

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland Housing and Property Chamber

STATEMENT OF DECISION UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006

In connection with

Re: Property at 3F1, 13 Gillespie Crescent, Edinburgh EH10 4HT, registered in the Land Register for Scotland under Title Number MID101053 ("the Property")

Chamber Ref: FTS/HPC/RT/19/3633

The Parties

City of Edinburgh Council. East Neighbourhood Office, 101 Niddrie Mains Road, Edinburgh EH16 4DS ("the Third Party Applicant")

Mr. Mark Edward Fortune, whose whereabouts are unknown ("the Landlord") as successor to Edinburgh Holiday and Party Lets Limited (SC577943), PO Box 46, 2 Corstorphine High Street, Edinburgh EH12 7ST, sometimes trading as EHPL Ltd, whose sole director was for a time Mr. Mark Edward Fortune ("the former Landlord")

The Tribunal comprised Ms. Aileen Devanny, Chamber President, and Ms. Carol Jones, Ordinary (Surveyor) Member.

DECISION

The First-tier Tribunal for Scotland ("the Tribunal"), having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order ("the RSEO") in relation to the Property; having attempted to carry out an inspection of the Property; and having considered the written representations and productions of the Landlord and former Landlord as well as the Third Party Applicant, determined

1. that the RSEO should be varied to insert "Mr Mark Edward Fortune, whose whereabouts are unknown" as the "Landlord" deleting reference in the RSEO to Edinburgh Holiday and Party Lets Limited (referred hereinafter in this determination as EHPL Ltd) as the Landlord;

2. that the RSEO should be varied to delete reference to items of required works (i), (iii), (v), (vii), (viii) and (ix) of the RSEO which have now been completed.

The variations in 1 and 2 above are made in terms of Section 25(1)(a) of the Housing (Scotland) Act 2006 ("the Act") and reflect the evidence before the Tribunal;

3. that required works at items (ii), (iv) and (vi) of the RSEO had not been satisfactorily completed by the Landlord. Consequently, in terms of Section 26(1) of the Act, the Tribunal has decided that the Landlord has failed to comply with the RSEO and directs that a notice of the failure be served on the Local Authority for the area in which the Property is situated. It follows that the Tribunal refuses to grant a certificate of completion under section 60 of the Act in relation to the works required by the RSEO, as varied by this decision; and
4. having made the decision at 3 above, the Tribunal went on to consider whether or not to make a Rent Relief Order ("RRO") and decided to make an RRO in terms of Section 27 of the Act reducing the rent payable for the Property by 33%.

The above decisions of the Tribunal are unanimous.

BACKGROUND

1. Reference is made to (1) the Determination of the Tribunal dated 8 November 2022 which decided that the Landlord (who at the time of issue of the said Determination was Edinburgh Holiday and Party Lets Limited with a sole director at the time of Mr. Mark Edward Fortune) had failed to comply with the duty imposed by Section 14(1)(b) of the Act and (2) to the RSEO dated 8 November 2022 which required the completion of specified works to the Property.

2. The RSEO dated 8 November 2022 specifies the parties at the start of the Order

"City of Edinburgh Council, East Neighbourhood Office, 101 Niddrie Mains Road, Edinburgh EH16 4DS ("The Third Party Applicant")

Edinburgh Holiday and Party Lets Limited (SC577943), PO Box 46, Mail Box 46, 2 Corstorphine High Street, Edinburgh EH127ST, sometimes trading as EHPL Ltd whose sole director is Mr Mark Edward Fortune ("The Landlord")"

The RSEO requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of the Order is made good.

In particular the Tribunal requires the Landlord to:-

- (i) Ensure the roof above the living room is repaired to prevent water ingress.
- (ii) Repair the damage to the living room ceiling caused by the ingress of water

and, in particular, re-plaster and redecorate all affected areas.

- (iii) Repair or replace the living room windows to ensure that they are wind and watertight, in proper working order, and in a reasonable state of repair.
- (iv) Repair or replace the kitchen window to ensure that it is wind and watertight, in proper working order, and in a reasonable state of repair.
- (v) Ensure that the downstairs bedroom window is wind and watertight, in proper working order, and in a reasonable state of repair.
- (vi) Engage a suitably qualified SELECT, NICEIC or NAPIT registered electrical contractor or suitably qualified fire engineer to test and repair or replace the system for detecting fires and for giving warning in the event of fire or suspected fire to ensure that the system meets the requirements of the Act and all current statutory guidance. Thereafter to provide the Tribunal with a report on the working order of the system and written evidence of compliance with all fire safety requirements of a House in Multiple Occupation.
- (vii) Install a carbon monoxide detector in the kitchen in compliance with the relevant legislation and all current statutory guidance.
- (viii) Engage a suitably qualified SELECT, NICEIC or NAPIT registered electrical contractor to carry out a certificated inspection and testing of the entire electrical installation in the property and any electrical appliances and equipment provided by the landlord. Thereafter to provide a copy of an unqualified Electrical Installation Condition Report (EICR) and Portable Appliance Test (if applicable) to the Tribunal.
- (ix) Engage a suitably qualified and Gas Safe registered engineer to carry out a certificated gas safety check on the gas heating system and any other gas appliances in the property and provide a copy of the Landlord Gas Safety Record to the Tribunal.

The Tribunal ordered that the works specified in the RSEO must be carried out and completed within a period of 8 weeks from the date of service of the Order. The Order was issued to parties on 9 November 2022.

3. The Decision dated 8 November 2022 was appealed to the Upper Tribunal for Scotland by the Landlord named in that decision and as stated in the RSEO. The Upper Tribunal dismissed the appeal in a decision dated 31 March 2023. The First-tier Tribunal for Scotland wrote on 17 April 2023 to the Landlord stated in the RSEO and indicated that the period for compliance with the RSEO would be 8 weeks from that date.

EHPL Ltd responded by email on 17 April 2023 indicating that they were considering further proceedings and the appeal proceedings were not exhausted and this would have an impact on the period of compliance in the RSEO. EHPL Ltd further stated

“As it is the case we Edinburgh Holiday and Party Lets Ltd are not the landlords our contract was terminated in 2022 and we have only continued the appeals etc to protect our position as to costs - We believe the heritable owners have issued the contract to an new company in January 2023 this is in addition to the company that took over our contract”

Enquiries by the First-tier Tribunal administration with the Upper Tribunal administration confirmed that as the permission to appeal decision was made following an oral hearing before the Upper Tribunal on 30 March 2023, the appeal is exempt from any further appeal or review with the Upper Tribunal for Scotland and the case was closed. Consequently, the period for compliance with the RSEO of 8 weeks runs from the date that the Upper Tribunal decision was notified.

Within the appeal decision issued by the Upper Tribunal on 31 March 2023 it is stated that “The respondents were represented at the hearing by Mr Fortune”.

The grounds of appeal were that the Tribunal erred in accepting witness statements before it; that the Tribunal erred by treating Mr Fortune and EHPL Limited as one and the same; the condition of the property; allegations against the legal member of the Tribunal; and that the notice by the council to the Landlord prior to lodging the application was not in the proper form. The Upper Tribunal dismissed each of these grounds.

Particularly relevant to the further proceedings post appeal and this decision as will be detailed later is the Upper Tribunal judge’s comments at Paragraphs (14) - (22) which refers to the inconsistencies as to the identity of the landlord. At paragraph 19 of the Upper Tribunal decision the following is stated

“The facts that the leases were not in Mr Fortune’s name might suggest proceedings should not have been raised or involved Mr Fortune as an individual. But that would be to ignore the reality of the situation before the FTS. Mr Fortune made extensive submissions at the oral hearing in relation to the separate identities of himself and the limited company. The FTS were told at different points contradictory information on who the landlord was. The fact that a limited company has a separate legal persona is not in dispute. It is clear that the FTS were anxious to understand who the landlord was. It is clear from reading the decision that there

was ambiguity (caused by the appellant) as to in whose name individual leases were at any particular time. The tenants appeared to be students. It appears that there was a number of students in the property throughout the lifetime of the case. Against that background, it is perhaps not surprising that the FTS designated the appellants in the way that it did, should there be any further changes as to who the landlord is, given the property is owned personally by Mr Mark Fortune.”

At paragraph 34 of the Upper Tribunal decision the judge observes

“I note the FTS’s observations that “EHPL Limited and Mr Fortune appeared, at times, to try to subvert the procedure failing to provide information, and providing contradictory information (para 152). That is a fair summary. I would go further and say that the appellants have acted in a way that has been deliberately obstructive.”

4. The First-tier Tribunal in this case has made an RSEO and registered it against the Property title as required in Section 61 of the Act. The RSEO is included as a burden in the land certificate of the Property Title Number MID101053 and transmits to a successor in title to the Landlord in terms of the definition of landlord in Section 194 of the Act. The existence of an RSEO on the title to the Property results in the operation of Section 28 of the Act which has the effect of restricting the use of the Property to exclude new tenancy and occupancy agreements in relation to the Property during the time when the RSEO has effect. The RSEO remains in place until it is revoked or discharged.

5. To check compliance with the RSEO, a re-inspection of the house by the First-tier Tribunal for Scotland (“the Tribunal”) was fixed for 26 July 2023 at 10:00, and EHPL Ltd and the Third Party Applicant were advised that access to the Property would be required, and all participating parties were entitled to attend. The Tribunal notified that a hearing by conference call would take place on 26 July 2023 at 13:00. The parties were sent notification of the inspection and hearing details on 21 June 2023.

PRE-HEARING CASE MANAGEMENT

6. On 20 June 2023 the Tribunal issued the following direction to EHPL Ltd as Landlord with a copy sent to the Third Party Applicant:

“The time limit for the completion of works in the Repairing Standard Enforcement Order (RSEO) dated 8 November 2022 has expired and the First-tier Tribunal requires information from the Landlord as to the stage of completion of the works within the time limit specified below. A copy of the RSEO already sent to you is attached.

This direction requires the Landlord

1. to provide the up to date documentation for the property as detailed and required in terms of items (vi), (viii) and (ix) of the RSEO;

The Landlord is required to lodge the documentation as detailed at (vi), (viii) and (ix) of required works in the RSEO with the First-tier Tribunal for Scotland, Housing and Property Chamber, Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT no later than midday on 11 July 2023. It is possible that the First-tier Tribunal will draw an inference from any failure to lodge the said documentation required as detailed above that items (vi), (viii), and (ix) specified in the RSEO have not been carried out."

7. An email was received from EHPL Ltd dated 21 June 2023 in response to the notification of the date of the inspection and hearing and direction to the Landlord stating

"As previously advised we are no longer the landlord of this property. The property management has been handed to another company by the owner."

8. A check of the land certificate for the Property Title Number MID101053 by the Tribunal revealed that the registered proprietor is Mr. Mark Edward Fortune. The RSEO has been registered as a burden in the land certificate on 22 May 2023. Accordingly, since Mr Fortune appeared to retain ownership of the Property and in light of the communication from EHPL Ltd, the direction issued previously was amended and re-issued with the change that instead of it being issued to "Edinburgh Holiday & Party Lets Limited (SC577943), PO Box 46, Mailbox 46, 2 Corstorphine High Street, Edinburgh EH12 7ST, sometimes trading as EHPL Limited, whose representative is Mark Edward Fortune ("the Landlord")", it was amended on 22 June 2023 and issued to

"Edinburgh Holiday & Party Lets Limited (SC577943), sometimes trading as EHPL Limited, whose representative is Mr Mark Edward Fortune; AND the said Mr Mark Edward Fortune, for any right, title and interest as landlord he has acquired ("the Landlord"). The definition of "Landlord" is provided at Section 194 of the Housing (Scotland) Act 2006."

9. On 23 June 2023 Mr Mark Fortune responded by email

"I have no idea why you are emailing me, not only did I advise you to remove this email address from your system as you did not have consent to store a request I believe you confirmed, now in breach of GDPR I am not the landlord by your own ruling and I'm not a director of the company that was issued with the notice etc. Further your attachments do not open."

10. On 3 July 2023, the papers sent to Mr Fortune by email were served by advertisement on the HPC website in terms of Rule 6A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Rules") and Mr Fortune was advised that the documents had been so

served by email on 3 July 2023.

11. Mr Fortune responded by email on 3 July 2023 stating that he was not the landlord and indicating that papers should not be served with his name which would constitute harassment and a data breach.

12. The notification of inspection and hearing with the amended direction was served by sheriff officers on the registered office of EHPL Ltd on 5 July 2023.

