

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Housing (Scotland) Act 2006, Section 25

Chamber Ref: FTS/HPC/RT/21/3070

Property at Conland Farm Cottage, Forgue, Huntly, Aberdeenshire, AB54 6DR

Property Description:- Conland Farm Cottage, Forgue, Huntly, Aberdeenshire, AB54 6DR part of ALL and WHOLE the Lands and Estate of Bognie lying in the Parish of Forgue and County of Aberdeen described in the Deed altering the order of succession granted by Alexander Edward Forbes Morison in favour of himself and his heirs and assignees dated Twenty second January and recorded in the Division of the General Register of Sasines for the County of Aberdeen on Fourth February both months Nineteen Hundred and Fifteen and also described in Disposition by Charles Grant Brown and others as Trustees therein mentioned in favour of Alexander Gordon Morison recorded in the said Division of the General Register of Sasines on Fourth July Nineteen Hundred and Seventy Seven. ("the Property")

The Parties:-

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51 3WA
("The Third Party")**

**Ms Ellisa Corbett, Conland Farm Cottage, Forgue, Huntly, Aberdeenshire, AB54 6DR
("the Tenant")**

Mrs Karen King, Conland Farm, Forgue, Huntly, Aberdeenshire, AB54 6DR ("the Landlord")

BMF Group Trustees, Estate Office, Frendraught, Forgue, Huntly, Aberdeenshire, AB54 6BE ("the Head Landlord")

Tribunal Members:

Gillian Buchanan (Chair) and Angus Anderson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the Repairing Standard Enforcement Order ("RSEO") in

relation to the Property, determined that the Landlord should be given a further extension of 9 months to the period allowed for completion of the works required all in terms of Section 25(1) of the Housing (Scotland) Act 2006 ("the Act").

Background

1. Reference is made to the determination of the tribunal dated 7 July 2022 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that she had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 - i. To repair or replace the first floor and stair landing windows to ensure that they are in a reasonable state of repair and in proper working order
 - ii. To engage a suitably qualified roofing contractor to undertake an inspection of and thereafter undertake any works required to ensure the roof of the Property including the roof of the adjacent outhouse is wind and watertight and in a reasonable state of repair, and to repair and thereafter redecorate the ceilings on the first floor to put them into a reasonable state of repair.
 - iii. To repair or replace the gutters and downpipes of the Property including the adjacent outhouse to ensure they are in a reasonable state of repair and in proper working order.
 - iv. To engage a suitably qualified contractor to inspect and test the installations within the Property for the supply of space heating and hot water and to carry out such repairs or replacement of the installations to ensure that they are in a reasonable state of repair and in proper working order.
 - v. Within the bedroom situated to the right at the top of the stairs to the upper floor, to repair or replace the skirting boards to ensure that they are in a reasonable state of repair.
 - vi.
 - (a) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the electrical installations of the Property and thereafter to undertake all works required to ensure that the entire system is safe and in proper working order.
 - (b) On completion of the works referred to in 6(i) above to provide to the tribunal a copy of the EICR with no items marked as Category 1 or Category 2.
 - vii. To install a carbon monoxide detector in the lounge to comply with the requirements of the relevant legislation; and
 - viii. To install within the Property sufficient smoke alarms and heat detectors that are mains wired or fitted with lifetime batteries and are interlinked and otherwise comply with the requirements of the relevant fire legislation.
2. In terms of the RSEO the tribunal ordered that the works specified in the RSEO must be carried out within a period of 12 weeks from the date of service thereof.

Previous Variations

3. By a Decision of the tribunal dated 19 October 2022 the period for completion of the works specified in the RSEO was extended by a period of 6 months and Notice to of a Decision to Vary the RSEO in terms of the Housing (Scotland) Act 2006, Section 25 was issued to that effect.
4. By a further Decision of the tribunal dated 25 May 2023 the period for completion of the works specified in the RSEO was extended by a period of 6 months and Notice to of a Decision to Vary the RSEO in terms of the Housing (Scotland) Act 2006, Section 25 was issued to that effect.
5. By a further Decision of the tribunal dated 5 December 2023 the period for completion of the works specified in the RSEO was extended by a period of 9 months and Notice to of a Decision to Vary the RSEO in terms of the Housing (Scotland) Act 2006, Section 25 was issued to that effect.

Head Landlords' representations

6. By email dated 14 December 2023 the Estate Assistant, Rosanna Stickels, on behalf of the Head Landlord stated that :-

*"Mr Morison still does not agree with the necessity for the case at all, as he deems the property vacant, removed from letting registers and non-occupiable and thinks that there should not be a case to progress.
However, that being stated, as representative of the "Head Landlord", he is not the direct party that is carrying out the works, and as he understands from the "Landlord", Mrs King, that she has a contractor engaged to carry out works which she believes will be in the timeframe, he will put the issue on hold from this Office's point of view."*

Landlord's representations

7. By email dated 4 September 2024 with attachments (including photographs) the Landlord's representative, Mr Thomas McFarlane of Sheppherd & Wedderburn, stated that although significant progress has been made, the works will not be completed by 12 September 2024. He stated that in in the circumstances, the Landlord once again requests that the RSEO is either revoked, or is varied to provide her with further time to complete the works.
8. In support of a revocation, Mr McFarlane referred the Tribunal again to his submissions dated 20 October 2022 and to the Landlord's name having been removed from the Landlord Register. He said that the Landlord awaits roofers coming to replace the slates on the roof and make the Property weatherproof before internal works can continue.
9. He stated that if the Tribunal is not minded to grant a revocation, Mr McFarlane seeks a variation of the RSEO in order to provide the Landlord with more time to comply with the RSEO. He suggested a variation to the end of 2024.

Third Party representations

10. There have been no representations from the Third Party.
11. The tribunal carefully considered how to proceed in light of the representations received.

Decision

12. The tribunal's role is to consider whether or not the works required by the RSEO have been undertaken.
13. The tribunal considered whether there would be merit in undertaking a further inspection of the Property at this time and decided that an inspection would serve no useful purpose. In particular, it is clear from the Landlord's representations and the photographs provided that the refurbishment of the Property is ongoing and will, in the fullness of time, incorporate the remedial works required by the RSEO.
14. In determining how to proceed, the tribunal took into account the following factors:-
 - i. That the Property is vacant and refurbishment thereof is well underway.
 - ii. That the Landlord has stated she has no intention to re-let.
 - iii. That the works required in terms of the RSEO are substantial.
 - iv. That steps are ongoing to achieve compliance with the RSEO as part of a larger project to redesign and refurbish the property to provide single storey living accommodation suitable for the Landlord given her medical needs.
 - v. In respect that the redesign and refurbishment of the Property will, in due course, achieve compliance with the RSEO and taking into account the Landlord's commitment to complete the redesign and refurbishment of the Property, it is appropriate to give a further extension to allow the Landlord to undertake the works required by the RSEO.
15. The tribunal is of the view that an additional period of 9 months to complete the outstanding works required by the RSEO would be sufficient.
16. The decision of the tribunal was unanimous.

Right of Appeal

- 17. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**
- 18. 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.**

Gillian Buchanan

Signed

Date 1 October 2024
Legal Member and Chairperson