

Housing and Property Chamber First-tier Tribunal for Scotland



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

statutory successor to the Private Rented Housing Committee in terms of the Tribunals (Scotland) Act 2014 and the First tier-Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016

Certificate of Completion of Work under Section 60 of the Housing (Scotland) Act 2006 as amended (“the Act”)

Property at 5 Burnfoot Avenue, Barassie, Troon KA10 6RF, being the subjects more particularly described in Land Certificate Title Number AYR84275 (hereinafter referred to as “the house”)

Ms. Cheryl Elliot, residing at the house, whose agents are Black Hay, Solicitors, Prestwick (Ms. Elliot is successor in title to Mr. Mahar Mohammed Nasir, 2 Langhaul Avenue, Glasgow G53 7RW) (“the Landlord”)

Reference PRHP/RP/15 /0147

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) hereby certifies that the work required by the **Repairing Standard Enforcement Order (“RSEO”)** relative to the house dated 21 July 2015 and served on 22 July 2015 as varied has been completed. Accordingly, the said RSEO relative to the house is revoked.

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.

In terms of Section 63 of the Act, 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 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.

In Witness Whereof these presents type written on this and the preceding page are executed by Mrs Aileen Devanny, legal member of the Tribunal, at Glasgow on the Thirteenth day of May, Two thousand and nineteen in the presence of the undernoted witness:-

A Devanny

H Butler

Witness

Legal member^c

_____ name in full

20 York Street address

Glasgow

G2 8GT

Housing and Property Chamber First-tier Tribunal for Scotland



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

statutory successor to the Private Rented Housing Committee in terms of the Tribunals (Scotland) Act 2014 and the First tier-Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016

Variation of Repairing Standard Enforcement Order (“RSEO”): Housing (Scotland) Act 2006 Section 25

Property at 5 Burnfoot Avenue, Barassie, Troon KA10 6RF, being the subjects more particularly described in Land Certificate Title Number AYR84275 (hereinafter referred to as “the house”)

Ms. Cheryl Elliot, residing at the house, whose agents are Black Hay, Solicitors, Prestwick (Ms. Elliot is successor in title to Mr. Mahar Mohammed Nasir, 2 Langhaul Avenue, Glasgow G53 7RW) (“the Landlord”)

Reference PRHP/RP/15 /0147

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) having determined on 11th May 2019 that the Repairing Standard Enforcement Order (RSEO) relative to the House dated 21 July 2015 and served on 22 July 2015 should be varied, the said **RSEO is hereby varied** with effect from the date of service of this Notice in the following respects:-

Items (e), (j) and (k) of the said RSEO have been deleted from the RSEO.

Subsection 25(3) of the Housing (Scotland) Act 2006 as amended does not apply in this case.

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.

In terms of Section 63 of the Act, 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.

In witness whereof these presents type written on this and the preceding page are executed by Aileen Devanny, legal member of the Tribunal, at Glasgow on the Thirteenth day of May Two thousand and nineteen in the presence of the undernoted witness:-

H Butler

A Devanny

witness

Legal Member

name in full

20 York Street Address

Glasgow

G2 8GT

Housing and Property Chamber
First-tier Tribunal for Scotland



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

statutory successor to the Private Rented Housing Committee in terms of the Tribunals (Scotland) Act 2014 and the First tier-Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") under Section 26(1) of the Housing (Scotland) Act 2006

In connection with

**Property at 5 Burnfoot Avenue, Barassie, Troon KA10 6RF
(hereinafter referred to as "the house")**

The Party

Ms. Cheryl Elliot, residing at the house, whose agents are Black Hay, Solicitors, Prestwick (Ms. Elliot is successor in title to Mr. Mahar Mohammed Nasir, 2 Langhaul Avenue, Glasgow G53 7RW) ("the Landlord")

Reference PRHP/RP/15 /0147

BACKGROUND

1. Reference is made to the Determination of the Private Rented Housing Committee ("the Committee") dated 15 July 2015 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act ("the Act") and to the Repairing Standard Enforcement Order ("the RSEO") dated 21 July 2015 which confirmed that the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order; any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The RSEO required the Landlord to undertake works as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order was made good.