13. Mr Fortune on 6 July 2023 emailed the Tribunal as follows

"I'm advised for some strange reason you have attempted to deliver something to the registered office of EHPL for myself. I am not a director of that company. As you well know I live and have a residency card for France! I do not live at nor have a place of business at Corstorphine High Street."

14. Notification was served by sheriff officers on the occupiers of the Property advising them that access to the Property in terms of Section 181(2) of the Housing (Scotland) Act 2006 was required for the attendance of the First-tier Tribunal members on 26 July 2023 at 10am to check compliance with the RSEO. A response was received from an email address stating the name as Peter Jones referring to the notification and stating "We do not consent to anyone entering our property, none of the current residents issued any complaint nor made any complaint, we are happy in the accommodation as it fits our budget, we are not happy that the landlord may use this as an excuse to end our stay."

15. EHPL Ltd replied to the paperwork served on them by sheriff officers on 7 July 2023

"We have been advised a letter from Sheriff officers from you, deposited in a neighbouring office, We have not therefore accepted it, we also have advised you were are not the landlord, a new company has been instructed to take over the running of the property"

16. On 11 July 2023 EHPL Ltd sent the following email with attachments

"Out of courtesy we have obtained paperwork, notwithstanding we are no longer the landlord, that having been taken over by another company. We have obtained the roof repair paperwork, the gas, electric and alarm updated certificates (notwithstanding the previous were valid) Details of window and general repairs. These documents are cover by GDPR they are Private and Confidential and are for sight only by the tribunal members, permission is not given to pass to any 3rd party as they may contain commercial details to which the 3rd party contractors have not consented to issue."

17. On 19 July 2023 in response to the email from EHPL Ltd dated 11 July 2023, the following reply was sent to EHPL Ltd by the Tribunal

“You have on 11 July 2023 provided paperwork. This contains gas certification, a fire detection and alarm system inspection and servicing report and various contractor’s estimates/ invoices. You appear to wish to lodge the documents in evidence but have placed a restriction that they have not to be shared with the other party in the case. Please be aware that for reasons of fairness and transparency in the proceedings and to comply with legal requirements, if these documents which you have sent are to be considered by the Tribunal, they require to be shared with the other party, who in this case is the City of Edinburgh Council. Given the restrictions you have stated, the documents have not been circulated and will not be considered as evidence when a determination is made as to whether the repairing standard enforcement order has been complied with. For the avoidance of doubt, if you wish the documents submitted to be considered as evidence by the Tribunal, you should write and confirm this in the knowledge that the documents will be circulated to the City of Edinburgh Council. Alternatively, you can resubmit documents you are content to be circulated to the Council and these alone will be considered by the Tribunal members when making their decision. Please note that the terms of the repairing standard enforcement order at paragraph (vi) requires a suitably qualified registered electrician (as specified in the order) or suitably qualified fire engineer to have carried out the works and be the author of the report. If you are submitting evidence, you may wish to consider if you have provided evidence of this with any report.”

18. On 22 July 2023 EHPL Ltd emailed

“For reason unknown the electric certificate did not attach in the original binder. Please find such attached - as such all in order”

19. In advance of the hearing and inspection on 26 July 2023 the Tribunal administration passed to the Tribunal Members a copy of the confirmation from sheriff officers of service of papers on EHPL Ltd and of the certificate of advertisement relating to service of the case papers on Mr Fortune on the Housing and Property Chamber website.

INSPECTION OF PROPERTY ON 26 JULY 2023

20. The Tribunal members, Ms Aileen Devanny, Chamber President, and Ms Carol Jones, Ordinary (Surveyor) Member attended the Property on 26 July 2023 at the notified time of 10am to carry out an inspection to check compliance with works required as detailed in the RSEO. The members were accompanied by two venue assistants. The members attempted to gain entry by pressing the common entry buzzer for the flat and were let into the common close by the occupier of an adjoining flat but, despite waiting for 10 minutes and knocking on the door of the Property, no entry was provided. Ms Jones was part of the Tribunal who carried out the original inspection before the RSEO was granted and, consequently, was aware of the location of the Property within the block.

HEARING ON 26 JULY 2023

21. On 26 July 2023 at 13.00 a teleconference hearing took place. The Tribunal comprised Ms. Aileen Devanny, Chamber President and Chairperson, and Ms. Carol Jones, Ordinary (Surveyor) Member. The members attended at George House, Edinburgh with a hearing clerk present and the proceedings were recorded.

Mr Mark Fortune attended the hearing. No representative of the Third Party Applicant attended. Three members of the public in advance of the hearing requested that they be allowed to listen to the proceedings and SCTS arranged for them to do so.

22. The proceedings commenced with an introduction by the clerk on technical issues followed by an introduction from the chairperson explaining the stage of proceedings reached and the possible outcomes open to the Tribunal after evidence had been considered. The chairperson also outlined that the members had not been given access to the property that day for the inspection when they attended at 10am.

23. Mr Fortune explained his involvement in the proceedings. He stated that he had made a complaint to the Judicial Office and he was involved in the hearing not as the landlord but to protect his legal rights and to stop these rights being prejudiced. He stated that he was not a director of EHPL Ltd and not the legal owner and landlord of the property. He stated that he did not believe the landlord was attending the hearing that day but that paperwork had been submitted in advance of the hearing which he believed the Tribunal had in its possession. He was at the hearing to report back to the Judicial Office on the complaint. He was asked to clarify if he represented EHPL Ltd in the Upper Tribunal (UT) appeal which had taken place in relation to the case at an earlier stage and he stated that one of the EHPL Ltd directors had intended to attend the UT for the appeal and at eleventh hour he had stepped in to assist in those proceedings.

24. There was then a point raised by the Tribunal chairperson that the documents sent to the Tribunal had been sent with a restriction which excluded their circulation to the parties and this had been explained within an email sent by the Tribunal to EHPL Ltd dated 19 July 2023. The chairperson referred to the requirement that evidential productions required to be circulated to the other parties and it was a requirement of Rule 23 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 SSI No 328 ("the Procedure Rules") that all reasonable steps should be taken to ensure that documents were circulated to parties at least 3 days in advance of the hearing date. The circulation of the documents to the Third Party Applicant had not occurred due to the restrictions placed on circulation by EHPL Ltd. Further, Schedule 2 Paragraph 6(4) (c) of the Housing (Scotland) Act 2006 requires that a notice served in terms of Schedule 2 Paragraph 6(3) must be accompanied by "any report which the First-tier Tribunal considered before making the decision." The notice

in terms of Paragraph 6(3) is served on the Landlord, Tenant, and the Third Party Applicant. The chairperson indicated that the Tribunal were of the view that for the paperwork to be considered in evidence, the restriction on circulation placed by EHPL Ltd would need to be lifted.

Mr Fortune indicated that the documents produced in evidence were not the property of EHPL Ltd and some documents were addressed to him and some other managing companies. He indicated that he would feed back the position on the documents to EHPL Ltd and they could come back to the Tribunal.

25. Mr Fortune was asked by the chairperson if he wanted to say anything about the works to the Property from his own knowledge.

He explained in response that the initial roof leak was a direct result of works carried out in 2010 under statutory notices issued by the City of Edinburgh Council and works completed by the Council's subcontractors. The other owners in the block of flats did not wish to carry out the repairs to the roof. He was delighted that there was an order to carry out roof repairs which assisted. There was evidence in the documentation submitted which supported that works had been carried out to the roof. He thought that the skylight where there was a roof leak had been replaced and the lead flashing around the skylight had been repaired. This work has been carried out between March and May 2023. There was confirmation in the documentary productions submitted by EHPL Ltd that the roofing works had been completed. The internal plasterwork has been left to dry out but he stated this work was not part of the RSEO. He clarified in response to a question by the Ordinary (Surveyor) Member that the door to the lounge was now locked and the tenants did not have access to the lounge.

He believed that no works in the RSEO remained outstanding, apart possibly from window ropes which need adjusted. He stated that the bedroom, kitchen and lounge windows had been replaced at different times. The lower bedroom window had been replaced before the last Tribunal inspection of the property and before the RSEO was issued and the kitchen and lounge windows replaced after that inspection. He believed that evidence to confirm this had been included in the productions lodged by EHPL Ltd. He complained about the restrictions imposed by the City of Edinburgh Council on window replacements. Because of the age of the windows, he stated that they would never 100% close and he considered that tenants prop up the windows and "play" with them. He stated that as far as he is aware the windows in the property are safe and secure.

He was asked the question by the Tribunal when was the last time he had visited the Property. He replied that he had not been in the Property for a number of years but he had the ability to send people to the flat to look for him. He stated that he tended not to go to his properties because of past allegations made about him. He also stated there had been problems obtaining access with some tenants working from home

using headphones and not answering the door. Hence the reason why everything is transferred into third party companies to run, as was accepted by a sheriff at Edinburgh Sheriff Court. He expanded on this and stated that fortunately he did not need to deal with tenants on a day to day basis as he had passed this on to someone else.

The requirements stated in the RSEO at (vi) were read out to Mr Fortune. He detailed the documents in the productions which deal with this issue. However, these documents had been subject to the restriction on circulation and the Tribunal pointed this out and that if consideration was to be given to these documents, they would need to be able to be circulated to the parties. It was pointed out by the chairperson that the Tribunal had to have regard to Scottish Government guidance and the RSEO referred to meeting the standards for a house of multiple occupancy (HMO). That being the case there should be a risk assessment in the papers submitted to the Tribunal.

Mr Fortune disputed that the Property fell within the provisions of being a house of multiple occupancy (HMO). He stated that it had ceased being an HMO in 2009 and was a holiday let. He stated that he thought there were 3 people staying in the flat at the moment. He thought the flat had 6 bedrooms and a box room explaining "I own so many properties".

He stated that there had been a number of sheriff decisions and rulings on the issue of whether it was an HMO.

Mr Fortune confirmed that the carbon monoxide detector in the kitchen was replaced by the electrician when he completed the electrical report.

In relation to point (ix) of the RSEO, he stated that the gas fire in the lounge had been removed when the certification had been completed. The boiler and hob were part of the gas certification.

Lastly, the chairperson asked if Mr Fortune wished to make any comment on the option of a Rent Relief Order ("RRO") in the event that the Tribunal made a failure to comply decision.

Mr Fortune responded that a RRO was irrelevant as the works detailed within the RSEO had been completed; and any additional works which the Tribunal thought would need adjusted would be carried out. He stated that it was a relief that the roof works had been completed. He stated that if an RRO was made the tenants would be served notice by the landlord explaining that a new landlord would not be subject to any order; and "I would instruct the landlord to appeal it to the Upper Tribunal. I would fund a Court of Session appeal, it is becoming ridiculous."

26. The chairperson asked Mr Fortune if he knew the identity of the landlord. To which he replied that he did but did not wish to share this information in public but he

would provide it to the Tribunal. The Chairperson pointed to the definition of landlord in Section 194 of the Housing (Scotland) Act 2006. Mr Fortune stated it was a landlord by contract not by title. He disputed that the definition in Section 194 of the Housing (Scotland) Act 2006 meant that an RSEO would transmit on sale to a subsequent owner of the property as "successor in title". In any event he stated that he had no intention to sell, he was buying at the moment.

On the issue of any reduction in rent in relation to any RRO which may be made in the event of a failure to comply decision, Mr Fortune stated that he was opposed to any reduction since the properties were offered for rent at about 20% below market rent. He stated that since tenants did not have the use of the lounge, they were unaffected by the faults there. He stated that the average rent payable by individual tenants in that Property was around £425 per month.

POST HEARING CASE MANAGEMENT

27. On 29 July 2023 the Tribunal were copied into an email sent by Mr Fortune to EHPL Ltd stating

"Further to the hearing held on Tuesday in regards the above, as you are aware I dialled in to listen to and if requested assist the panel, in short to protect my position, commercial agreements and take notes for a Judicial complaint.

As discussed yesterday (Friday 28th) I believe the paperwork submitted by EHPL should be 'unlocked' in so far the tribunal can use it, I accept as did the chairperson that permission was granted for the panel to have regard to the papers, she accepted that was the case but believed they ought not to because they could not thereafter pass it in to the 3rd party applicant and tenants, I do not believe the tenants can obtain a copy, a) they are not a party to the action b) their details are unknown so in essence the tribunal would be issuing to people unknown, the data would be outside their control and I expect prove a problem for their own GDPR department.

