

Housing and Property Chamber First-tier Tribunal for Scotland



STATEMENT OF DECISION TO ISSUE A NOTICE OF FAILURE UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006 ("the Act") AND TO ISSUE A RENT RELIEF ORDER UNDER SECTION 27 OF THE ACT.

Chamber Ref: RT/18/0840

THE PROPERTY:

59 Quoybanks Crescent, Kirkwall, Orkney KW15 1EN

Title Number: OAZ2579

THE PARTIES:

Orkney Islands Council, School Place, Kirkwall, Orkney KW15 1NY per Mr Paul Turner, Environmental Health Officer. ("third party applicant")

Mr Jon O'Joyce, residing at the property. ("the tenant")

and

Henry Clive Chaddock and Mrs Cynthia Rebecca Chaddock, residing at The Manse, Harray, Orkney KW15 2JR per Ms Serena Sutherland, Solicitor, D&H Law, 56A Albert Street, Kirkwall, Orkney KW15 1HQ. ("the landlords")

THE TRIBUNAL:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee (PRHC):

David M Preston (Chairman) and Greig Adams (Surveyor Member)

Decision:

- 1. The landlord has failed to comply with the Repairing Standard Enforcement Order ("RSEO") dated 31 July 2018 which was issued to the parties on 3 August 2018 within the time limit specified therein;**
- 2. To serve a Notice of Failure on Orkney Islands Council;**
- 3. To make a Rent Relief Order ("RRO") to reduce the rent payable by 75 %.**

Background:

1. The RSEO dated 31 July 2018 was issued to the parties on 3 August 2018. The time limit specified for completion of the works was 8 weeks from the date of issue, being 28 September 2018. Following the expiry of the time limit a re-inspection of the property was carried out by the Ordinary (Surveyor) Member of the tribunal on 8 October 2018. A report was prepared by him and issued to the parties on 17 October 2018 and the parties were requested: to advise whether they wished to request a hearing in relation to the report; to send written representations to give their response to the report by 31 October 2018; and to give their views on the granting of a Rent Relief Order and on the level of any rent reduction.

Tenant's Representations:

2. The tenant submitted various representations by emails, both before and after the issue of the re-inspection report regarding a number of issues which were not all related to the present application, and in particular he returned the re-inspection Response form on 22 October 2018 in which he advised that he agreed with the findings of the re-inspection report. He further advised of the effects of the landlord's non-compliance on his living conditions. He also said that a Rent Relief Order should be considered by the tribunal to reduce the rent payable to the landlords by 90% in view of the continuing difficulties being faced by him.

Third Party Representations:

3. In an email dated 2 October 2018, prior to the re-inspection Mr Turner advised that he had visited the property and found that the work required by the RSEO had not been carried out. On 18 October he responded to the Re-inspection Report indicating that he did not intend to submit further written responses, but found no reason to disagree with the findings of the Re-inspection Report. He made no comment in regard to a Rent Relief Order.

Landlord's Representations:

4. The landlords did not submit any written representations to the re-inspection report. Prior to the issue of the report, a letter dated 7 October 2018 from the landlords was sent to the tribunal by their solicitor under cover of their email dated 11 October 2018. The letter of 7 October 2018 enclosed: purchase order from The Glass Shop (Orkney) Ltd dated 28 September 2018; invoice from PW Plumbing dated 4 October 2018; letter dated 5 October 2018 from Orkney Insulation and Small Jobs; and letter dated 3 October 2018 from Orkfab. They made no representations regarding a Rent Relief Order.

Reasons

5. We considered the representations made by or on behalf of the parties so far as relevant to the application before us and determined to issue a Notice of Failure and RRO.

6. Our deliberations related to the landlord's failure to comply with the RSEO within the specified time limit. We took account of the documents provided by the landlords with their letter of 7 October 2018. The documents were either dated or related to dates no earlier than 28 September 2018. The RSEO had been issued on 3 August 2018 and it was clear to us that no efforts had been made by the landlords to attend to the works specified until the time limit had expired.
7. The landlords said that they had experienced difficulty engaging with the tenant who, they alleged was refusing to provide access.
8. In light of the landlords' representations we had regard to section 16(4) of the Act in terms of which a landlord is not to be treated as having failed to comply with his duty where the purported failure occurred because the landlord lacked necessary rights of access or otherwise despite having taken reasonable steps to acquire those rights.
9. We did not consider that the terms of this section could apply. Even if the tenant had refused access to the landlords or their agents or contractors, whether reasonably or not, no demonstrable efforts were made by the landlord until 18 September 2018 at the earliest which was too late to comply with the time limit in the RSEO. Further, had the landlords been faced with difficulties in gaining access to the property, it was open to them to make a Right of Entry application to the tribunal to assist them in gaining access. They made no effort to submit such an application.
10. We accordingly found that the landlord had failed to comply with the RSEO and in terms of section 26(2) the tribunal must serve Notice of Failure on the local authority and decide whether to make a RRO.
11. We determined to issue a RRO to restrict the amount of the rent payable to the landlord by 75%.
12. In arriving at its decision we took account of the representations submitted. We considered the following matters as contained in the representations:
 - a. The tenant has been denied reasonable use of the property for a significant period of time through dampness; lack of heating; and the collapsed ceiling and plasterwork in the kitchen. The condition of the property continues to deteriorate as a direct result of the issues raised in this application.
 - b. The condition of the property as evidence by our inspections and as detailed in the RSEO and the re-inspection report, has resulted and continues to result undoubtedly in an adverse effect on the health of the tenant.
 - c. While the landlord has made some belated efforts to gain access to the property to carry out the works, insufficient was done to ensure that their obligations were fulfilled. From the information available the landlord has only made one effort to gain access for the purpose of implementing the RSEO. It was open to the landlord to make application under the Right of Entry procedure.

13. In all the circumstances we concluded that a fair restriction of the rent would be 75%

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

D Preston

..... Chairman

13 November 2018

Housing and Property Chamber First-tier Tribunal for Scotland



**RENT RELIEF ORDER UNDER SECTION 27 OF THE HOUSING (SCOTLAND) ACT 2006
AS AMENDED ("the Act")**

Chamber Ref: RT/18/00840

THE PROPERTY:

59 Quoybanks Crescent, Kirkwall, Orkney KW15 1EN

Title Number: OAZ2579

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**Orkney Islands Council, School Place, Kirkwall, Orkney KW15 1NY per Mr Paul Turner,
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and

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Harray, Orkney KW15 2JR per Ms Serena Sutherland, Solicitor, D&H Law, 56A Albert
Street, Kirkwall, Orkney KW15 1HQ. ("the landlords")**

NOTICE TO ("the Landlord")

Whereas in terms of its decision dated 13 November 2018 the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal) determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Tribunal.

The Tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 75% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act. To ascertain the last date on which the decision can be appealed, please refer to the information note on appeals and reviews, a copy of which is attached.

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.

If an application for permission to appeal is received, then the Tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

D Preston

.....Chairman

13 November 2018