In particular the Private Rented Housing Committee required the Landlord:-

- (a) To arrange for an inspection of all aspects of the electrical wiring at the house including an inspection of the fittings and appliances provided by the Landlord, said inspection is to be carried out by a SELECT or NICEIC Registered Electrical Engineer; and following that inspection, an electrical inspection report requires to be prepared and submitted to the Homeowner Housing Committee; If works are identified as required in terms of that report, then these works require to be undertaken and certified as satisfactorily completed by the Registered Engineer and the Landlord is required to provide certification to confirm this from a SELECT or NICEIC Registered Engineer acceptable to the Committee.*
- (b) To identify the source of dampness and to rectify the cause to ensure that the house is wind and watertight; and to redecorate the affected area.*
- (c) To replace the sill at the kitchen door with treated timber or a suitably weatherproofed material.*
- (d) To repair and, as required replace, the quarry tiling at the kitchen exit step.*
- (e) To remove and replace the garage which is at risk of collapse and is beyond economic repair. The replacement structure should be capable of housing a car. To remove the asbestos door of the garage using the services of a competent contractor who is licensed under the Waste Management Regulations who will dispose of the door and a receipt to confirm this is to be submitted to the Committee.*
- (f) To repair the fencing and the gate opening to ensure that it is constructed to a uniform style of uniform materials and finish and to ensure that it is in a reasonable state of repair and proper working order.*
- (g) To employ a plumber to sink the rodding eye into the ground so that it is flush with the garden ground level.*
- (h) To reinstate the front and side boundary walls.*
- (i) To repair the windows as required to ensure that the windows are in a reasonable state of repair and in proper working order and draught free and that keys are provided to all windows with a locking mechanism. The hall window upstairs being used as a fire exit must be capable of being safely opened and closed.*
- (j) To repair the skylight velux window so that it is in a reasonable state of repair and in proper working order.*
- (k) To repair the front door to ensure it is wind and watertight and draught free.*
- (l) To produce an up to date and satisfactory Gas Safe certificate for the gas installation, the boiler and central heating system and any gas appliances provided by the Landlord.*
- (m) To install fire detection devices which comply with the current guidance issued by Scottish Ministers for the provision for such devices. A copy of the Statutory Guidance referred to is attached to this Order.*

(Hereinafter the works detailed at (a) to (m) are collectively known as "the works").

The Private Rented Housing Committee ordered that the works specified in this Order must be carried out and completed within the period of two months from the date of service of the Notice of the RSEO. Notice was served on the landlord and his representative, Messrs. Waddell and Mackintosh, Solicitors, Troon. The representative acknowledged receipt by letter dated 27 July 2015. Therefore, the said works were to be carried out and completed by 27 September 2015. The RSEO was registered as a burden on the title of the house, the effect of which is that a house cannot be re-let if it becomes vacant which is a restriction on use of the property and this restriction transmits to singular successors in title if the house is sold.

2. On 30 October 2015 the Private Rented Housing Committee considered the evidence and unanimously decided in terms of Section 26(1) of the Act that the Landlord had failed to comply with the requirements of the RSEO and directed that a notice of the failure be served on the Local Authority on which the house is situated. Since the tenant had by this date left the house, a rent relief order was not appropriate.

3. On 5 February 2019 Ms. Elliott advised the Tribunal that she had purchased the house in December 2017 and confirmed that she was resident in the house and sought the discharge or revocation of the RSEO to allow her to proceed with a mortgage. She provided some evidence of completion of works to the house in the form of photographs.

4. On 7 February 2019 the Tribunal decided that a re-inspection of the house by the surveyor member would be arranged once the Tribunal were in receipt of satisfactory documentation in relation to the provisions in the RSEO detailed at (a), (e) and (l).

