at 13:55 the landlord intimated access on Monday 17 December. The tenant responded to the landlord at 18:49 on Sunday 16 December with an email which does not make it clear whether access will be permitted. In any event, the tradesmen did attend on 17 December but were denied access as we were told in the landlord's application for further variation.
7. On Friday 11 January the tribunal sought clarification on a number of issues where either the emails of 3 December had not been produced to the tribunal, or the correspondence was confusing to follow. On 14 January the landlord responded with the information requested. On 17 January the tenant also responded. He said that he could not trace the emails of 3 December, but it was he who referred to them in his email of 7 December to the tribunal.
8. In summary the tribunal finds that the parties have both complicated the issues here: the landlord's requests for dates on which access will be refused as opposed to suitable dates; and the tenant's continual refusal of access – even on the dates offered by him as being suitable. Both parties failed to respond properly to reasonable requests from the other. Each requested confirmation from the other and both failed to respond to the requests. In particular, the tenant complained that the emails of 3 December did not provide times for access, but he did not, as might be expected of any person acting reasonably, ask for clarification, but without having responded at all he waited in on both dates. The tenant also failed to provide clarification to the landlord in relation to the day/date anomaly of "Friday 24 November", as a suitable date for access, when 24 November was actually a Saturday.
9. The tenant advised in his email of 19 January that during November he granted access for the leaking windows to be re-sealed, which were fixed.
10. So far as can be ascertained by the tribunal from the confusing correspondence from both parties, it appears that the outstanding work required comprises: the work in respect of the timber and dampness; in the front bedroom; the rear wall around the boiler; in the electrical cupboard and structural repairs in the roof space; wall and ceiling plaster in the first floor bedroom; and missing roof slates.
11. The tribunal has been advised that the landlord has now submitted an application for Right of Entry to obtain assistance from the First Tier Tribunal for Scotland to gain access for the purpose of carrying out the outstanding work. Such an application cannot be dealt with

by the appointed members of this tribunal as the intention of such is to obtain the support and assistance of the First Tier Tribunal for Scotland to secure access. It would not be appropriate for this tribunal to be seen to provide any assistance to one party over another.

12. It is clear that after a period of 9 months, the parties are incapable of reaching any accommodation for the outstanding work to be completed. We do not attribute any greater share of the blame for this to either party. They have both acted in a manner which has done little to progress matters. Unless they can begin to cooperate, the application for Right of Entry will have to be determined and there is nothing to be gained by the issue of a Notice of Failure.

13. Accordingly, in the hope that matters can be progressed in some way, the tribunal grants a further variation of the RSEO so as to extend the time limit for the work to be completed by a date two months from the date of issue of this Minute of Variation.

In terms of section 46 of the Tribunals (Scotland) Act, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

D Preston

.... Chairman

28 January 2019