

Housing and Property Chamber
First-tier Tribunal for Scotland



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

**NOTICE OF DISMISSAL OF APPLICATION IN TERMS OF SECTION 22(1) OF
THE HOUSING (SCOTLAND) ACT 2006**

Reference number: FTS/HPC/RP/18/1503

Re: Property at 6 Brackla Distillery Cottages, Brackla, Nairn, IV12 5QY ("the Property")

The Parties:

Mr Garry Smith and Mrs Amy Smith, 6 Brackla Distillery Cottages, Brackla, Nairn, IV12 5QY ("the former Tenants")

Ms Morven Snodgrass, Craigroy Cottage, Dunphail, Forres, IV36 2QR ("the Landlord")

Tribunal Members

Ms Helen Forbes (Legal Member)

Mr Mark Andrew (Ordinary Member)

Decision

The application is dismissed as incompetent in terms of section 22(1) of the Housing (Scotland) Act 2006 ("the Act").

Background

1. By application received on 25th June 2018, the Tenants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). The application stated that the Tenants considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following sections of the Act:

13(1)(a) The House is wind and watertight and in all other respects reasonably fit for human habitation.

13(1)(c) *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.*

13(1)(d) *Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.*

13(1)(g) *The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.*

2. Notice of Referral to a Tribunal under section 23(1) of the Act was sent to parties on 4th July 2018 following a decision to refer made by the Convener of the First-tier Tribunal on 27th June 2018. A hearing was assigned for 4th September 2018.
3. By letter dated 25th July 2018 the Landlord informed the Tribunal that the Property was on the market for sale.
4. On 30th July 2018, the Tribunal contacted the Tenants and received confirmation that the tenancy of the house had been terminated, and accordingly, under Schedule 2 Paragraph 7(1) of the Act, the Tenants were to be treated as having withdrawn the application. The Tribunal then considered the application and whether said application should be determined or whether it should be abandoned, all in terms of Schedule 2 Paragraph 7(3) of the Act. Having carefully considered the matter, the Tribunal decided to continue to determine the application given the serious nature of the matters complained of by the Tenants, including matters raising health and safety implications for future tenants.
5. An inspection of the Property took place on 4th September 2018. The Landlord was not present at the inspection. A hearing took place, thereafter, at the Spectrum Centre, 1b Margaret Street, Inverness, IV1 1LS. The Tribunal had been informed in advance that the Landlord would not be present. The Landlord was represented at the hearing by Mr Jamie Whittle, Solicitor, R&R Urquhart. Ms Karen Poke, Trainee Solicitor, was also present.
6. Following a discussion on the application and matters observed at the inspection, Mr Whittle made a motion to have the application dismissed as the application had been made by the Tenants after the tenancy ended.
7. Further enquiries of the Landlord and the former Tenants were made by the Tribunal. The tenancy commenced on 4th May 2018. Notice to Leave was served upon the Tenants dated 14th May 2018, giving the Tenants 28 days' notice to leave the Property. The period of notice ended on 12th June 2018. The Tenants made payment of the rent due on 4th May 2018. No further rental payments were made. The Tenants moved out of the Property on 1st June 2018. The application to the Tribunal was made on 16th June 2018. Accordingly, the Tenants were no longer tenants in terms of section 22(1) of

the Act on the date that the application was made. The application is incompetent and falls to be dismissed.

Decision

8. The Tribunal therefore dismisses the application as incompetent in terms of section 22(1) of the Act.

Rights of Appeal

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.

H Forbes

Chairperson
21st September 2018