Having made contact with the parties who carried out the works, repairs or certificates, I understand they will now have no objections to the documents being sent without restriction and I suggest you confirm to the tribunal that they can be used. The new management company is not named on the documents so their consent is not required."

Later that same day the Tribunal received the following email from EHPL Ltd

"Having taken further advise and spoken in part to the legal owners (the data subject) we are prepared to submit the papers unrestricted, indeed Mr Fortune¹ sought we do such in an attempt to help the panel.

Therefore the panel, although granted permission, can now look at said

productions over 2 emails and if so desire send to the 3rd party.

We understand these documents cover what was requested

Electrical certification

Gas certificate

Fire alarm certificate

Fire extinguisher certificate

Details of roof inspection

Details of additional works / repair carried out to the roof

Window repairs.

We do not believe anything else was required as additional issue ie leak in bathroom was addressed and confirmed repaired previously and at (v) the bedroom window we note in the papers an email from Tom Veitch (25/8/22) the applicant confirming that has been attended to”

28. The Tribunal issued a direction on 7 August 2023 to the Third Party Applicant, EHPL Ltd and Mr Mark Fortune as follows:

“Background

In advance of the hearing which was to be held on 26 July 2023, Edinburgh Holiday and Party Lets Limited submitted two emails with documents attached which they wished the Tribunal to consider as evidence in the proceedings. Edinburgh Holiday and Party Lets Limited stated that the documents in the attachments were for the Tribunal only to consider and were not to be shared with a third party.

It was pointed out to Edinburgh Holiday and Party Lets Limited in an email from the Tribunal administration sent on 19 July 2023 and also at the hearing on 26 July 2023 by the Chamber President that the restriction on circulation of documents was contrary to legislation. Furthermore, such an approach would be lacking in transparency in the proceedings and would be unfair. The restriction on circulation placed by Edinburgh Holiday and Party Lets Limited does not allow representations on the documents by the other party.

Rule 23 of the First tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 contained in SSI 2017/328 provides

“Documents at hearings

23.—(1) Where the application is to be subject to a hearing, the First-tier Tribunal must take all reasonable steps to ensure that there is sent to each of the parties at least 3 days before the date of the hearing, a copy of, or sufficient extracts from, or particulars of, each document relevant to the application which has been received from a party (other than a document which is in the possession of such party or of which that party has previously been sent a copy).

(2) Paragraph (1) does not apply to assured tenancy references.”

It was pointed out in advance of the hearing and at the hearing on 26 July 2023 that if the attachments to the emails were to be considered in evidence by the Tribunal, either they would need to be circulated to the Third Party Applicant or, alternatively, documents could be resubmitted which Edinburgh Holiday and Party Lets Limited were content to be circulated to the Third Party Applicant and these alone would be considered in evidence by the Tribunal members.

The Chamber President intimated to Mr Fortune at the hearing, which was not attended by the Third Party Applicant, that he could consult with Edinburgh Holiday and Party Lets Limited and confirm after the hearing concluded if the documents produced by Edinburgh Holiday and Party Lets Limited were to be circulated to the Third Party Applicant. This would allow consideration of them by the Tribunal if agreement for circulation was confirmed.

On 29 July 2023 both Mr Fortune and Edinburgh Holiday and Party Lets Limited confirmed in emails sent to the Tribunal that the documents which were attachments to two emails submitted to the Tribunal administration by Edinburgh Holiday and Party Lets Limited on 11 July 2023 and 22 July 2023 could be circulated to the Third Party Applicant. Accordingly, these documents are being circulated to the Third Party Applicant and will be considered by the Tribunal before making a determination. The procedure would normally be that these documents would be circulated before a hearing. The contents of the documents could have had a bearing on the attendance of the Third Party Applicant at the hearing or whether the Third Party Applicant submitted written representations in response. Given this, the Tribunal issue this direction to City of Edinburgh Council as Third Party Applicant.

DIRECTION TO THE CITY OF EDINBURGH COUNCIL as Third Party Applicant

The Third Party Applicant is directed within 10 days of the date of this direction to provide to the Tribunal any written representations they wish to make (1) in relation to the documents submitted in evidence by Edinburgh Holiday and Party Lets Limited; and (2) in relation to the issue of compliance with the Repairing Standard Enforcement Order following consideration of these documents.

In the event that written representations are received from the Third Party Applicant, The Tribunal administration are directed to send a copy of these written representations received to Edinburgh Holiday and Party Lets Limited and Mr Mark Fortune to provide them with an opportunity to submit any further written representations they may wish to make on the written representations received from the Third Party Applicant.”

Attached to the direction were the following documents

1. email from EHPL Ltd to the Tribunal administration with binder of attachments (email dated 11 July 2023).
2. email from EHPL Ltd to the Tribunal administration dated 22 July 2023 with electrical certificate (this email includes the message from the Tribunal administration to EHPL Ltd dated 19 July 2023 which is referred to in the direction)
3. email from Mr Fortune to the Tribunal administration dated 29 July 2023.
4. email from EHPL Ltd to the Tribunal administration dated 29 July 2023.

29. On 8 August 2023 the following email was received from Mr Fortune in relation to the direction issued

"Further to the email below and attached - it is totally unacceptable and outrageous the wording in the header. It is both incorrect in fact and in law

Edinburgh Holiday & Party Lets Limited (SC577943), sometimes trading as EHPL Limited, whose representative is Mr Mark Edward Fortune; AND the said Mr Mark Edward Fortune, for any right, title and interest as landlord he has acquired ("the Landlord"). The definition of "Landlord" is provided at Section 194 of the Housing (Scotland) Act 2006.

It is my understanding that the company Edinburgh Holiday & Party Lets Limited does not and has never traded as EHPL Ltd, indeed in law that would be impossible as both limited companies would have their own legal identity and indeed a company EHPL Limited having been removed from the register could not trade, a limited company could trade as ie EHPL but not as a limited company under Company Act. It is further incorrect to state that issues were pointed out to Edinburgh Holiday and Party lets at the hearing, as you know very well they did not attend, as you clearly confirm so how could they anything be pointed out to them... do not tell a pack of lies or print a misleading narrative, as you are well aware (as I have recorded) I simple confirmed I would pass on your comments and or my opinion of releasing the documents. I also did not confirm my permission to release the documents, I copied you to an email I sent to the landlord confirming I thought they should and I had no objection if they did.

More concerning is the totally incorrect and indeed believed comment used maliciously and indeed misleading whoever representative is Mark Edward Fortune, it should be know that I had independent legal witnesses present on the call, I made it very clear when asked on more than one occasion that I was NOT representing the company Edinburgh Holiday and Party Lets Limited, I was only attending the hearing to protect myself and to witness what was said inc I was not prejudiced- I therefore call on you to immediately remove any such statement, failing such I shall lodge a complaint with the Judicial Office of Scotland for what is not less than a down right

lie, I will thereafter raise legal action against the writer personally, not only for there attempt to mislead but also for u lawfully attempting to breach the corporate vale without meeting clear case law. in regards title, again you need to read them correctly to ascertain ownership.

I am as accepted in a higher judicial process than HPC that being the Sheriff Court and Court of Session as not being the landlord! There is no contract between the head landlord and the sub-tenant(see, for example, Rennie – Leases (SULI) at paragraphs 18-40 to 18-43), and as a general rule no right of action lies between them arising out of the sub-lease (see, for example, Stair Memorial Encyclopedia – Landlord and Tenant (2nd Reissue) at para 308). There has also been rulings in the English Appeal court.

It appear again without any lawful right, without following the rules of the tribunal (rule 32) you have again changed the definition of respondent although on the attached document it appears the above narrative flows from the 3rd party applicant.

in regards DIRECTION TO THE CITY OF EDINBURGH COUNCIL as Third Party Applicant

The Third Party Applicant is directed within 10 days of the date of this direction to provide to the Tribunal any written representations they wish to make (1) in relation to the documents submitted in evidence by Edinburgh Holiday and Party Lets Limited; and (2) in relation to the issue of compliance with the Repairing Standard Enforcement Order following consideration of these documents.

Having sought legal advice it appears it is not within your gift to seek the above, it could be argued that point 1 is just a general observation, point 2 is not within your gift nor in law can an applicant make such a statement. The applicant is not a professional expert as defined in law and it is outwith their gift under the rules to make any comment, indeed should they make comment against a tradesman they open themselves up to legal action

I will if you continue to publish incorrect detail of myself start to publish details of yourself to alert the public to court actions and complaints against Ms Devanny which will include all public available data which could include your home address.

I wait confirmation that you have corrected the mistakes and be very check your recollection very clearly as I can prove on more than one occasion I was very clear I did not appear for Edinburgh Holiday and Party Lets Ltd nor was their representative so you are a total liar if you say different.

I will allow you until 4pm tomorrow 9/8/23 Failing a reply I shall lodge with the Judicial Office and publish thereafter as required.”

A reply was sent on 8 August 2023 from the Tribunal as follows

“With reference to your email dated 8 August 2023, the heading on the direction issued on 7 August 2023 follows the same style as that in the direction issued on 22 June 2023. The Tribunal has yet to issue their determination on all matters.”

30. On 17 August 2023 Mr Tom Veitch, Acting Regulatory Operations Manager - Trading Standards and Enforcement, Regulatory Services City of Edinburgh Council on behalf of the Third Party Applicant responded as follows to the direction

“Please note the City of Edinburgh Council’s response to the direction to provide the Tribunal with any written representations in relation to:

- 1. The documents submitted in evidence by Edinburgh Holiday and Party Lets Limited*
- 2. The issue of compliance with the Repairing Standard Enforcement Order (RSEO) following consideration of these documents.*

Answer 1.

Officers from the City of Edinburgh Council visited 13 3f1 Gillespie Crescent on 19 June 2023 in relation to an ongoing investigation that this property was operating as an unlicensed House in Multiple Occupation, and that was operating as a rental property without the owner being landlord registered. During this visit the officers observed that the property was still below the repairing standard, with several issues outstanding including the living room ceiling which had continued to deteriorate and was still in poor condition. (see photo attached)

Subsequently the documentation which was forwarded to us is dated after our visit of the 19th June, showing estimates and invoices for works relating to a number of the identified outstanding issues. The City of Edinburgh Council recognise that the Gas Safety and EICR certificates have both been signed off by appropriately qualified persons for this property.

However having reviewed the documentation, there does not appear to be any evidence that the kitchen window has been repaired, or that the repairs to the ceiling have been completed to date although I note the contractor has suggested these are not completed for a period of 3 months to allow the interior ceiling time to dry. I also note it is not clear as to whether a carbon monoxide detector has been fitted.

Answer 2.

City of Edinburgh Council acknowledges that there appears to have been progress in terms of further repairs and improvements to the safety of this property since our most recent visit on 19th June 2023. However as per our answer to Q1 above, the documentation does not appear to show repairs for the kitchen window or ceiling to date which we believe were both listed on the original RSEO. I would further note that

these repair issues were first reported to the Tribunal by the City of Edinburgh Council in 2019.

The City of Edinburgh Council would therefore comment that it appears from the documentation provided that the RSEO has been at least partially complied with. In order to determine whether the RSEO has been fully complied with, the City of Edinburgh Council would suggest that the Tribunal may wish to consider a further inspection of the property by the Tribunal to satisfy themselves that all works listed within the RSEO have been completed and the property meets the tolerable standard. Furthermore, the Tribunal may wish to also consider arranging for a representative from the Scottish Fire and Rescue Service to visit this property to assess and advise the Tribunal on the Fire Safety arrangements, including carbon monoxide detection."

This response from the Third Party Applicant was served on EHPL Ltd and Mr Mark Fortune.

31. On 26 August 2023 the following further representations were received from EHPL Ltd

"Having sought legal advice in regards the various complaints lodged at the Judicial Office for Scotland including comments received from them.

It appears the orders issued by the tribunal were flawed

The property 13/5 is a property within a tenement, the Scottish Government webpage (attached) is clear,

A flat in a tenement does not fail the repairing standard if work cannot be done because of other owners refusing consent.

The tribunal were advised on a number of occasions that other owners would not and did not consent to any further roof repairs, indeed the property 14 Gillespie Crescent continued to refuse access to erect scaffolding in their garden making access both dangerous and restricted

The decoration of a property is not within the jurisdiction of the tribunal and evidence will be supplied we understand shortly to show the applicant in these proceedings have far greater problems and complaints within their housing stock inc black mould.

