

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/RP/24/4204

Property: 26 New Road, Kennoway, Leven, KY8 5JR ('The House')

Title reference: FFE64995

The Parties: -

William Mitchell, The Elms, The Causeway, Kennoway, Leven ('the landlord')

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined to extend the period for the landlord to comply with the Repairing Standard Enforcement Order ("RSEO") dated 11 June 2025 until 4 December 2026.

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

Greig Adams , Ordinary Member (surveyor)

Background

1. By application dated 7 September 2024, the tenant, Rosemary Morris applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Housing (Scotland) Act 2006.

2. An inspection and hearing took place on 6 June 2025. The tenant and her son Martin Ryder were in attendance. The landlord's solicitor, Mr Macdonald attended the hearing on his behalf.
3. Following the hearing the Tribunal issued a Repairing Standard Enforcement Order (RSEO) in respect of the application. The RSEO required the landlord to carry out the following works within 6 weeks of the date of service of the RSEO:
 - 1) *Instruct a suitably qualified and SELECT, NAPIT or NICEIC registered electrician (i) to carry out a full inspection of the electrical installation throughout the house, the purpose of which inspection is to ensure that the electrical installations are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be repaired, replaced or renewed, including the defective double socket in the kitchen to ensure that the installation is fully functioning and meets current regulatory standards and (iii) thereafter to issue a complete and compliant electrical installation condition report ("EICR") in accordance with Scottish Government statutory guidance on electrical installations and appliances in private rented property and exhibit the EICR to the Tribunal. This should include testing and certification of any portable electrical appliances provided by the Landlord.*
 - 2) *Instruct 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 gas safety record to the Tribunal.*
 - 3) *Produce evidence or certification to demonstrate that the smoke and heat detectors in the property are fixed to the ceiling and interlinked. The evidence should also demonstrate that alarms are located in the living room, hallway, upper landing and kitchen in the property in compliance with Scottish government regulations on fire and smoke alarms.*
 - 4) *Produce a legionella risk assessment for the house in accordance with the Scottish Government's publication "Repairing Standard: statutory guidance for private landlords", Annex D1 (D.28-D.35)*
 - 5) *Carry out such repairs as are necessary to ensure the toilet in the ensuite shower room is in a reasonable state of repair and proper working order.*
 - 6) *Carry out such repairs as are necessary to ensure the sealant surrounding the shower is in a reasonable state of repair and proper working order or replace the door and lock.*
4. A re-inspection took place at 10am on 30 October 2025. A teleconference hearing took place at 11.30am on the same day. The tenant attended with her son Martin Ryder who was acting as her representative. The landlord's solicitor, Mr Macdonald attended on his behalf.

5. Based on the written documents produced, the re-inspection and hearing the Tribunal was satisfied that the landlord had complied with paragraphs 2,3,5 and 6 of the RSEO. Reference is made to the Tribunal's decision dated 30 October 2025 which provides a statement of reasons for the decision.
6. It was not disputed that works had been carried out to the electrical installations however there was an outstanding issue with the functioning of the socket under the kitchen counter. The EICR that had been produced did not comply with requirements of the RSEO as it stated that the installations were unsatisfactory.
7. It was not disputed that the landlord had tested the water in the property for legionella however as no risk assessment had been submitted to the Tribunal paragraph 4 of the RSEO remained outstanding, .
8. The Tribunal varied the RSEO to remove the works that had been completed. The Tribunal considered a period of 5 weeks should be sufficient for the required works to be completed. The RSEO was varied accordingly with the new date for compliance stated as 18 December 2026.

Reinspection – 29 April 2026

9. A re-inspection was undertaken on 29 April 2026 by the Tribunal Members. The tenant, her representative and the landlord's representative were present during the re-inspection.
10. The Tribunal considered the two outstanding issues detailed at paragraphs 1 and 4 within the RSEO. Reference is made to the re-inspection report which was prepared by the Tribunal and issued to parties setting out the Tribunal's findings at the re-inspection.
11. At the re-inspection the kitchen socket was found to be fully functioning, The Tribunal noted that the landlord had not submitted an updated valid EICR. No further additional submissions had been provided by way of explanation for the absence of an updated EICR.
12. In relation to paragraph 4 of the RSEO, a Legionnaires Disease Risk Assessment was provided to the Tribunal on 9 February 2026 with the assessment having been carried out in July 2024. Risk assessments are required to be reviewed at intervals of no more than two years and are capable of being undertaken by an individual such as a private landlord

themselves. The assessment detailed that cold water does not rely on storage tanks and is mains fed, that hot water is supplied above 50°C at outlets, heated to at least 60°C at the boiler and that cold water is supplied below 20°C. The tenant's Representative raised issues in relation to comments within the risk assessment relating to access into the Master Bedroom En-Suite Bathroom and the condition of the shower. The Tribunal did not consider that these issues materially affected the risk assessment.

Further submissions

13. On 6 May 2026 the tenant's representative wrote to the Tribunal stating that they agreed with the contents of the re-inspection report and did not request a hearing.
14. On 21 May 2026 the landlord's representative submitted an updated EICR. The EICR had not been completed by an electrician registered with SELECT, NICEIC or NAPIT.
15. On 22 July 2026 the landlord's representative wrote to the Tribunal to advise that the tenant was moving out of the flat. They stated that there had been issues with gaining access to the property and that the landlord's intention was to refurbish the property including improvements to the electrical installations. An updated EICR would be submitted in due course.
16. On 28 July 2026 the former tenant's representative wrote to the Tribunal to advise that she had moved out of the property. They disputed that there had been any issue regarding access to the property.
17. On 25 August 2026 the landlord's representative wrote to the Tribunal. They confirmed that the tenancy had terminated on 23 July 2026. They stated that refurbishment works were ongoing and stated that the property will not be re-let until the works have been completed. They requested that the RSEO be varied to extend the period for completion of the required works by 3 months.

Reasons for the decision

18. In the absence of an up-to-date replacement EICR paragraph 1 of the RSEO has not been complied with.
19. The Tribunal considers that the Legionella Risk Assessment is adequate to detail that the risks associated with legionnaire's is low at the property with the

provided documentation considered adequate to show compliance of the Repairing Standard in relation to this item.

20. The Tribunal determined that it was reasonable in the circumstances to extend the period for compliance with the RSEO by 3 months. The Tribunal took into account that the previous tenancy had ended. The Tribunal accepted the submissions on behalf of the landlord that refurbishment works would now be carried out with a view to producing a valid EICR. The Tribunal took into account the landlord's submission that the property would not re-let in the meantime. The Tribunal notes that 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 RSEO has effect in relation to the house in terms of Section 28(5) of the Act.

Decision

The Tribunal determined to extend the period for the landlord to comply with the RSEO to 4 December 2027.

Right of Appeal

A landlord, tenant or third-party applicant 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.