

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

Notice of Failure to Comply with a Repairing Standard Enforcement Order:  
Housing (Scotland) Act 2006 ("the 2006 Act"), section 26

Chamber Ref: FTS/HPC/RP/17/0014

Property at West Lodge, Stobo, Peebles, EH45 8NY  
("The Property")

The Parties:-

Miss Carol McMillan, residing at the Property  
("the Tenant")

Mr Hugh Seymour, Home Farm House, Stobo, Peebles, EH45 8NX  
("the Landlord")

The Tribunal

Mr Maurice O'Carroll (Legal Member and Chair)  
Mr Nick Allan (Ordinary Member) (Surveyor)

### Decision

The Tribunal, having carried out such enquiries as are appropriate, determined that the Landlord has **failed to comply** with the requirements of the Repairing Standard Enforcement Order ("RSEO") issued further to the Tribunal's decision of 18 May 2017. It further determined that notice of that failure should be served on the Local Authority in whose area the Property is situated. The Tribunal further determined to make a Rent Relief Order in this matter given the seriousness of the breach and the opportunity afforded to the Landlord to comply with the RSEO.

### Background

- 1, The Tribunal issued a Repairing Standard Enforcement Order ("RSEO") relative to the Property on 24 May 2017 following an inspection and a decision that the Landlord had failed to comply with his duty under section 14(1)(b) of the 2006 Act. The RSEO required the Landlord to carry out the following works within 2 calendar months of the date of the RSEO.
  - (a) Repair or replace the porch to the Property to ensure that it is wind and water tight, safe and secure with a functioning entrance door, using appropriate modern materials to replace existing and to comply with any necessary building consents;

- (b) Repair or replace the guttering to the Property to ensure that it does not result in water ingress into the porch as referred to in the said decision;
  - (c) Re-install the electrical installations in the porch area of the Property and ensure that they are safe and installed in accordance with current safety guidance;
  - (d) Unblock the drain to the rear of the Property adjoining the kitchen and carry out such further works as are reasonably necessary to safeguard against further recurrence, whether after obtaining a specialist report and implementing its recommendations or otherwise.
2. On 27 July 2017 at request of the Landlord, the Tribunal varied the RSEO to permit further time to carry out the works required in terms thereof. The variation permitted the Landlord until 31 August 2017 to carry out the necessary works.
  3. A reinspection was carried out by the surveyor ordinary member of the Tribunal after the expiry of the renewed deadline, on 15 September 2017. His report dated 25 September 2017 indicated that items (a) to (c) of the RSEO had not been completed in the respects noted within said report.
  4. On 11 October 2017, following a request from the Tribunal, the Tenant confirmed that the necessary works had not yet been completed. In particular, she noted that painting had yet to be completed, that there was water ingress into the porch and that paving work connected with the repairs was also incomplete.
  5. No further request for an extension of time was made by the Landlord.

### **Reasons for decision**

6. In terms of section 28(1) of the Housing (Scotland) Act 2006, it is an offence not to comply with the terms of an RSEO. Notification to the appropriate authorities will be made by the Tribunal.
7. The original RSEO, prior to extension was issued following a decision of the Tribunal dated 18 May 2017. Accordingly, more than five months have passed since service of the RSEO without the necessary works having been carried out. The Tribunal is not minded to grant any further extension of time in order to permit such works to be completed.
8. In terms of section 28(4) of the 2006 Act, the Tribunal decided on 30 October 2017 that the Landlord has failed to comply with the terms of the RSEO, in particular in relation to items (a) to (c) thereof.
9. Therefore, in terms of section 26(2)(a) of the Act, the Tribunal determined to send a notice of that failure to the Local Authority in whose area the House is situated.
10. The Tribunal is required in terms of section 26(2)(b) of the Act to decide whether to make a Rent Relief Order. In this case, the Landlord was provided

with an extended opportunity to comply with the RSEO. Two months have passed since the extended deadline with works still being incomplete and no indication as to when they will be finalised. Accordingly, the Tribunal decided to make a Rent Relief Order to the extent of 90% per cent of the rent payable in terms of the lease agreement between the parties.

11. The decision of the Tribunal was unanimous.

### **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 within 30 days of the date the decision was sent to them.**

Where such an appeal is made, the effect of the decision and the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed:

Date: 30 October 2017

**M O'Carroll**

Chairman