The repairing standard state "wind and water tight" it does not state how a landlord must paint, decorate or indeed how old the decoration can be

The property also meets the Tolerable Standard and it should be noted NO resident of the property throughout these proceedings has joined the action, submitted a complaint or supported the applicant, although the applicant has attempted to bully,

coerce and threaten them to do so.”

32. On 1 September 2023 Mr Veitch from the Third Party Applicant responded

“The City of Edinburgh Council notes the further information provided relating to the carbon monoxide detection and kitchen window repair, and the intended delay to ceiling repairs. Otherwise, we would make no further comment beyond our previous response, suggesting that the Tribunal may wish to consider an inspection of the property to satisfy themselves that all works listed within the RSEO have been completed to an acceptable standard and the property now fully meets the tolerable standard.”

33. On 27 September 2023 the Tribunal issued the following direction

“Background

The First-tier Tribunal (“the Tribunal”) is at the stage of proceedings where it is considering whether the Repairing Standard Enforcement Order dated 8 November 2022 (“the RSEO”) has been complied with and the various works as detailed in the RSEO have been completed. An inspection of the property was scheduled for 26 July 2023 but did not proceed as no access was provided by the tenants.

The RSEO specifies the following requirements as part of works required to the property:

(ii) Repair the damage to the living room ceiling caused by the ingress of water and, in particular, re-plaster and redecorate all affected areas.

(vi) Engage a suitably qualified SELECT, NICEIC or NAPIT registered electrical contractor or suitably qualified fire engineer to test and repair or replace the system for detecting fires and for giving warning in the event of fire to ensure that the system meets the requirements of the Act and all current statutory guidance. Thereafter, to provide the Tribunal with a report on the working order of the system and written evidence of compliance with all fire safety requirements of a House in Multiple Occupation.

In relation to item (ii) of the RSEO detailed above, documentation from a company called Fire Flood Emergency Services TWS dated 18 August 2023 has been lodged by or on behalf of the Landlord. The documentation states that this company has provided an estimate for undertaking plasterwork and painting of the lounge ceiling but that it will take until October 2023 to allow time for the ceiling areas to dry out and show no signs of dampness or rot. The company Fire Flood Emergency Services TWS indicates that they are happy to undertake the ceiling repair as quoted and have an inspection penciled in for October and the company indicates that, including

preparation work, it will take approximately 4 days for the ceiling works to be completed.

In relation to item (vi) of the RSEO detailed above, a fire detection and alarm system inspection and servicing report by EFS-GROUP/FIREALARM GUY dated 22 June 2023; and portable fire extinguishers report of same date, both documents signed by Peter Brown of EFS-GROUP/FIREALARM GUY, have been lodged with the Tribunal by or on behalf of the Landlord. The documentation refers to an inspection of and service of the fire alarm system and service and replacement of fire extinguishers. Beyond these two documents dated 22 June 2023, no written fire safety risk assessment nor any other documentation, which may be required under the legislation relating to houses of multiple occupation, is lodged with the Tribunal. There is guidance issued by Scottish Ministers in relation to fire safety in houses of multiple occupation and the Scottish Fire and Rescue Service (SFRS) has a role in enforcing the relevant legislation and guidance. Schedule 2 paragraph 4 of the Housing (Scotland) Act 2006 ("the Act") as amended places a duty on the Tribunal, where the application relates to the standard of repair mentioned in the repairing standard in relation to the provision for detecting fire, to consult with the chief fire officer of SFRS. Originally, this related to the repairing standard duty in Section 13(1) (f) of the Act but, following statutory amendment, this repairing standard duty for provision for detecting fire now falls within Section 13(1) (h) of the Act. This was an amendment introduced by the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

In considering the repairing standard regard has to be had to guidance issued by Scottish Ministers in relation to equipment for detecting fire and for giving warning of fire and suspected fire and the tolerable standard, in accordance with Section 13(7) of the Act.

It is appropriate that the Tribunal consult with SFRS in relation to whether Peter Brown of EFS-GROUP/FIREALARMGUY, the company who issued the paperwork dated 22 June 2023, is a registered third party certificated company or individual with the appropriate level of technical training, experience and knowledge to provide fire safety and fire risk assessment documentation and, furthermore, whether the appropriate equipment has been installed and is in operation in the property and a fire safety risk assessment has been carried out and implemented for the property as a house of multiple occupation. This will provide assistance for the Tribunal in determining whether there has been compliance with fire safety requirements for the property.

As a consequence of the forgoing background, the Tribunal issues the following directions:

A. Direction to Chief Fire Officer of Scottish Fire and Rescue Service (SFRS)

The Chief Fire Officer of SFRS is consulted as specified in Schedule 2 Paragraph 4 of the Act in relation to the fire detection provisions which apply at the property and is directed within one month of the date of this direction (which date may be extended on cause shown by SFRS) to inspect the property and provide to the First-tier Tribunal Housing and Property Chamber, 20 York Street, Glasgow G2 8GT a fire safety report taking into account guidance issued by Scottish Ministers in relation to

1. whether Peter Brown of the company EFS-GROUP/FIREALARM GUY, who issued the paperwork attached, is a registered or third party certificated company or individual for completion of fire safety documentation and fire safety risk assessments.
2. whether the SFRS consider that satisfactory fire safety equipment meeting the guidance issued by Scottish Ministers has been installed and is in operation and in working order in the property;
3. whether any required fire safety risk assessment has been carried out for the property by a person with the appropriate level of technical training, experience and knowledge and the assessment has been implemented for the property as a house of multiple occupation;
4. specification of all documentation which would be required to be prepared for the property to meet the guidance of Scottish Ministers in relation to houses of multiple occupation; and
5. any other fire safety information relevant to the Tribunal's role in determining if the RSEO provision (vi) above relating to the property has been complied with.

It is proposed that the Tribunal will on receipt of the report from the Chief Fire Officer or his delegated representative in the SFRS circulate it to the parties to inform them of the contents and to allow further written representations from them on the report.

B Direction to Edinburgh Holiday and Party Lets Ltd and Mr Mark Edward Fortune

Edinburgh Holiday and Party Lets and Mr Mark Edward Fortune are directed to provide details on whether it is their intention to carry out the works to the ceiling identified by company called Fire Flood Emergency Services TWS in documentation dated 18 August 2023 and in which case to provide the date by which time it would be anticipated that the works to the living room ceiling would be completed in full. This information requires to be provided to the First tier Tribunal Housing and Property Chamber, 20 York Street, Glasgow G2 8GT no later than 16 October 2023.

It should be noted that the Tribunal has yet to decide whether a further attempt to inspect the property is required.”

In the case of the communication to the Chief Fire Officer, Scottish Fire and Rescue Service, three documents were attached to the direction:

1. a fire detection and alarm system inspection and servicing report by EFS-GROUP/FIREALARM GUY dated 22 June 2023
2. a portable fire extinguishers report dated 22 June 2023 signed by Peter Brown of EFS-GROUP/FIREALARM GUY
3. electrical inspection condition report dated 19 July 2023 issued by Mr Eddy O'Malley, Electrical Certificate Solutions.

34. On 28 September 2023 EHPL Ltd sought permission to appeal the direction.

35. On 30 September 2023 Mr Mark Fortune responded as follows to the direction:

"As advised prior and at the hearing, I am not the landlord as defined in recent case law.

I do however note the following which appears to be outwith the original RSEO.

A. Direction to Chief Fire Officer of Scottish Fire and Rescue Service (SFRS)

The Chief Fire Officer of SFRS is consulted as specified in Schedule 2 Paragraph 4 of the Act in relation to the fire detection provisions which apply at the property and is directed within one month of the date of this direction (which date may be extended on cause shown by SFRS) to inspect the property and provide to the First-tier Tribunal Housing and Property Chamber, 20 York Street, Glasgow G2 8GT a fire safety report taking into account guidance issued by Scottish Ministers in relation to

- 1. whether Peter Brown of the company EFS-GROUP/FIREALARM GUY, who issued the paperwork attached, is a registered or third party certificated company or individual for completion of fire safety documentation and fire safety risk assessments.*
- 2. whether the SFRS consider that satisfactory fire safety equipment meeting the guidance issued by Scottish Ministers has been installed and is in operation and in working order in the property;*

I am aware that Peter Brown is extremely upset having his professionalism called into question, he has also received correspondence from his contact at the Fire Service that they do not do as you wish them to do, it is outwith their remit.

It appears clear to me both at the hearing and further that this is again a personal issue, Ms Devanny was very clear to which I had witnessed, she was intent on bending the rules, when it was clear the RSEO had been carried out she moved the goal posts, when advised I was not the landlord and thus not subject to the order made further daft comments, she was recorded as being bias and prejudice. Her combative attitude was not called for on a judicial hearing and must be checked.

I have therefore taken the decision on legal advise to report her to the Judicial Office of Scotland, it is clear the HPC is over reaching what Parliament intended and no doubt

discriminating against myself and other property owners or landlords.

As advised previously, the landlord was not advised prior to lodging this action, it was suggested I as the owner was advised, I was not the owner as I had made clear to you! Further the landlord is a limited company.

I therefore suggest you stick to the original RESO to which the documents have been supplied, you now refer to the property as an HMO, the property is NOT an HMO, does not operate as such, has not had an HMO for approx 11/12 years and it is a fact that NO action for unlicensed HMO has been reported, indeed if such was reported no action has been taken by the crown - I think that confirms the property is not an HMO and as such can't be held to the requirement of such, further if it is now to be reported as a non HMO to assist the HPC this case should be sisted in order not to prejudice a criminal case as this process is in the public domain.

I wait your reply by return, failing such will support EHPL Ltd appealing the direction to the upper tribunal and thereafter to the Court of Session as this harassment needs to be brought to a stop. Indeed an appeal to the Court of Session will place this harassment on hold for at least 2 years."

36. On 4 October 2023 EHPL Ltd sent the following email to the Tribunal

"Given the apparent willingness for the tribunal too go beyond their powers or indeed what Parliament intended we have sought legal advice as this nonsense has gone on too long.

The tribunal has ruled Mr Fortune is the sole director of our company Edinburgh Holiday & Party Lets Ltd [EHPL] Mr Fortune is not the director of the company

The landlord was served a letter by the applicant prior to lodging at the HPC The landlord EHPL was not sent any such letter.

The letter was sent to Mr Fortune - as a director that was as good as the same it was ruled. Mr Fortune is not a director but clear case law distinguished between company and directors and in short they are a separate identity

Mr Fortune was sent the letter as the owner of the property and as such in short normally the landlord. It has been brought to our attention from counsel that Mr Fortune is not the owner of the property and has not right in law to carry out or be ordered to do anything in relation the property.

Having sight of the title deeds, it appears the property vested in a trustee in sequestration having been appointed by the court on 24/12/2010. As such any such notice would and should have been issued to the trustee. More concerning having

contacted the AIB it would appear that the sequestration and the appointment of the trustee was at the request of the 3rd party applicant, indeed within the sequestration a commissioner appointed under the bankruptcy Scotland act 1985 is an employee of the 3rd party applicant. It would therefore be reasonable to suspect that the 3rd party applicant would be well aware Mr Fortune was not the owner or in control and in any event a trustee vest. Indeed the tribunal has a copy of the titles and the burdens are clearly noted, indeed this go above what would normally be noted in a sequestration, we are advised a note would normally just be listed at the register of inhibitions and insolvency, it would appear this burden was the result of either a sheriff or o judge at the Court of Session. This gives great concern as to the 3rd parties credibility, indeed further the 3rd party applicant previously referred to witness statements in that a Mr Clegg had given a statement and produced a lease for housing benefit - the alleged witness statement suggested his landlord was 4m Ltd - attached is the adobe e document signed by Mr Clegg which contradicts said statement, our understanding was that it was always the position at the hearings in that the witness statements were made up by Mr Ross to found on jurisdiction indeed Mr Ross accepted the statements lodged were no more than his recollection from his note book and NO cohoberation to said statements was supplied.

It appears as the original NOTICE was never sent correctly, the 3rd party applicant would have been aware this case should not have passed go and all orders thereafter are incompetent. In order not to waste anymore of the public purse please dismiss the action immediately- failing such we shall lodge an appeal to the upper tribunal."

