

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) being the statutory successor to the Private Rented Housing Committee in terms of the First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 (SSI 2016/337).

Statement of Decision in Application for Permission to Appeal
in terms of Rule 7 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016 (Schedule 1 of the Housing and Property (Procedure) Regulations 2016 (SSI No 339) (“the Procedure Rules”); and under Section 46(3)(a) of the Tribunals (Scotland) Act 2014
Chamber Ref: PRHP/RP/16/0050

Property:

Flat 3/1, 55 Broomlands Road, Paisley, PA1 2 NQ (“the property”)

Parties:

Miss Liene Visokiha, Flat 3/1, 55 Broomlands Road, Paisley, PA1 2 NQ (“the tenant”)

Robert and Joy Saunderson, c/o Castle Residential Scotland Limited, 63 Causeyside Street, Paisley, PA1 1YT (“the landlords”)

Title Number: REN 1591

Tribunal Members: Simone Sweeney (chairing legal member) Andrew Taylor (surveyor member)

Decision:

1. The Tribunal refuses permission by the landlords to appeal the decision of the Tribunal to the Upper Tribunal.
2. The Tribunal refuses the request of the landlords to revoke the Repairing Standard Enforcement Order “RSEO”).
3. The Tribunal allows the landlords’ application for review to be received, though late, therefore dispensing with the need for an appeal to the Upper Tribunal.

4. The Tribunal determines that the terms of the RSEO be varied further.
5. The Tribunal directs this decision and the terms of the RSEO as varied further, be intimated to the local authority.
6. The decision of the Tribunal is unanimous.

Procedural Background

7. The Tribunal refers to its order of 2nd February 2017, varying the terms of the RSEO of 29th April 2016. Also the Tribunal refers to its statement of facts and reasons of 14th July 2017 determining that the RSEO will not be revoked.

8. The variation order of 2nd February 2017 required the landlords to complete the following works at the property by 10th March 2017:

“

- (i) To carry out such repairs or replacements as are required to ensure that the roof of the house is wind and watertight;**
- (ii) To carry out such repairs or replacements to eradicate all staining and water damage and mould growth on all affected walls and to the ceiling of the bedroom;**
- (iii) To carry out all ancillary works necessitated by the above works to and make good all decoration.”**

9. Having determined that the works of the RSEO had not been completed and there was no evidence of any lack of necessary rights to do so in terms of section 26 (3) of the Act, the Tribunal reached the view that the RSEO would not be revoked. Reference is made to the terms of the statement of facts and reasons of the Tribunal dated 14th July 2017.

Landlords' request for permission to appeal

10. By letter of 20th September 2017, Messrs R.S Vaughan solicitors wrote to the Tribunal intimating that they had been instructed by the landlords. The solicitors sought permission to appeal the decision of the Tribunal of 14th July 2017 to the Upper Tribunal for Scotland.

11. The basis of the landlords' appeal against the decision of the Tribunal of 14th July 2017, was that they lack the necessary rights to comply with the order. This is said to be because the landlord's property forms part of a tenement; that the roof is therefore presumed to be communal property and responsibility for its maintenance shared with all owners at the property.

12. In the letter of 20th September 2017 it is submitted that,

"We cannot say authoritatively that our clients' title deeds contain a burden stating that the burden of repairing the roof is to be a communal matter, but would presume so, particularly given the owners meetings which were conducted. Of course, the situation may be further covered by the Tenements (Scotland) Act 2004."

13. Although responsibility for the roof remained unclear, it was submitted that if the roof is communal, then the landlords require the consent of other owners before they can proceed with any communal repairs. Further, it is said that to do so, in the absence of the authority of other owners, would place the landlords at a disadvantage as they would be left to meet the full costs of the repairs. In turn, it is said that this would place the other owners at an unfair advantage. The letter read,

"Were our clients to undertake the repairs necessary to comply with the terms of the order without first seeking approval and payment from the other owners, they would effectively be being made liable to pay the full costs of the repairs via the RSEO and also may not necessarily be entitled to seek recompense for their actions from the other owners. This would effectively penalise our clients. On one view, they would be unjustifiably enriching the other owners."

14. Also within the letter of 20th September 2017, the landlords' solicitor states that the landlords have demonstrated a commitment to progress of

matters since receipt of the RSEO in April 2016. In support of this, it is said that; the landlords' former representatives had liaised with the property factors, Ross and Liddell; meetings of residents had been arranged; Quotes had been recovered for the costs of the works required and ; the landlords had paid their share of the costs but other owners failed to do so. It is understood that during this time the roof fell into a greater state of disrepair.

15. The letter confirms that there is no one residing at the property currently.

16. Going forward it is submitted that the solicitor will assist the landlords to resolve the problems at the roof. Correspondence will be issued to the property factors and to tenants on behalf of the landlords. It is submitted that the landlords may be entitled to financial assistance from the local authority to complete repairs. Reference is made to the possibility of exploring a repair or improvement scheme which all owners could approach, jointly. Alternatively, the landlords may seek statutory enforcement action through the local authority.

Landlords' request for variation of the RSEO

17. In the event that their request for revocation of the RSEO is refused, the landlords request that the terms of the RSEO are varied to allow them further time within which to complete the works. A period of 6 months is sought.

Landlords' request for review of Tribunal decision

18. Reference is made to a party's entitlement to seek review of a decision of a Tribunal and whilst, it is accepted that the period of time to do so has been lost, the landlords request that the Tribunal exercises its discretion by allowing an application for review, late, "*as a principal alternative to appealing.*"

Reasons for Tribunal's decision

19. The Tribunal refuses the request for an appeal but allows the landlord's request for review, although late. Allowing the request for review dispenses with the time and delay of the appeal process.
20. Clarity is required on whether or not the roof falls within common property. If so, then there may be evidence that the landlords do not possess the necessary rights to carry out the works required by the RSEO.
21. The request for revocation is refused on the basis that the landlords accept that the roof is in need of repair. Reference is made to the terms of the letter of 20th September which states that,
- “the roof had further dilapidated and the repairs became more extensive, meaning the costs increased. We understand this is where matters lie.”*
22. The request for the terms of the RSEO to be varied is allowed on the basis that, within the letter of 20th September, the landlords provide an undertaking to complete the works; that there is no suggestion by the landlords that the works specified by the RSEO are not required; that there are various methods outlined within the letter which the landlords undertake to explore to resolve the issues with the roof; and that the property is vacant and there is no prejudice to the other party to this action.
23. In light of the extent of the works required at the roof and the potential issues and delays which may arise should the roof be common to all owners, the Tribunal consider a period of 6 months reasonable. The Tribunal determine that matters will be assessed at the end of that period to establish what progress has been achieved.

S Sweeney

Chairing legal member of the Tribunal, 15th November 2017