

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 Sections 26, 27 & 28

Chamber Ref: FTS/HPC/RT/23/4450

Property at Troup Lodge, Gamrie, Banff, Aberdeenshire, AB45 3JN
("the Property")

The Parties:-

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

Mr Carl Pettett, Troup Lodge, Gamrie, Banff, Aberdeenshire, AB45 3JN ("the Tenant")

Mr Mark Baxter, Troup Home Farm Bungalow, Gamrie, Banff, Aberdeenshire, AB45 3JN
("the 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 has complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that (i) the Landlord has failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the said Act"), (ii) a Notice of Failure to Comply with the RSEO should be served on the relevant local authority within which the Property is situated, and (iii) the matter should be reported to the Police for consideration for prosecution under Section 28 of the said Act.

Background

1. Reference is made to the determination of the tribunal dated 16 December 2024 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that he had failed to ensure that the Property met the Repairing Standard. The works required by the RSEO were: -

- (i) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor or suitably skilled electrician to carry out a condition check 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 and thereafter to prepare an electrical installation condition report (EICR)
- (ii) On completion of the works referred to in 6(i) above to provide to the tribunal a copy of the (EICR) which describes the system overall as satisfactory with no items marked as Category 1 or Category 2.
- (iii) To provide to the tribunal a statement from the suitably qualified electrical contractor or electrician describing the provision of smoke, heat and carbon monoxide detection within the property and that confirming that it complies with the Scottish Government's Guidance relating to the Tolerable Standard on satisfactory fire detection and satisfactory carbon monoxide detection.

The RSEO gave the Landlord 28 days to carry out the works.

Hearing

1. On 12 June 2025 the tribunal held a Hearing which took place by telephone conference. The Third Party was represented Ms Eilidh Mackay. The Tenant was not present. The Landlord was neither present nor represented. The Landlord received intimation of the Hearing by email on 29 March 2025.
2. The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Landlord having received notice of the Hearing and determined to proceed in the absence of the Landlord in terms of Rule 29.
3. In response to question from the tribunal Ms Mackay stated:-
 - i. The Tenant is understood to still be in occupation of the Property.
 - ii. The Landlord is not believed to own any other rental properties.
 - iii. The Landlord continues to be registered with the Third Party as a landlord;
 - iv. A Rent Relief Order is appropriate having regard to the safety concerns arising.
4. The tribunal has heard nothing from the Landlord following service of the RSEO.

Reasons for Decision

5. In terms of Section 26(1) of the Act it is for the tribunal to decide whether a landlord has complied with an RSEO. In terms of sub-section (2), where the tribunal determines that a landlord has failed to comply with an RSEO, the tribunal must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
6. The Landlord has not responded to service of the RSEO and the documentation and information that requires to be produced to the tribunal in terms of the RSEO is outstanding. Failure to comply with the RSEO is a serious matter. Health and safety issues arise and the Tenant may be at risk.
7. The Tribunal considered whether it would be appropriate to vary the RSEO to allow the Landlord further time to comply with it. In the absence of any contact from the Landlord to

indicate his intention to comply with the RSEO and the reasons for the delay in doing so no such variation is appropriate.

8. The tribunal determined that the Landlord has failed to comply with the RSEO. Accordingly the tribunal is obliged to serve notice of the failure on the local authority and resolved to do so.
9. The tribunal then decided whether or not to make an RRO. The tribunal determined that it was appropriate to make an RRO.
10. The tribunal also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord has offered no explanation as to his failure to complete the outstanding works nor any indication as to when they will be completed. Accordingly, in the circumstances, the tribunal was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

11. The tribunal determined that in terms of the Act the Landlord had failed to comply with the RSEO. The tribunal determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property is situated and to report the matter to the Police for consideration for prosecution.
12. The tribunal made an RRO.
13. The decision of the tribunal was unanimous.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

G Buchanan

Legal Member & Chairperson

12 June 2025