37. On 25 October 2024 the Tribunal refused the request of EHPL Ltd for permission to appeal the direction. The decision refusing permission stated

"The request for permission to appeal relates to the issue of a direction seeking further information before a decision of the Tribunal is made. In terms of Schedule 2 Paragraph 2 of the Housing (Scotland) Act 2006 ("the Act"), the Tribunal may make inquiries as it thinks fit for the purposes of determining whether the landlord has complied with the duty imposed by section 14(1) (b) of the Act in relation to the house concerned. Schedule 2 paragraph 3 of the Act states that for the purpose of making inquiries the Tribunal can require any person to give such documents or information as it may reasonably require. Schedule 2 Paragraph 4 of the Act places a duty of the Tribunal to consult the Chief Fire Officer of Fire and Rescue Service in certain circumstances.

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 contains the Housing and Property Chamber Rules of Procedure ("the Procedure Rules"). Rule 20(1) states that Tribunal may make such inquiries as it thinks fit for the purposes of exercising its functions and these inquiries may consider any report instructed by the Tribunal about any of the matters referred to in the application. Rule 16 refers to the issue of directions relating to the conduct or progress

of the case. Rule 26 refers to decisions of the Tribunal. A direction relating to the conduct or progress of a case is not a decision of the Tribunal. In terms of Rule 37(2) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 the application for permission to appeal must “identify the decision of the First-tier Tribunal to which it relates.” It is not competent to make application for permission to appeal relating to a direction.

The application seeking permission to appeal does not comply with the requirements of Rule 37(2) The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

For the forgoing reasons, permission to appeal the direction dated 27 September 2023 issued by the Tribunal is refused. The decision stated the provisions for appeal of this decision.

38. On 27 October 2023 the Tribunal received a report from SFRS. It was submitted to the Tribunal by Mr Mark Bramwell GIFireE MIFSM Station Commander Prevention & Protection, City of Edinburgh.

In summary this report by SFRS was compiled following upon an audit carried out on 11 October 2023 by SFRS Fire Safety Enforcement Officers. It involved an inspection of the property. No access was gained to bedrooms 1, 4 and 7 during the inspection due to the tenants being out and the doors being locked.

SFRS understood that the Property is currently operating as an unlicensed House in Multiple Occupation (HMO). Whilst HMOs (whether licensed or unlicensed) fall under the scope of the definition of Relevant Premises (Part 3 of the Fire (Scotland) Act 2005, section 78) for the purposes of compliance with fire safety legislation, the issue of licensing remains a matter for the relevant Local Authority.

The responses from SFRS to each request for information from the Tribunal are stated after the appropriate part of the direction

2.1 Whether Peter Brown of the company EFS-GROUP/FIRE ALARM GUY, who issued the paperwork attached, is a registered or third party certificated company or individual for completion of fire safety documentation and fire safety risk assessments.

Response - By way of background, duty holders, or their employees, may have the necessary training, skills, knowledge and experience to carry out their own fire safety risk assessment and guidance is available on the Scottish Government website.

Whilst duty holders are often best placed to know their premises, they may not be in a position to undertake a fire safety risk assessment themselves and so they can arrange for a suitably qualified or competent person or company to complete an

assessment on their behalf. It is the duty holder's responsibility to satisfy themselves that those contracted to carry out the assessment have the necessary qualifications, skills, knowledge and experience to assess the fire safety risk at their premises.

It should be noted that there is currently no mandatory requirement for Fire Alarm Installers or Fire Risk Assessors to register or be certified in accordance with a third-party accredited scheme. There are, however, several registration schemes and industry bodies that organisations/professionals may opt to join to evidence their competence.

Having reviewed publicly available registers, there was no indication that EFS Group, Fire Alarm Guy, or Peter Brown were affiliated with such schemes or bodies.

2.2 Whether the SFRS consider that satisfactory fire safety equipment meeting the guidance issued by Scottish Ministers has been installed and is in operation and in working order in the property.

Response - Following a fire safety audit of the Property by SFRS Fire Safety Enforcement Officers, the fire warning & detection system was deemed to be of a higher standard to that recommended for this premises type. The system installed is a Grade A Category L2 system. When considering the standard, cognisance is taken of both the Scottish Government guidance and the appropriate British Standard BS 5839-1:2017.

Whilst the system as referenced above is considered to be superior to that required it should be noted that at the time of the fire safety audit there was a lack of evidence of regular testing, recording or proper management of fire safety measures (fire warning & detection system and firefighting equipment) by either the duty holder, appointed agent, or tenant.

The type and distribution of portable fire extinguishers was deemed acceptable, however, the servicing report (included with the Notice of Direction) does not reference the appropriate British Standard BS 5306-3: 2017, therefore it was not possible to ascertain the standard to which the firefighting equipment has been tested to

Our intention was to test the fire alarm system at the time of audit, however this was not possible as the control panel indicated a fault, and the tenant (present at the time of the audit) had no knowledge of how to test the system.

The property was lacking in an emergency lighting system within the means of escape that would be expected in this HMO.

2.3 Whether any required fire safety risk assessment has been carried out for the property by a person with the appropriate level of technical training, experience and

knowledge and the assessment has been implemented for the property as a house of multiple occupation.

Response - To date, SFRS have not received a copy of a Fire Risk Assessment for the Property, nor was one available at the time of fire safety audit. The duty holder was not present at the Property at the time of the audit. There was no tenancy management pack, documentation or records relating to a Fire Risk Assessment available at the Property, which would be expected to be present in an HMO at the time of audit.

For HMOs, such as this Property, Regulations 8 and 9 of the Fire Safety (Scotland) Regulations 2006 (the 2006 Regulations) require that information be recorded in respect of the significant findings of the Fire Risk Assessment, including the measures which have been or will be taken by the person having duties under section 53 or 54 pursuant to Part 3 of the Fire (Scotland) 2005 Act and the 2006 Regulations. In addition, information must be recorded concerning any relevant person or group of relevant persons identified by the assessment as being especially at risk from fire. No information regarding either a Fire Risk Assessment or significant findings were provided to the Fire Safety Enforcement Officers at the time of the fire safety audit.

2.4 Specification of all documentation which would be required to be prepared for the property to meet the guidance of Scottish Ministers in relation to houses of multiple occupation

Response – As part of an HMO license application/renewal submitted to the Local Authority, SFRS would be consulted and would expect the following information to be made available to the Fire Safety Enforcement Officers either prior to or at the time of a fire safety audit.

- a) Fire Risk Assessment
- b) Tenancy Management Pack (including documentation relating to the Fire Risk Assessment)
- c) Testing and maintenance records for
 - I Fire warning and detection system
 - II. Emergency lighting system
 - III. Firefighting equipment
 - IV. Any other fire safety measures, for example where sprinklers or other automatic fire suppression systems may be installed
 - V. Gas safety certificate
 - VI. Electrical Installation Condition Report (EICR)
 - VII. Portable Appliance Testing (PAT)
- d) Personal Emergency Evacuation Plans (PEEPs) where necessary

Additionally, SFRS may also be presented with the HMO licence application, and Property floor plans where available.

2.5 Any other fire safety information relevant to the Tribunal's role in determining if the RSEO provision (vi) above relating to the property has been complied with.

Response - Reference is made to observations at point 2.2 regarding the issues relating to testing at the time of the fire safety audit.

39. On 9 November 2023 EHPL Ltd sent the following email to the Tribunal

"It's been brought to our attention by our solicitor that the tribunal has acted unlawfully and does not have jurisdiction In the Sheriff Appeal case KIRSTIN PRENTICE SHERRIFF against JAMIE O'ROURKE and LOUISA O'ROURKE The appeal court which is binding were correct to rule that as is the case with our flat the residents had a LICENCE It was accepted by the applicant that the various residents had signed a licence, it was also accepted that each had access to a room, therefore the did NOT have exclusive access which is required to for a lease.

Therefore as this was a licence the tribunal does not have jurisdiction- the appeal court also noted as is the case with our licence that various notes were placed on the licence confirming what it was and that it was not a residential tenancy and the appeal court has taken the view contrary to the tribunal that it does not meet the requirements as per (Gray v University of Edinburgh 1962 SC 157; St Andrews Fore Lodges Ltd v Grieve [2017] SC DUN 25). If one of these was missing in a contract per the occupation of heritage, then the contract is, in law, a licence. Please arrange to have this case dismissed failing we will lodge with the upper tribunal"

40. On 14 November 2023 the Tribunal issued the following direction to the Third Party Applicant, EHPL Ltd and Mr Mark Fortune

Direction

1. A copy of the report from Scottish Fire and Rescue Service (SFRS) dated 27 October 2023 has been circulated to parties with this direction. The Third Party Applicant, Edinburgh Holiday and Party Lets Limited and Mr Mark Edward Fortune have until 30 November 2023 to submit to the Tribunal written representations on this report.
2. The email from Edinburgh and Holiday Party Lets Limited dated 9 November 2023 is circulated to parties with this direction. The Third Party Applicant and Mr Mark Edward Fortune have until 30 November 2023 to submit to the Tribunal written representations on the contents of this email.
3. In a communication from Edinburgh Holiday and Party Lets Limited dated 21 June 2023 the company states that they are no longer the landlord and the

property management has been handed over to another company by the owner. Mr Mark Edward Fortune at the hearing on 26 July 2023 stated that he could provide details of the landlord of the property to the Tribunal. Mr Mark Fortune is directed to provide this information to the Tribunal by 30 November 2023. Edinburgh Holiday and Party Lets Limited are directed to provide information to the Tribunal by 30 November 2023 on the identity of the owner of the property and the identity of the other property management company referred to in their said email and the identity of the landlord of the property.

By direction issued on 27 September 2023, Edinburgh Holiday and Party Lets Limited and Mr Mark Edward Fortune were directed to provide details on whether it was their intention to carry out the works to the ceiling identified by a company called Fire Flood Emergency Services TWS in documentation dated 18 August 2023 and in which case to provide the date by which time it would be anticipated that the works to the living room ceiling would be completed in full. This information required to be provided to the First tier Tribunal Housing and Property Chamber, 20 York Street, Glasgow G2 8GT no later than 16 October 2023. No response has been received. Accordingly, it is presumed that it is not their intention to carry out the forgoing works to the ceiling.”

The parties were given notice of the terms of the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 at the end of the direction.

41. Following upon the issue of the direction mentioned at paragraph 40 hereof, EHPL Ltd emailed the Tribunal on 15 November 2023 as follows

“Further to your email below, it would appear the tribunal has totally ignored the email of 4th October, it would appear this has been ignored as the relevant parties were not notified by the applicant prior to application.

It would appear that the tribunal has chosen to look at data that fits their pre determined harassment and determine to help the applicant regardless of the fact the tribunal acts unlawfully.

Therefore we shall seek to lodge an additional complaint against Mrs A Devanny at the Judicial Office of Scotland.

Meantime as we are aware a Sheriff will no doubt be making a ruling shortly at Edinburgh we request no further information be submitted until 11th December rather than 30th November in order his ruling is known.”

42. The email from EHPL Ltd was taken by the Tribunal to be a request for an extension of time to respond as a ruling from a Sheriff at Edinburgh Sheriff Court was expected.

EHPL Ltd provided no further communication nor did Mr Fortune in response to the direction issued on 14 November 2023 and on 26 January 2024 two further directions were issued by the Tribunal. The first direction to the parties as follows

“Edinburgh Holiday and Party Lets Ltd responded by email to the forgoing Direction on 15 November 2023 indicating the information would be lodged but a judgement from Edinburgh Sheriff Court was awaited and the Direction would not be complied with until after 11 December 2023 when this judgement would be known. No further information has been lodged. Accordingly, the Tribunal directs that the parties have until 14 February 2024 to comply with the direction dated 14 November 2023.

Additionally, on reviewing the file it is noted that Edinburgh Holiday and Party Lets Ltd on 4 October 2023 indicated that the trustee in sequestration for Mr Mark Fortune is vest in the property. It is appropriate that the trustee is contacted by the Tribunal to ascertain if he continues to have an interest in the property, and if so, to clarify the nature of that interest and his involvement, if any, in any tenancy agreements relating to the property.”

The second direction of 26 January 2024 is addressed to the trustee in sequestration of Mr Mark Fortune and states as follows

“Background

The First-tier Tribunal (“the Tribunal”) is at the stage of proceedings where it is considering whether the Repairing Standard Enforcement Order dated 8 November 2022 (“the RSEO”) has been complied with and the various works as detailed in the RSEO have been completed. The RSEO has been registered against the property title as a title burden.