5. On 17 February 2019 Ms. Elliot produced a satisfactory Gas Safe Certificate to evidence that condition (l) of the RSEO had been complied with. However, she provided incomplete documentation to satisfy the Tribunal that conditions (a) and (e) had been complied with and further information was sought by the Tribunal. Documentation to support that condition (a) of the RSEO had been complied with was submitted on 22 February 2019. Further documentation was submitted from the timber and damp specialist who removed the garage and shed to the effect that there was no asbestos present in the garage at the time that works were completed by them. Whilst the timber and damp specialist stated that it is not a licensed contractor under waste management regulations for the disposal of asbestos, nonetheless the company has a waste permit and is aware of the appearance of asbestos and the restrictions which apply to the disposal of asbestos.

6. A re-inspection of the house was carried out by the surveyor member of the Tribunal and a re-inspection report of the findings submitted to Ms. Elliott and her solicitor. Written representations were sought from her on the report. A copy of the re-inspection report is attached to this determination.

7. On 2 April 2019 the Tribunal received photographic evidence of further works having been completed to the house since the completion of the surveyor's re-inspection report. These photographs confirmed that a fire detector had been installed in the kitchen, a carbon monoxide alarm was present, a fire alarm had been installed in the downstairs landing, wires had been removed from the attic, the side boundary wall had been re-instated, the gate had been re-instated and window defects had been remedied. On 17 April 2019 further photographic evidence was produced by Ms. Elliot to establish that a fire detector was installed in the living room and upper landing and heat detector installed in the kitchen. Evidence of the invoice for the window repairs was produced.

The Tribunal comprised Mrs. Aileen Devanny, Chairperson and Legal Member, Mr. Mike Links, Surveyor Member.

DETERMINATION AND REASONS

8. The Committee considered the evidence and unanimously decided in terms of Section 26(1) of the Act that the Landlord had complied with items (a) to (d) and (f) to (i) and items (l) and (m) of the RSEO. The only matters which remained outstanding were items (e), (j) and (k) of the RSEO. The front door remains in its original condition and the skylight velux window still is cracked. The garage had been removed but not reinstated and there was no receipt produced that the asbestos in the door of the garage had been removed in accordance with Waste Management Regulations.

The Tribunal considers that the velux window presents only a very minor risk issue and is in an area which is not within the living quarters of the house. It is in the roof void and since the RSEO was made, the stairway from the first floor giving access to the attic has been removed. Ms Elliot indicated that the window is completely watertight and that she will attend to this item when she has funds.

The front door is in the same condition as at the time that the RSEO was made. However, Ms Elliot states it is completely wind and watertight. She proposes to replace it whenever she has the funds to do so.

The house is no longer occupied by the original tenant and is occupied by the owner. Accordingly, there is no need to replace the garage and it is sufficient that it is removed. The Tribunal would normally insist on the necessary documentation for removal of asbestos. However, in this case the Tribunal cannot say whether the asbestos door was removed on the instructions of Mr Nasir before the sale to Ms Elliot or it was removed following the sale. Evidence was provided that the asbestos door was not present when the garage was removed. Accordingly, the Tribunal decided to vary the RSEO to delete reference to item (e) of the RSEO and to the replacement of the garage and the requirement for submission of documentation to the Tribunal regarding the asbestos disposal.

A Devanny

The Tribunal considers that given the minor nature of the remaining works detailed in (j) and (k); the absence of risk to residents in the living quarters of the house; and Ms. Elliot's undertaking to attend to the two items when in funds that the RSEO should be varied and items (j) and (k) of the RSEO should be deleted.

The stated variations in the RSEO would allow the Tribunal to issue a Certificate of Completion in relation to the remaining works in the RSEO.

APPEAL PROVISIONS

A Landlord 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.

A Devanny

Legal Member,
13 May 2019