

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 UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006 ("the Act")

In connection with

Chamber Reference number: PRHP/RP/16/0311

Re: Property at The Corran, Kensaleyre, Portree, Isle of Skye IV51 9XE ("the house")

The Parties:

- **Mr Calum Nicolson ("Landlord")**

Tribunal members: Mrs Aileen Devanny (legal member and chairperson); Mr Robert Buchan (ordinary member (surveyor))

DECISION

The First-tier Tribunal for Scotland ("the Tribunal"), having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order (hereinafter referred to as "the RSEO") in relation to the house concerned, and taking account of the responses of the Landlord dated 12 May 2017 and 8 November 2017 and the lack of production of a document required in the RSEO and lack of response to a Direction issued on 27 November 2017, unanimously decided in terms of section 26(1) of the Act that the Landlord had failed to comply with the RSEO and directed that a notice of the failure be served on the Local Authority for the area in which the house is situated.

The Tribunal considered whether or not a variation or revocation of the RSEO was appropriate but discounted these options given the evidence before them that the Landlord had already had sufficient time to complete the works and the outstanding works remained necessary. The Tribunal was not persuaded by the submission of

the Landlord that the RSEO should be revoked as the property is a private residence and he is no longer a landlord. In the submission of 12 May 2017 he states that as a private citizen he considers the RSEO is incompatible with Protocol 1, Article 1 of the Human Rights Act 1998. The Landlord was given an opportunity to expand on and argue the Human Rights issue before the Upper Tribunal for Scotland in relation to the Landlord's application for permission to appeal the Section 24(1) decision to grant a RSEO but the Landlord did not take this opportunity.

Since the tenant has left the house, a rent relief order is not appropriate.

1. BACKGROUND

Reference is made to the Determination of the Tribunal under section 24(1) of the Act dated 3 March 2017 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act and to the Repairing Standard Enforcement Order (RSEO) dated 6 March 2017 which required the Landlord to carry out works as specified therein. The said works detailed in the RSEO to be carried out and completed within a period of 2 months from 10 March 2017.

Following upon the Upper Tribunal decision to refuse to grant permission to appeal and after expiry of the 30 days appeal period from that decision, the Landlord was written to on 27 September 2017 and reminded that the works in the Repairing Standard Enforcement Order (RSEO) must be carried out. The works were detailed in this letter. The First-tier Tribunal required information from the Landlord as to the stage of completion of the works within 14 days. The information was required in terms of Schedule 2 paragraph 3 (1) (b) of the Housing (Scotland) Act 2006. The Landlord was reminded that once the up to date electrical inspection condition report required in terms of the RSEO is obtained, a copy of the full report requires to be sent to the First-tier Tribunal. That letter was sent recorded delivery and signed for by the Landlord on 28 September 2017. No response was received from the Landlord and a reminder was sent by e-mail to the Landlord's known e-mail address on 23 October 2017. No response from the Landlord to this reminder was received within the timescale. However, an e-mail was received from the Landlord on 8 November 2017 when he stated that the house had not been leased to tenants since 6 January 2017. He stated that the property is his permanent private residence and he was no longer a landlord. He asked that the previous address used in the past for notification purposes no longer be used.

On 27 November 2017 a direction was issued by the Tribunal requiring the Landlord to provide the up to date electrical inspection condition report detailed as a requirement at (b) of the RSEO dated 6 March 2017 to the First-tier Tribunal. The Tribunal stated within the direction that it is possible that the First-tier Tribunal will draw an inference from the failure to provide the up to date electrical inspection condition report required in the RSEO that there has been a failure to repair and replace the electrical hob in the kitchen which is also works detailed within the RSEO. If the Landlord disputes this inference, then evidence of works to the electrical hob, for example in the form of photographs, must be provided to the First-tier Tribunal. If no such evidence is produced, the First-tier Tribunal is likely to make the inference stated.

The Landlord was required to lodge this report with the First-tier Tribunal Housing and Property Chamber, 4th Floor, 1 Atlantic Quay, 45 Robertson Street, Glasgow G2 8JB no later than midday on 12 December 2017.

No response was received by the Tribunal. Further reminders seeking a reply were sent to the Landlord on 27 December 2017 and 29 January 2018. No responses to these reminders were received from the Landlord. The First-tier Tribunal must now consider if a decision in terms of section 26(1) of the Housing (Scotland) Act 2006 should be made or if a variation or revocation of the RSEO is appropriate

2. WORKS REQUIRED BY THE RSEO DATED 6 MARCH 2017

The Tribunal required the Landlord to carry out such work 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 the Order is made good.

In particular the Tribunal required the Landlord:-

- (a) To repair or replace the electrical hob in the kitchen.*
- (b) To provide an up to date electrical inspection condition report in respect of the house from a competent person in terms of the statutory guidance confirming that the work identified in the report, including the repair or replacement of the electrical hob, has been carried out to a satisfactory standard.*

The Tribunal ordered that the works specified in this Order must be carried out and completed within the period of 2 months from the date of service of this Notice.

3. DETERMINATION AND STATEMENT OF REASONS

The Tribunal taking account of the responses of the Landlord dated 12 May 2017 and 8 November 2017 and the lack of production of an electrical inspection condition report required in the RSEO and lack of response to a Direction issued on 27 November 2017, unanimously decided in terms of section 26(1) of the Act that the Landlord had failed to comply with the RSEO and directed that a notice of the failure be served on the Local Authority for the area in which the house is situated.