The RSEO specifies the following requirements as part of works required to the property:

- (ii) Repair the damage to the living room ceiling caused by the ingress of water and, in particular, re-plaster and redecorate all affected areas.
- (vi) Engage a suitably qualified SELECT, NICEIC or NAPIT registered electrical contractor or suitably qualified fire engineer to test and repair or replace the system for detecting fires and for giving warning in the event of fire to ensure that the system meets the requirements of the Act and all current statutory guidance. Thereafter, to provide the Tribunal with a report on the working order of the system and written evidence of compliance with all fire safety requirements of a House in Multiple Occupation.

A direction has been issued to parties following a communication from Edinburgh Holiday and Party Lets Limited that they were no longer the landlord and the property management has been handed over to another company by the owner. The Tribunal

sought information from Edinburgh Holiday and Party Lets Limited and Mr Mark Fortune on the identity of the owner of the property and the identity of the other property management company referred to in the said email and the identity of the landlord of the property.

Edinburgh Holiday and Party Lets Ltd have indicated that the trustee in sequestration for Mr Mark Fortune is vest in the property.

Public records held by the Accountant in Bankruptcy indicate that the current trustee is Mr William T M Cleghorn, Aver Chartered Accountants, 21 York Place, Edinburgh EH1 3EN.

Direction

It is appropriate that the trustee in sequestration is contacted by the Tribunal to ascertain if he continues to have an interest in the property, and if so, to clarify the nature of that interest and his involvement, if any, in any tenancy agreements relating to the property. Accordingly, the Tribunal directs that the trustee in sequestration provides the information highlighted in italics in this Direction to the Tribunal by 14 February 2024."

On service of the direction to Mr Fortune, which was by service by advertisement as his address in France is unknown with notification also by email on 26 January 2024 17:17:00, a response was received from his email account on 27 January 2024 08:39:00 stating

"This email could not be delivered - mailbox full please revert to the recipient directly". The email also enclosed a caveat at the start CAUTION: This email is from an external sender, please take extra care to consider its context, intent and veracity before clicking on links or opening attachments.

The direction was issued by sheriff officer on the registered office of EHPL Ltd.

43. An email was received on 5 February 2024 with a letter from Mr WTM Cleghorn, the Trustee in sequestration of Mr Fortune responding to the direction referred to at paragraph 42.

"Sequestration of Mr Mark Fortune ("the Debtor")

Property: 13 3f1 Gillespie Crescent, Edinburgh, EH10 4HT

I refer to the above and your letter of 26 January 2024 enclosing the Notice of Direction. On 16 September 2015, I was appointed as the replacement Trustee in Sequestration of the Debtor by the Sheriff at Edinburgh following the resignation of the previous Trustee. Enclosed is a copy of the Interlocutor confirming my appointment.

In accordance with s.31 of the Bankruptcy (Scotland) Act 1985 ("the Act"), the property noted above vests in myself as Trustee of the Debtor. However, please note that the Debtor has refused to provide access to the property to allow me to carry out my duties. I can confirm that I have not collected any rental income from the property or provided tenancy agreements of the individuals living in the properties.

It is my intention to sell the property for the benefit of the Creditors of the Debtor in accordance with s.39(4) of the Act. I have been unable to sell the property to date as I have been unable to obtain access to the property to allow the required home report, EPC and photos to be undertaken to allow the property to be marketed. It is my intention to sell the property with any tenants in situ."

The direction sent to the trustee and his response was served on parties on 12 February 2024. No further communications have been received.

DOCUMENTS RELATING TO WORKS AT THE PROPERTY SUBMITTED BY EHPL LTD

44. In advance of the hearing, at the hearing and subsequent to the hearing reference was made to documents submitted to the Tribunal by EHPL Ltd. These documents relating to the Property comprise

1. A quote for plastering work to the lounge ceiling and invoice for other works from Fire Flood Emergency Services TWS dated 1 July 2023 addressed to Edinburgh Management & Maintenance Ltd 2D Corstorphine High Street Edinburgh EH12 7ST. The invoice for works covered

To arrange inspection of communal roof repair via Moffat & Son (attached)

To thereafter carry out roof repair including fitting of new Velux Roof window.

To arrange inspection of, service and other of Fire Alarm system inc Certificate (attached).

To arrange and carry out service / replacement 2 Fire extinguishers and certify (attached).

To arrange Gas Safety inspection inc certification (attached) (existing expires 10/7/23)

To arrange Electrical test inc certification (attached) (existing expires 30/7/23)

Works including replacing light bulbs, broken electrical sockets x4 and replace CO2 alarm.

To replace Kitchen tap, wc flush and shower head.

To inspect bedroom window, confirmed working – no fault found.

To inspect lounge window, to adjust – further information sought from planning department re Double glassed unit for kitchen.

To inspect ceiling in lounge, due to the prior water leaks we would not recommend nor commence works for 3 months in order the interior ceiling is given time to dry and there're inspected for any damage. Any loose plaster removed to make area safe.

Accompanying this invoice/ quote were various attachments

2. A fire detection and alarm system inspection and servicing report by Peter Brown, EFS-GROUP/FIREALARMGUY in which the client/ landlord was named Cooper Watson but showing the client email address the same as EHPL dated 22 June 2023 which showed that a 6 monthly check had passed the inspection with no observations and showing that the "full fire alarm system service completed and all devices tested ok this visit, replaced 2x smoke detectors due to slow firing on the first floor". A portable fire extinguishers report also by Peter Brown and dated 22 June 2023 showing as additional comments "installed and wall mounted and fitted user signage".
3. A gas safety record issued by a gas safe registered engineer addressed to Mr Mark Fortune dated 23 June 2023 showing that the boiler and hob have been checked and are safe to use and a carbon monoxide alarm has been checked with no defects noted.
4. An estimate from Stuart and Moffat Roofing Contractors dated 12 May 2023 with an invoice dated 19 May 2023 for roof investigation works addressed to Cooper Watson; a further estimate from the same contractor dated 24 May 2023 for access, replacement of velux window/flashings kits, slate repairs and internal work involving supply and fitting a plasterboard where an access hole was cut and applying a coat of plaster ready for painting and invoices dated 29 May 2023 and 26 June 2023, all addressed to Cooper Watson.
5. Invoice from a company Newleaf (Scotland) Limited addressed to Ferrier Holdings Ltd, Arbroath undated which details Lounge - Manufacture and install new top sash to middle bay window. - Manufacture and install new timber cill x 2 Front Bedroom - Supply and install new glass to existing bottom sash. - Prepare timber and undercoat.
6. Separately, on 22 July 2023 EHPL Ltd submitted to the Tribunal an electrical installation condition report dated 19 July 2023 from an NICEIC registered contractor addressed to "The Owner" which considered the electrical installation to be satisfactory with no adverse observations. Reference is made in the report to smoke alarms being present.

ENQUIRIES BY TRIBUNAL TO IDENTITY THE LANDLORD

45. Given that EHPL Ltd have indicated that they are no longer the landlord of the property; the lack of response to directions issued to EHPL Ltd and Mr Mark Fortune on the issue of the identity of the landlord; and the assertion that someone other than Mr Fortune is the owner of the property, the following enquiries were made by the Tribunal in terms of Rule 20 of the Procedure Rules and in terms of Schedule 2 Paragraph 2 of the Housing (Scotland) Act 2006.

1. The Land Certificate for the property is Title Number MID101053.

This discloses in Section B that the proprietor is MARK EDWARD FORTUNE 4b, Essex Brae, Edinburgh. There are notes attached to this Section of the public record as follows

“In terms of the Bankruptcy (Scotland) Act 1985, the estate of the said Mark Edward Fortune has vested in the trustee in sequestration of the said Mark Edward Fortune. The title of the said Mark Edward Fortune is subject to the following entries in the Register of Inhibitions: Certified Copy Interlocutor (Sequestration) granting warrant to cite Mark Fortune, of 4B Essex Brae, Edinburgh. By Certified Copy Interlocutor, dated 6 Feb.2014, the Sheriff makes an order under and in terms of section 63 of the Bankruptcy (Scotland) Act 1985, allows the warrant to cite dated 24 Dec 2010 to be amended and in respect that the original warrant to cite was never recorded. Date of warrant 24 Dec 2010, per David Ritchie, Registers of Scotland, recorded in the Register of Inhibitions and Adjudications 11 Feb. 2014 and Memorandum of Renewal, dated 30 May 2014, in respect of sequestrated estate of Mark Fortune, 4B Essex Brae, Edinburgh. Date of Sequestration 24 Dec. 2010; with Certified Copy Interlocutor, dated 22 May 2014, in terms of the Bankruptcy (Scotland) Act 1985 authorises the Keeper of the Registers of Inhibitions to record the said memorandum or as near as may be, notwithstanding the expiry of the period of three years mentioned) in subsection 14(3)(b) of the said Act. Per J McNamara, Registers of Scotland, recorded in the Register of Inhibitions and Adjudications 2 Jun. 2014.”

2. A search in the Company Register against Edinburgh Holiday and Party Lets Limited Company number SC577943 discloses that the current director is Roger Anderson. The filing record for the company discloses that Mr Anderson's new appointment details were received for filing by the Register of Companies on 3 May 2023 (a date after issue of the Upper Tribunal decision) with his date of appointment as 20 October 2020 (a date which predates the issue of the RSEO). Mr Mark Fortune resigned as director of the company with his resignation details received for filing by the Register of Companies on 2 May 2023 (a date after his appearance at the Upper Tribunal and after issue of the Upper Tribunal decision) and his date of resignation being 20 October 2020.

Other entries received for filing with the Register of Companies for the company show termination of Mr. Mark Fortune's appointment as director on 10 October 2020 filed on 10 November 2022 and his appointment as director on 10 October 2020 filed on 30 January 2023.

LEGISLATION

46. Section 26 of the Housing (Scotland) Act 2006 as amended states

"Effect of failure to comply with repairing standard enforcement order

(1) It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal.

(2) Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must—

(a) serve notice of the failure on the local authority, and

(b) decide whether to make a rent relief order.

(3) The First-tier Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—

(a) unless the period within which the order requires the work to be completed has ended, or

(b) if the First-tier Tribunal is satisfied, on the submission of the landlord or otherwise—

(i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or

(ii) that the work required by the order is likely to endanger any person.

(4) Where the First-tier Tribunal is prevented by reason only of subsection (3)(b) from deciding that a landlord has failed to comply with a repairing standard enforcement order, the First-tier Tribunal must serve notice on the local authority stating that it considers the landlord to be unable to comply with the repairing standard enforcement order."

The definition of "landlord" is contained in Section 194 of the Act:

"landlord" means any person who lets a house under a tenancy, and includes the landlord's successors in title"

The Act envisages that the application and enforcement proceedings following upon a determination under Section 24(1) of the Act can proceed against a Landlord even

if the tenancy has been lawfully terminated, all in terms of Schedule 2 Paragraph 7(3) of the Act. This provision in the Act states

“Withdrawal of application

7(1) A tenant may withdraw an application under section 22(1) at any time (and the tenant is to be treated as having withdrawn it if the tenancy concerned is lawfully terminated).

(1A) A third party applicant may withdraw an application under section 22(1A) at any time.....

(3) Where an application is withdrawn after it has been referred to the First-tier Tribunal, the First-tier Tribunal may—

(a) abandon consideration of the application, or

(b) despite the withdrawal—

(i) continue to determine the application, and

(ii) if it does so by deciding that the landlord has failed to comply with the duty imposed by section 14(1), make and enforce a repairing standard enforcement order.”

Section 28(5) of the Act supports that the enforcement of an RSEO applies even although there is no tenant in the property. Section 28(5) states

“(5) A landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house.”

Section 25 of the Act details the provision on variation and revocation of a RSEO

“Variation and revocation of repairing standard enforcement orders

(1) Where the First-tier Tribunal has made a repairing standard enforcement order, it may, at any time—

(a) vary the order in such manner as it considers reasonable, or

(b) where it considers that the work required by the order is no longer necessary, revoke it.”

POINTS OF CHALLENGE BY MR FORTUNE AND EHPL LTD

47. It is appropriate that the Tribunal address the issues raised by EHPL Ltd and Mr Mark Fortune.

A. Identity of the Landlord

The first of these issues relates to the identity of the landlord and whether that has changed from the time that the RSEO was issued and the Upper Tribunal issued its appeal decision. A direction was issued by the Tribunal to EHPL Ltd and Mr Fortune seeking information from them as to the identity of the landlord of the Property since EHPL Ltd indicated in writing that they were no longer the landlord and the owner has instructed another managing company; and furthermore, Mr Fortune at the hearing stated he is not the landlord or owner. Neither responded to a direction seeking this information. EHPL Ltd implied in an email to the Tribunal dated 29 July 2023 that Mr Fortune was the owner.

