



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 25(1) of the Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RT/24/0830

Re: Property at 13 Shore Street, Macduff, Aberdeenshire, AB44 1UB (“the Property”)

Parties:

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

William Stewart, Greenfold Farmhouse, Bridge of Marnoch, Huntly, Moray, AB54 7UN (“the Landlord”)

Tribunal Members:

Ruth O'Hare (Legal Member) and David Godfrey (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined to vary the Repairing Standard Enforcement Order (“RSEO”) made on 22 July 2024 to extend the period for completion of the works by three months.

Background

- 1 Reference is made to the decision of the Tribunal dated 22 July 2024 in terms of which the Tribunal determined that the Landlord had failed to comply with the repairing standard duty under section 14(1) of the Act. The Tribunal therefore made an RSEO requiring the Landlord to:-
 - (i) Inspect the windows in the property and carry out such works as are necessary to ensure they are wind, watertight and in proper working order;
 - (ii) Inspect the structure and exterior of the property and carry out such works as are necessary to ensure the property is wind and watertight, including clearing and repairing the rain water fittings and repairing the external stonework and render;

- (iii) Inspect the drainage to the rear of the property and carry out such works as are necessary to ensure it is in proper working order and free from any blockages;
- (iv) Submit to the Tribunal a current gas safety certificate and electrical installation condition report for the property;
- (v) Install smoke, heat and carbon monoxide detectors in compliance with current statutory requirements; and
- (vi) Carry out internal decoration to the property where necessary following the completion of the above works.

- 2 The Tribunal ordered that the works be completed within a period of four weeks. Whilst the Landlord's representative, Annie Kenyon Architects, had expressed concerns about this timescale the Tribunal noted that the former Tenant, Miss Robyn Watt, was still residing in the property with her family. The Tribunal considered that the potential risk to occupants arising from some of the issues of disrepair, particularly the electrical and gas safety, was of sufficient concern to merit a shorter timescale in the first instance for completion of the initial works.
- 3 On 13 August 2024 the Tribunal received an email from the Landlord's representative advising that the four week period for completion of the works was unattainable. The Landlord did not contest the requirements for the work, solely the timing. The Landlord's representative confirmed that they were dealing with the electrical and gas safety inspections as a matter of urgency. However, the Landlord was looking for an extension of the period for completion of the works. On 14 August 2024 the Tribunal received an email from the Third Party Applicant advising that they had no objection to an extension in the circumstances.
- 4 On 28 August 2024 the Tribunal emailed the Landlord representative in response to the Landlord's request for an extension. The Tribunal sought an update from the Landlord on the works completed to date, with particular reference to the electricity and gas safety. The Tribunal advised that it would consider the request for a variation of the RSEO after consideration of the Landlord's response.
- 5 On 2 September 2024 the Landlord's representative emailed the Tribunal to confirm that the electrical defects had all been made safe and smoke detectors had been installed. The Landlord's representative was chasing the contractor for the gas certification. On 13 September 2024 the Landlord's representative emailed the Tribunal again to confirm that the gas works had been inspected and a scope of works identified. The Landlord had accepted the quote for the works, which were due to commence the week of the 16 September 2024. A joiner was also due to attend the property to inspect the windows. On 17 September 2024 the Landlord's representative sent the

Tribunal a quote for works relating to the guttering and the roof which had been accepted by the Landlord. The Landlord was awaiting a quote for the window repairs.

- 6 On 9 October 2024 the Tribunal wrote to the Landlord's representative requesting copies of the certification for the gas and electrical installations.
- 7 On 22 October 2024 the Landlord's representative emailed the Tribunal with a condition report from the electrician who had attended the property. The Tribunal responded to the Landlord's representative on 31 October 2024. The Tribunal noted that the condition report was not in the standard IET model form and did not disclose the contractor's qualifications. The Tribunal asked the Landlord's representative to provide the report in the model form and provide further information regarding the contractor's qualifications.
- 8 On 8 November 2024 the Landlord's representative provided evidence of the contractor's qualifications to the Tribunal by email. They advised that the contractor's report was based on a "Meggar test and visual inspection only".
- 9 On 18 November 2024 the Tribunal emailed the Landlord's representative. The Tribunal noted that the RSEO required the Landlord to provide an electrical installation condition report ("EICR"). The document provided by the Landlord's electrician did not meet the requirements for an EICR. On 18 November 2024 the Landlord's representative responded to state that they would seek further information from the contractor. They further advised that the former Tenant had vacated the property. On 19 November 2024 the Tribunal emailed the former Tenant requesting confirmation of this. The former Tenant did not respond. The Tribunal subsequently contacted the Third Party Applicant who confirmed that the former Tenant was no longer residing at the property.
- 10 On 2 December 2024 the Landlord's representative emailed the Tribunal with an EICR in the model form. The EICR highlighted C1 and C2 defects with the electrical installations in the property.

Reasons for Decision

- 11 The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the Landlord's request for a variation of the RSEO. The Tribunal did not consider there to be any requirement to undertake a re-inspection of the property as it was clear from the terms of the correspondence from the Landlord's representative that the majority of the works required by the RSEO were still outstanding. The Tribunal also concluded that there was no requirement to hold a hearing in the matter on the basis that the Third Party Applicant had no objection to a variation of the RSEO.
- 12 The Tribunal therefore had regard to Section 25 (1) of the Act which states "*the first-tier tribunal which made a repairing standard enforcement order may,*

at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.”

- 13 With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. In light of the nature of the disrepair, the Tribunal was not of a mind to revoke the RSEO. Several of the issues of disrepair posed a significant health and safety risk to future tenants, were the Landlord to re-let the property at a future date. Whilst the Landlord had not confirmed his intentions in this regard the Tribunal considered it would be in the public interest for the RSEO to remain in place at this time.
- 14 The Tribunal then considered Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply.
- 15 The Tribunal was satisfied, based on the written representations from the Landlord’s representative, that the Landlord had made reasonable efforts to complete the works required by the RSEO. The Landlord’s representative had provided some contractor documentation in support of this and had kept the Tribunal updated as to progress with the works. The Tribunal also took into account the fact that the former Tenant was no longer residing at the address. The property appeared to be vacant, therefore there would be no risk to occupants were the Landlord allowed further time to complete the works. The Tribunal was conscious that the Landlord would be unable to re-let the property whilst the RSEO remained in place, as to do so would be a criminal offence.
- 16 The Tribunal therefore concluded that it would be reasonable to vary the RSEO to extend the period for completion of the works by a period of three months.
- 17 The Tribunal also took account of the EICR that the Landlord had submitted, which identified defects that require to be addressed to ensure the electrical installations are made safe. The Tribunal therefore determined to vary the RSEO to require the Landlord to carry out such works as are necessary to produce an EICR which has no C1 or C2 defects.
- 18 The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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 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 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 determined.

R O'Hare

7 January 2025

Legal Member/Chair

Date