The Tribunal considered whether or not a variation or revocation of the RSEO was appropriate but discounted these options given the evidence before them that the Landlord had already had sufficient time to complete the works and the outstanding works remained necessary. The Tribunal was not persuaded by the submission of the Landlord that the RSEO should be revoked as the property is a private residence and he is no longer a landlord. In the submission of 12 May 2017 the Landlord states that as a private citizen he considers the RSEO is incompatible with Protocol 1,

Article 1 of the Human Rights Act 1998. The Landlord was given an opportunity to expand on and argue the Human Rights issue before the Upper Tribunal for Scotland in relation to the Landlord's application for permission to appeal the section 24(1) decision to grant a RSEO but the Landlord did not take this opportunity.

It is not appropriate for the Tribunal to make a Rent Relief Order in terms of section 27 of the Act as the tenancy to which the application relates has been terminated.

No electrical inspection condition report has been received. That was one of the requirements of the RSEO. The Landlord has also not responded to the direction which gives notice that an inference will be drawn from failure to produce this report that the hob has not been replaced since the condition report would make reference to the condition of the electrical hob. The Landlord was given an opportunity to challenge this inference or provide evidence that the hob had been replaced. There is evidence of the Landlord's receipt of the direction and he has been given an opportunity to respond but has not done so.

The Landlord's only response was that the house had not been leased since January 2017 and he is not a landlord as the house is a private residence. However, Schedule 2 Paragraph 7 of the Act as amended makes provision for situations where the tenancy is lawfully terminated in the course of the proceedings and the Tribunal has discretion to abandon the application or continue to determine the application and, as appropriate, make and enforce a repairing standard enforcement order. Following termination of the tenancy for the house, a decision was made by the Tribunal on 31 January 2017 to continue to determine the application and this decision was notified to the Landlord and the reason for the continuation was narrated in the decision made under section 24(1) of the Act. Having made an RSEO, the Tribunal is now considering compliance with and enforcement of the RSEO as provided for in Schedule 2 Paragraph 7(3)(b)(ii).

Schedule 2 Paragraph 7 (as amended per the annotations) is detailed as follows:

"Withdrawal of application

7(1)A tenant may withdraw an application under section 22(1) at any time (and the tenant is to be treated as having withdrawn it if the tenancy concerned is lawfully terminated).

[F38(1A)A third party applicant may withdraw an application under section 22(1A) at any time.]

(2)Where an application is withdrawn before the [F39Chamber President has referred] the case to [F40the First-tier Tribunal] , the [F41Chamber President] may—

(a)abandon the application, or

(b)despite the withdrawal, continue to refer the case to [F40the First-tier Tribunal] .

(3)Where an application is withdrawn after it has been referred to [F42the First-tier Tribunal, the First-tier Tribunal] may—

- (a) *abandon [F43its] consideration of the application, or*
- (b) *despite the withdrawal—*
- (i) *continue to determine the application, and*
- (ii) if [F44it does] so by deciding that the landlord has failed to comply with the duty imposed by section 14(1), make and enforce a repairing standard enforcement order.”

Amendments (Textual)

F38Sch. 2 para. 7(1A) inserted (1.12.2015) by Housing (Scotland) Act 2014 (asp 14), ss. 26(6), 104(3); S.S.I. 2015/272, art. 2, sch.

F39Words in sch. 2 para. 7(2) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016 (S.S.I. 2016/338), reg. 1(2), **sch. 2 para. 2(18)(b)(i)** (with sch. 1 para. 5)

F40Words in sch. 2 para. 7(2) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 (S.S.I. 2016/337), reg. 1(2), **sch. 2 para. 6(20)(h)(i)** (with sch. 1)

F41Words in sch. 2 para. 7(2) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016 (S.S.I. 2016/338), reg. 1(2), **sch. 2 para. 2(18)(b)(ii)** (with sch. 1 para. 5)

F42Words in sch. 2 para. 7(3) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 (S.S.I. 2016/337), reg. 1(2), **sch. 2 para. 6(20), (h)(ii)(aa)** (with sch. 1)

F43Word in sch. 2 para. 7(3)(a) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 (S.S.I. 2016/337), reg. 1(2), **sch. 2 para. 6(20), (h)(ii)(bb)** (with sch. 1)

F44Words in sch. 2 para. 7(3)(b)(ii) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 (S.S.I. 2016/337), reg. 1(2), **sch. 2 para. 6(20), (h)(ii)(cc)** (with sch. 1)

If the Landlord's interpretation of the legislation is correct, then any landlord could avoid the consequences of an RSEO by terminating the tenancy and arguing that a tenancy no longer exists and there is no landlord. Schedule 2 Paragraph 7 allows the Tribunal to consider whether the application should continue or be abandoned notwithstanding that the tenancy is terminated. There is provision in section 61(1)(a) that each repairing standard enforcement order must be registered in the appropriate Land Register and in section 62 (2) it provides for the First-tier Tribunal to register the order. Once registered, the RSEO appears in the burdens section of the land certificate for the house and the requirement for works in the RSEO transmits on sale or transfer of the house to "successors in title" (in accordance with the definition of "landlord" in section 194 of the Act). There is a restriction on the future letting of the house because of the provisions of section 28(5) of the Act which creates an offence if a "landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house." It can be seen from this that the intention of the legislation is that an RSEO does not continue only for the duration of the tenancy as the Landlord argues.

The Tribunal considered if the RSEO should be revoked but to make that decision the Tribunal must, in terms of section 25(1) (b) of the Act, be satisfied that the work required by the order is no longer necessary. The Tribunal is of the view that the works remain necessary. Since the Landlord has been given an adequate time to complete the works a variation of the RSEO to extend the period of compliance with the RSEO is not appropriate. The time limit for completing the works in the RSEO has expired.

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