“Having taken further advise and spoken in part to the legal owners (the data subject) we are prepared to submit the papers unrestricted, indeed Mr Fortune sought we do such in an attempt to help the panel.”

A title check indicates Mr Fortune to be the registered proprietor of the property. On 4 October 2023 EHPL Ltd stated that having taken advice the Property is vest in someone other than Mr Fortune. Enquiries were made by the Tribunal which established that, according to the trustee in sequestration, the Debtor (i.e. Mr Fortune) is not giving access to the property to allow the trustee in sequestration, who is vest in the Property, to carry out his duties and commence arrangements for its sale. From the refusal of Mr Fortune to provide access, it can be presumed that Mr Fortune retains possession of the property and that he is dealing with the property as the owner. The trustee in sequestration confirms that he has not collected any rental income from the property or provided tenancy agreements to the individuals living in the properties and, accordingly, it can be concluded that the trustee is not the landlord. Mr Fortune stated at the hearing that his business model is to enter into a contract whereby a company manages the Property as he does not want to have dealings with tenants. He has shown throughout the proceedings that he is knowledgeable about the remedial works to the Property and tenancy arrangements. Documents from contractors engaged to complete works at the property were addressed to Mr Fortune, and companies Cooper Watson and Edinburgh Management and Maintenance Limited. Cooper Watson Limited and Edinburgh Management and Maintenance Limited have registered offices at the same address as EHPL Ltd and Mr Fortune is the sole director of these two companies. There was amongst the written representations sent to the Tribunal by Mr Fortune a suggestion that the owner has entered into a sub-lease and that the legal position is that an owner as a head landlord is not responsible for carrying out the obligations in the sub-tenancy. That is the only conclusion which can be reached from his reference to the position of sub-leases in representations. No documentation to evidence the existence of a sub-lease (or indeed any other contract passing possession of the property to a company) has been produced to the Tribunal which is perhaps not surprising since a sublease could not be entered into other than with consent or at the behest of the trustee in sequestration which it can be presumed is

not the case given the trustee's response to the direction.

EHPL Ltd stated on 17 April 2023 that their contact with the owner was terminated in 2022, this is before issue of the RSEO and the Upper Tribunal appeal was made and raises the question as to why in light of this a company acting independently would not raise this at the time to seek to avoid liability and involvement in appeal proceedings. The most probable answer is that it was not raised because Mr Fortune was at the time acting as the sole director of EHPL Ltd and he wished to distance himself from the outcome of any proceedings and raise ambiguity as to the identity of the landlord to deflect any liability which may be attributed to him personally. The filing history for Edinburgh and Party Lets Limited in the Register of Companies indicates that paperwork removing Mr Fortune as the sole director was not filed in the company register until 2 May 2023 with a resignation/ termination of his appointment dated 20 October 2020. The documentation relating to the replacement director for Mr Fortune was not filed in the Register of Companies until 3 May 2023 with the replacement director's appointment date on 20 October 2020, being the date of termination of the appointment of Mr Fortune.

On 21 June 2023 EHPL stated "The property management has been handed to another company by the owner." Handing over management is suggestive of a unilateral act rather than a bilateral contract between two separate legal entities. The evidence which Mr Fortune gave at the hearing of his ability to send people to the flat to inspect it for him; his knowledge of the number and at times, the personal nature of tenants occupying the property; that he tends not to go to his properties because of past allegations made about him which was why everything is transferred into third party companies to run; that he does not need to deal with tenants on a day to day basis as he had passed this on to someone else; that if an Rent Relief Order was made the tenants would be served notice by the landlord; his statement that a new landlord would not be subject to any order; and that he would instruct the landlord to appeal a decision to the Upper Tribunal and he would fund a Court of Session appeal, are all suggestive of his knowledge and control with the companies he is connected with, and that the companies are acting as his agents and taking instruction from him on the management of the tenancies. The motivation for ongoing obfuscation on the identity of the landlord is most probably down to Mr Fortune's understanding as expressed at the hearing that a new landlord would not be subject to any order. Given the foregoing, the Tribunal is of the view that the evidence points towards Mr Mark Fortune being the landlord of the property with the company which manages the property doing so as a separate legal entity but as his agent. The arrangement described in the evidence is akin to that of an owner and letting agent carrying out letting agency work in Scotland as defined in section 61(1) of the Housing (Scotland) Act 2014 Act. Section 61(1) states

"things done by a person in the course of that person's business in response to relevant instructions which are—

- a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy agreement by virtue of which an unconnected person may use the landlord's house as a dwelling, or
- b) for the purposes of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a)."

B. Objection to the heading in the direction that Edinburgh Holiday & Party Lets Limited has a trading name EHPL Ltd

Mr Fortune raised this as an objection on 8 August 2023 to a direction issued. He pointed out that the name of the company is Edinburgh and Holiday Party Lets Limited and the trading name EHPL Limited had never been used to his knowledge and to refer to the one company by another name with limited attached would be impossible in law.

The first part of the heading in the direction states
Edinburgh Holiday & Party Lets Limited (SC577943), sometimes trading as EHPL Limited, whose representative is Mr Mark Edward Fortune.

The inclusion of the words EHPL Limited was taken from the RSEO and Determination issued on 8 November 2022 and the Upper Tribunal appeal decision dated 31 March 2023. Reference to this originated from the evidence submitted with the application being the offers dated in September and October 2019 issued to tenants and the Bank Details form issued to these tenants for payment of deposit and rent to a specified bank account in the name "mefortune". The offers and Bank Details form issued were on notepaper headed "EHPL Limited" and the name provided at the bottom of some pages or in some instances below the heading was Edinburgh Holiday and Party Lets Limited or Edinburgh Holiday and Party Lets and the words registered in Scotland SC577943. The registered number SC577943 relates to the company Edinburgh Holiday and Party Lets Limited. This documentation issued in 2019 occurred at a time when Mr Fortune was sole director of the company Edinburgh Holiday and Party Lets Limited (SC577943).

Since the trading name of EHPL Limited originates from the paperwork of the company there is no basis for the objection. The Tribunal is referring to information presented in evidence.

C. Objection to the heading in the direction that states

“AND the said Mr Mark Edward Fortune, for any right, title and interest as landlord he has acquired (“the Landlord”). The definition of “Landlord” is provided at Section 194 of the Housing (Scotland) Act 2006.”

Mr Fortune raised this as an objection on 8 August 2023 to a direction issued. The heading of the direction followed the same style as had been issued on 22 June 2023. The amendment from the heading appearing in the RSEO was appropriate given that the identity of the landlord was a live issue under consideration and there required to be fair notice given to Mr Fortune of the proceedings so that he was aware of the issues, written submissions and evidence received to ensure he had the opportunity to make representations to the Tribunal; furthermore he has an interest in the Property which is burdened with the RSEO on its title and this in turn impacts on the future use of the property in terms of Section 28(1) and (5) of the Housing (Scotland) Act 2006. A communication was issued to Mr Fortune on 8 August to reassure him that the Tribunal had yet to issue their determination on all matters.

D. Objection to item of works detailed at (i) and (ii) of the RSEO

On 26 August 2023 EHPL Ltd challenged the legality of item (i) of the RSEO being the roof repair. It was stated in the objection that a flat does not fail the repairing standard if work cannot be done because other owners have refused consent. This is a matter which should be the subject of challenge on appeal after issue of the determination and RSEO in November 2022. The Tribunal are satisfied that the works to the roof have been carried out and the point now raised is an academic one. The Tribunal will not revisit this item in the RSEO. As an observation, at the hearing Mr Fortune welcomed this item of the RSEO as he indicated that the RSEO had assisted the roof works being carried out.

On the same date EHPL Ltd suggested that some issues in the RSEO related to decoration and did not form part of the repairing standard. Mr Fortune referred to the ceiling repairs in item (ii) of the RSEO falling within the category of decoration. The ceiling repairs to the living room (he referred to it as the lounge) are not common repairs and in the decision issued in November 2022 following an inspection of the property by the then Tribunal were found to be necessary due to damage caused by water ingress. This issue was considered by the Upper Tribunal and referred to within the appeal decision issued on 31 March 2023. It should be pointed out that Section 24(2) of the Housing (Scotland) Act 2006 states

“Where the First-tier Tribunal decides that the landlord has failed to comply with that duty, it must by order (a “repairing standard enforcement order”) require the landlord to carry out such work as is necessary for the purposes of ensuring—

(a) that the house concerned meets the repairing standard, and

(b) that any damage caused by the carrying out of any work in pursuance of that duty or the order is made good.

Section 24(2)(b) explains the legal basis for the requirement of works in item (ii) of the RSEO.

Mr Fortune at the hearing stated that the tenants no longer had access to this room as the door is locked. By doing this Mr Fortune seemed to consider that there was no need to have regard to the required living room/ lounge work in the RSEO.

Preventing the use of an area of the property by tenants is not a reason for stating that works stated in the RSEO are not required. Such an approach would allow a landlord to circumvent the legislation. The Housing (Scotland) Act 2006 makes clear by the provisions in Schedule 2 Paragraph 7 that, even if a tenant is not living in the property, the RSEO still applies and can be enforced. If the legislation applies to an unoccupied property, the legislation is equally relevant to an area where a landlord has excluded from tenants' occupation.

E. Objections to the Determination issued under Section 24(1) of the Act including objections to the competency of the application to the Tribunal.

Any objection relating to the determination made under Section 24(1) of the Housing (Scotland) Act 2006 ("the Act") and the required work in the RSEO or the competency of the application before that determination was made should have been raised timeously after the determination was issued and it is too late now to raise such issues. This is reinforced by Section 66(3) of the Housing (Scotland) Act 2006 as the Tribunal is at the stage of considering whether or not to make a failure to comply decision which involves whether or not to issue a completion certificate in terms of Section 60 certifying the works in the RSEO are complete and, in the event of a decision not to issue a Section 60 certificate, whether to make a Rent Relief Order.

Section 66(3) of the Act provides

"No question may be raised on an appeal under subsectionor subsection (4)(d), (e) or (f), of section 64 which might have been raised on an appeal against the decision under section 24(1) in consequence of which the repairing standard enforcement order to which the appeal relates was made."

Subsection 64(4) (d), (e) and (f) provides

"(d)to make or not to make a rent relief order (see section 26(2)(b)),

(e)to revoke a rent relief order (see section 27(4)), or

(f)to grant, or to refuse to grant, a certificate under section 60 in relation to any work required by a repairing standard enforcement order"

EHPL Ltd now raise an objection that none of the complaints about the condition of the property had been initiated by any of the residents of the property. Section 22(1)A of the Housing (Scotland) Act 2006 allows a local authority to make an application to the Tribunal. It does not require the involvement of any tenants. Furthermore, even if an application is made by a tenant under Section 22(1), if the tenancy terminates or the application withdrawn after an application is lodged with the Tribunal and has yet to be determined or enforced, Schedule 2 Paragraph 7(3) specified that the Tribunal can continue with the application. This emphasises that there is no requirement for the involvement of a tenant in the proceedings for the Tribunal to competently consider an application and to enforce an RSEO in the event that one is granted. There is no merit to this point.

A challenge has been made to the use of witness statements before the Tribunal which made the determination under section 24(1) and upon which the RSEO was issued. This was a ground of appeal considered by the Upper Tribunal and dismissed. The current stage of proceedings does not provide an opportunity for reconsideration of previous decisions.

A further challenge was made to the purported lack of notification of the required works on the landlord before the application was lodged. This matter was dealt with within the Upper Tribunal decision issued on 31 March 2022 and was not found to have merit. The matter has already been considered on appeal and cannot be revisited.

On 9 November 2023 EHPL Ltd challenged the competency of the proceedings as the arrangement between the landlord and the tenants it was submitted was not one based on a tenancy arrangement but on a licence and the jurisdiction in such cases does not rest with the First-tier Tribunal.

The Tribunal decision made under Section 24(1) of the Act which was issued on 8 November 2022 states at para 154 various findings, one of which was that the arrangement between residents and the landlord were private residential tenancies. Paragraph 72 of that determination is relevant and explains the reasons for the Tribunal coming to this conclusion.

