



**Decision on Review under 39(1) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 (“the Procedural Rules”) and section 44 of the Tribunals (Scotland)**

**Chamber Ref: FTS/HPC/RT/23/3108**

**Re: Property at 3 Balmain Cottages, Fettercairn, AB30 1DA (“the Property”)**

**Parties:**

**RR Brown and Sons, Balmain Farm, Fettercairn, Laurencekirk, AB30 1DA (“the Landlord”);**

**Faith Allan, 3 Balmain Cottages, Fettercairn, AB30 1DA (“the Tenant”); and**

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, AB51 3WT (“the Third Party Applicant”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)**

**Decision**

The Tribunal determined in terms of section 39(1) of the Procedural Rules and section 44 of the Tribunals (Scotland) Act 2014, having reviewed its decision of 1 August 2024, to take no action.

**Background**

- 1 Reference is made to the decision of the Tribunal dated 1 August 2024 in terms of which the Tribunal determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order dated 24 January 2024. The Tribunal further imposed a Rent Relief Order of 50% of the monthly rent due and determined that notice of the failure be served on the local authority.
- 2 The decision was issued to parties on 16 August 2024. By email of 20 August 2024 the Third Party Applicant requested a review of the decision. In particular the Third Party Applicant requested that the Tribunal increase the rent relief order to 90% for the following reasons:-

- (i) The tenant had not been able to enjoy or use all rooms of the property since the beginning of 2023 when she discovered the property suffered with damp and mould problems;
  - (ii) The landlord has not made sufficient efforts to resolve matters since being notified of them in early 2023;
  - (iii) The tenant paid for new flooring and spent a considerable amount of her own money decorating the property when she first moved in, however, the improvements she paid for have been damaged due to the damp issues;
  - (iv) The landlord has failed to comply with the RSEO or even take reasonable steps to resolve;
  - (v) The tenant was having to pay extra fuel costs to heat and dry the property and a substantial amount more for fuel than others who live in similar properties. The tenant was concerned about the upcoming winter months and how much extra she would have to pay for fuel costs; and
  - (vi) The tenants' belongings, clothes and furnishings had been damaged by the damp and mould and would have to be replaced at a cost to the tenant.
- 3** The application for review was made timeously in accordance with Rule 39(2) of the Procedural Rules. The Tribunal was further satisfied that the request for review was not wholly without merit.
- 4** The Tribunal subsequently issued a Notice of Review and Direction to the parties on 20 August 2024. The Tribunal received written representations from the Third Party Applicant on 21 August 2024 stating their view that the decision on review could be made without a hearing on the basis of the findings from the inspection and the reasons given in the request for review. No response was received from the Landlord.

### **Relevant Legislation**

- 5** The provisions regarding review of a Tribunal decision are contained with Rule 39 of the Procedural Rules and section 44 of the Tribunals (Scotland) Act 2014:-

*“39.—(1) The First-tier Tribunal may either at its own instance or at the request of a party review a decision made by it except in relation to applications listed in rule 37(3)(b) to (j), where it is necessary in the interests of justice to do so.*

*(2) An application for review under section 43(2)(b) of the Tribunals Act must—  
(a) be made in writing and copied to the other parties;*

*(b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and*

*(c) set out why a review of the decision is necessary.*

*(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal must refuse the application and inform the parties of the reasons for refusal.*

*(4) Except where paragraph (3) applies, the First-tier Tribunal must notify the parties in writing—*

*(a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and*

*(b) may at the discretion of the First-tier Tribunal, set out the First-tier Tribunal's provisional views on the application.*

*(5) In accordance with rule 18, the decision may be reviewed without a hearing.*

*(6) Where practicable, the review must be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates.*

*(7) Where the First-tier Tribunal proposes to review a decision at its own instance, it must inform the parties of the reasons why the decision is being reviewed and the decision will be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).*

*(8) A review by the First-tier Tribunal in terms of paragraph (1) does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016 for making an application for permission to appeal.”*

#### *“44 Actions on review*

*(1) In a review by the First-tier Tribunal or the Upper Tribunal under section 43, the Tribunal may—*

*(a) take no action,*

*(b) set the decision aside, or*

*(c) correct a minor or accidental error contained in the decision.*

*(2) Where a decision is set aside by the First-tier Tribunal in a review, it may—*

*(a) re-decide the matter concerned,*

*(b) refer that matter to the Upper Tribunal, or*

*(c) make such other order as the First-tier Tribunal considers appropriate.*

*(3) If a decision set aside by the First-tier Tribunal in a review is referred to the Upper Tribunal, the Upper Tribunal—*

*(a) may re-decide the matter concerned or make such other order as it considers appropriate,*

*(b) in re-deciding that matter, may do anything that the First-tier Tribunal could do if re-deciding it.*

- (4) Where a decision is set aside by the Upper Tribunal in a review, it may—*
- (a) re-decide the matter concerned, or*
  - (b) make such other order as it considers appropriate.*
- (5) In re-deciding a matter under this section, the First-tier or Upper Tribunal may reach such findings in fact as it considers appropriate.”*

## **Reasons for Decision**

- 6** The Tribunal concluded that there was no requirement to hold a hearing to determine the request for review. Neither party had requested a hearing and the Tribunal was satisfied it had sufficient information before it to determine the request, taking into account the Tribunal’s decision of 1 August 2024 and the subsequent written representations from the Third Party Applicant. The Landlord had been given the opportunity to make submissions but had failed to respond.
- 7** The request for review sought an increase in the rent relief order from 50% of the monthly rent to 90%. Whilst the Tribunal accepted that the property had suffered from disrepair for a prolonged period of time, ultimately the Tenant was still able to make use of the majority of rooms in the property. Neither bedroom was significantly affected with damp, and the mould in the kitchen was largely confined to an area behind the fridge.
- 8** The Tribunal also accepted that the Tenant may have suffered loss as a result of the Landlord’s failure to comply with the Repairing Standard. However the Tribunal was conscious that she would have alternative remedies available to her in terms of a separate civil claim against the Landlord. That would be the appropriate route for the remedy she is seeking.
- 9** Furthermore the Tribunal noted that the Landlord had taken some steps to comply with the Repairing Standard Enforcement Order. They had not ignored it completely. The Tribunal therefore did not believe that a rent relief order of 90% would be reasonable in the particular circumstances of this case. There would have to be significant disrepair, rendering the majority of space in the property uninhabitable, for an order of that level to be justified. Whilst the Tribunal accepted that the property suffered from damp and mould, the Tribunal did not believe it was of a level that would prevent the Tenant from continuing to use the rooms in question. The Tribunal therefore concluded that a rent relief order of 50% was reasonable and justified in this case.
- 10** Accordingly having reviewed its decision the Tribunal determined to take no action.
- 11** The decision of the Tribunal was unanimous.

**R O'Hare**

**Legal Member**

24 September 2024

**Date**