The definition of a private residential tenancy is contained in the Private Housing Tenancies (Scotland) Act 2016 at Sections 1 - 4. It is clear from the findings in the Determination dated 8 November 2022 that the criteria for a private residential tenancy was considered. The statutory criteria for a private residential tenancy differs from that of the essential requirements for a lease at common law. The fact that a document describes itself as a licence does not prevent it from being a lease if the statutory criteria for a private residential tenancy are met. That criteria is detailed below:

1. Meaning of private residential tenancy

(1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

2. Interpretation of section 1

(1) This section makes provision about the interpretation of section 1.

(2) A tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual, or individuals, and another person.

(3) A tenancy is to be regarded as one under which a property is let as a separate dwelling, despite the let property including other land, where the main purpose for letting the property is to provide the tenant with a home.

(4) A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—

(a) the terms of the tenancy entitle the tenant to use property in common with another person (“shared accommodation”), and

(b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.

(5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in section 1(1)(b) and in subsection (3) are to any one of those persons.

3. Writing not required to constitute private residential tenancy

(1) A purported contract becomes lawfully constituted, despite not being constituted in a written document as required by section 1(2) of the Requirements of Writing (Scotland) Act 1995, when—

(a) a person occupies a property as the person’s only or principal home in pursuance of the purported contract’s terms, and

(b) the tenancy which the purported contract would create, were it lawfully constituted, would satisfy the conditions in paragraphs (a) and (c) of section 1(1).

(2) Any term of a purported contract which is unrelated to a private residential tenancy is not to be regarded as a term of the contract for the purpose of subsection (1).

4. Extended meaning of tenancy in this Act

For the purposes of this Act—

(a) if an agreement would give rise to a tenancy but for the fact that it does not specify an ish, it is to be regarded as giving rise to a tenancy,

(b) once an agreement has given rise to a private residential tenancy, it is to continue to be regarded as giving rise to a tenancy despite the term of the agreement requiring the tenant to pay rent subsequently being removed from the agreement or otherwise ceasing to have effect.

As well as considering the written agreement between the landlord and residents of the flat, witness evidence was considered in coming to the determination that the contracts were private residential tenancies and the residents were tenants. This challenge is a matter which could have been raised at the time of the appeal to the Upper Tribunal against the decision made under section 24(1). The Upper Tribunal issued its judgement on the appeal points on 31 March 2023. Consequently, to seek to appeal the decision on this point is out of time.

F. Challenge to reference to required works at item (vi) in the RSEO and to reference therein to the property being a House of Multiple Occupancy (HMO).

The Tribunal in its decision and RSEO issued in November 2022 make reference to the property being operated as a HMO. This finding was not challenged by the Landlord before the Upper Tribunal at the time that other grounds of appeal were considered. This challenge should have been made to the finding and requirement in the RSEO timeously at the time that other grounds were considered by the Upper Tribunal. It is now too late to do so.

As an observation, the SFRS Report prepared at the request for the Tribunal in terms of Schedule 2 Paragraph 4 of the Housing (Scotland) Act 2006 makes reference to the Property inspection carried out on 11 October 2023 and the findings of SFRS Fire Safety Enforcement Officers. In terms of Schedule 2 Paragraph 6(4)(c) of the Housing (Scotland) Act 2006 a copy of this report was considered before the Tribunal made its decision. The detailed findings of the SFRS Report did not contradict that this Property was being operated as an HMO.

G. Challenge to the conduct of the legal chairperson

Throughout the proceedings Mr Fortune and EHPL Ltd have complained about the legal chairperson in emails. This approach is a continuation of the behaviour displayed previously towards Ms Forbes when she was legal chairperson at an earlier stage in the proceedings. The appropriate procedure for making complaints about a judge is to contact the Judicial Office for Scotland direct and not to include complaints within case representations in what could be interpreted as an attempt to intimidate and to influence a Tribunal outcome. The Tribunal members have disregarded any complaints made and endeavoured to manage the proceedings fairly and have explored and given due consideration to the representations made by parties and each of the legal challenges intimated, all in accordance with the overriding objective of dealing with the proceedings justly in Rule 2 of the Procedure Rules. The role of the Tribunal is to consider compliance with the RSEO and that is what the tribunal members have sought to do. It is unfortunate that there has been a lack of cooperation and at times hostility by certain parties who should in terms of Rule 3(c) of the Procedure Rules “assist the First-tier Tribunal to further the overriding objective.”

DETERMINATION AND REASONS

48. The Tribunal considered the written evidence submitted and unanimously decided in terms of Section 26(1) of the Act that the RSEO should be varied to delete reference to items (i), (iii), (v), (vii), (viii) and (ix) of the RSEO which have now been completed; and the Tribunal further decided that items (ii), (iv) and (vi) of the RSEO had not been satisfactorily completed by the Landlord. The paperwork referred to at paragraph 44 above provides evidence of the works completed and those works which remain to be carried out. The paperwork does not support the completion of the works to the kitchen window and the lounge ceiling being items (ii) and (iv) of the RSEO.

The report by SFRS was compiled following upon an audit carried out on 11 October 2023 by SFRS Fire Safety Enforcement Officers and was considered by the Tribunal. The RSEO at item (vi) refers to the need to comply with all safety requirements of a House in Multiple Occupancy. This item of required work in the RSEO was not challenged on appeal to the Upper Tribunal. The reasons for the RSEO are detailed in the Tribunal Determination issued at the same time as the RSEO in November 2022. The SFRS report which followed upon an inspection of the property narrates a failure to comply with various fire safety requirements such as a control panel fault, lack of emergency lighting, concerns about appropriate testing standards being applied, and the lack of fire risk assessment records. The Tribunal have considered this report and were impressed by the level of detail provided by clearly knowledgeable fire safety enforcement officers. In contrast when considering the paperwork provided by EHPL Ltd and Mr Fortune relating to fire safety at the property, the Tribunal considered it was

lacking in detail in certain areas which they would have expected to be addressed as well as no mention of the failures identified within the SFRS Report. The Tribunal also noted the comment in the SFRS report that while there is no mandatory requirement for Fire Alarm Installers or Fire Risk Assessors to register or be certified in accordance with a third-party accredited scheme, there are several registration schemes and industry bodies that would evidence the competence of an organisation/professional. This SFRS report furthermore stated that having reviewed publicly available registers, there was no indication that the EFS Group, Fire Alarm Guy or Peter Brown were affiliated with such schemes or bodies.

The Landlord has already had sufficient time to complete the RSEO. Mr Fortune has had knowledge of the outstanding repairing complaints for a number of years. The house is occupied. There is no indication of when the outstanding works will be completed or even if they will be completed. No request for extension of time for completion of works has been received.

The Tribunal did consider if a further attempt to re-inspect the property should be made but considered that the documentation available to the Tribunal is sufficient to make a decision.

For the reasons already outlined under the heading of the identity of the landlord, the RSEO is varied to insert "Mr Mark Edward Fortune, whose whereabouts are unknown" as the Landlord. The Tribunal did consider whether Mr Fortune has had sufficient opportunity to make representations on this issue of a variation but is satisfied that Mr Fortune has had a copy of the paperwork in the case served on him, has attended the hearing, and has had prior notice through directions of the matters under consideration by the Tribunal. In short, he has had fair notice that the identity of the landlord and his interest in the Property was a matter under consideration. Mr Fortune has taken the opportunity to respond to matters raised but has failed to respond to the direction specifically seeking information from him on the identity of the landlord of the Property.

The Tribunal went on to consider whether having made a decision in terms of Section 26(1) of the Housing (Scotland) Act 2006 that there had been a failure to comply with the RSEO, whether or not the Tribunal should make a Rent Relief Order ("RRO") in terms of Section 27 of the Housing (Scotland) Act 2006. This provision states

"27 Rent relief orders

(1)A rent relief order is an order by the First-tier Tribunal which reduces any rent payable under the tenancy in question by such amount (not exceeding 90% of the rent which would, but for the order, be payable) as may be specified in the order.

(2) The First-tier Tribunal may make a rent relief order only where it has decided that a landlord has failed to comply with a repairing standard enforcement order which has effect in relation to the house concerned.

(3) A rent relief order does not affect the terms or validity of the tenancy to which it relates (otherwise than by reducing the rent payable under the tenancy)."

Mr Fortune was given an opportunity at the hearing to make submissions on the possibility of the Tribunal making an RRO in the event that the Tribunal made a decision that there had been a failure to comply with the RSEO. He did not think an RRO appropriate as he considered that the properties were offered for rent at about 20% below market rent. That tenants did not have the use of the lounge consequently they were unaffected by faults in that room. The average rent he stated payable for the property was around £425 per month per tenant. No evidence to support the average rent level payable by tenants and market rents in the area was produced.

Mr Fortune also stated that an RRO is not appropriate as he believed all works detailed in the RSEO had been completed, and any additional works which the Tribunal thought would need "adjusted" would be carried out. He stated that if an RRO was made the tenants would be served notice by the landlord explaining that a new landlord would not be subject to any order.

The Tribunal considered the appropriateness of granting a RRO in this case. They acknowledged that the Landlord had completed some of the works and there had been considerable cost to do so. Three items within the RSEO remained outstanding. The Tribunal referred to the Determination issued in November 2022 for descriptions on the faults. The kitchen window had been in poor condition with a large gap at the base of the window lining; the living room (sometime referred to as the lounge) ceiling had extensive water damage and a quote for plastering work had been obtained with a recommendation to allow a period for drying of the area after the roof repairs before completion of this work, and the outstanding issues on fire safety equipment narrated in the Scottish Fire and Rescue Service report. The Tribunal were not persuaded that they should disregard the faults in the living room ceiling due to the tenants' lack of access. Locking the door to the living room was a unilateral act by the Landlord and does not address the required work.

It is not the intention in legislation to allow a landlord to avoid undertaking the works required by removing tenants from a property or excluding them from an affected area. The Tribunal make no comment about the legality of the action by the Landlord of restricting the tenants' access to certain parts of a rented property since this is not a matter before the Tribunal for consideration in relation to compliance with a RSEO and they do not have before them all the facts. For that reason, it is not a matter which they have taken into account in relation to the amount of any rent reduction.

The Tribunal considered that no tenant had engaged in the proceedings and made submissions and whether that should have a bearing on whether an RRO is granted. The Tribunal concluded that reasons for tenant non-engagement can be multi-factorial and should have no bearing on whether an RRO is granted. It is a matter for the tenants whether they wish to engage in a proceedings relating to a third party application. The Third Party Applicant has made no submissions about the granting a Rent Relief Order which is to be expected as the Council have no financial interest and they are not involved in the proceedings as representatives of the tenants. The Tribunal consider that the Third Party Applicant's failure to lodge representations on the issue of an RRO is not relevant. The issue is a matter for determination by the Tribunal in terms of Section 27 of the 2006 Act.

The Tribunal was not impressed by Mr Fortune's comment that the granting of an RRO would result in the Landlord terminating the tenancies. This comment is not only indicative of a lack of empathy and absence of appreciation of the impact that outstanding repairs has on those who occupy a property in disrepair, but also a misunderstanding of housing legislation.

Weighing up the various factors narrated above and, in particular the extent of the failures by the Landlord to comply with the RSEO issued in November 2022, the delays in him carrying out the works which he did undertake at the Property, and importantly the likely impact on tenants of the outstanding works, the Tribunal conclude that it is proportionate that an RRO be granted but with a rent reduction towards the lower end of its powers which extend to a reduction of rent of up to 90%. The outstanding issues identified in relation to fire safety are very concerning from a safety perspective but there is some fire safety equipment in place in the Property. The faults to the kitchen window will impact on the use and enjoyment of that room which is an area for food preparation where hygiene is important. Should the tenants have access to the living room, the condition of the lounge ceiling would have an impact on their enjoyment of that room. The Tribunal did consider that some works had been completed by the Landlord at a considerable cost. Considering all these factors, the Tribunal considers that a reduction in rent of 33% is appropriate to reflect the overall impact of the outstanding works on the tenants' use, enjoyment and safety in the Property which they occupy as their main residence, for what amounts now to be a considerable duration since the application was lodged. That level of rent reduction also penalises the Landlord appropriately for not complying with all the requirements in the RSEO and it could be argued provides an incentive for the Landlord to complete the remaining works without further delay.

Section 63(4) and (5) apply for determining the date of commencement of the RRO.

APPEAL PROVISIONS

49. A Landlord 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.

Note: that in terms of Section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to the house at any time during which an RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

A Devanny

Chamber President
6 June 2024

