

Housing and Property Chamber

First-tier Tribunal for Scotland



REPAIRING STANDARD ENFORCEMENT ORDER

Parties : Mr David Strang, an employee of North Lanarkshire Council, Regulatory Services, Public Health and Housing team, 153, Main Street, Coatbridge, ML5 3RS (the "third party applicant") in respect of a tenancy between Mr Alan Maxwell residing at 72 Orbiston Drive, Bellshill, ML4 2LX ("the tenant") and Ms Nagina Kauser, residing at 7 Pollock Street, Bellshill, ML4 1QD ("the Landlord") per her agent, Mr Nadim Kauser, also residing at 7 Pollock Street, Bellshill, ML4 1QD ("the Landlord's agent")

Property: 72 Orbiston Drive, Bellshill, ML4 2LX registered in the Land Register for Scotland under Title Number LAN64474 ("the Property")

Chamber reference: FTS/HPC/RT/16/1015

Tribunal Members

Karen Moore (Chairperson)

Debbie Scott (Surveyor Member)

NOTICE TO THE LANDLORD

Ms Nagina Kauser, residing at 7 Pollock Street, Bellshill, ML4 1QD ("the Landlord") per her agent, Mr Nadim Kauser, also residing at 7 Pollock Street, Bellshill, ML4 1QD

Whereas in terms of their decision dated 13 April 2017, the First-tier Tribunal for Scotland determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed to comply in respect of 13(1) (c) and 13(1) (g) of the Act and failed to ensure that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and that the Property has satisfactory provision for giving warning that carbon monoxide is present in a concentration that is hazardous to health, the First-tier Tribunal now requires the Landlord to carry out the following works or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.

The Landlord must on or before 31 May 2017:-

1. Instruct a gas safe engineer to carry out a full inspection of the gas central heating system and to repair or renew any parts which require to be renewed or repaired to ensure the installation and system is fully functioning and meet current regulatory standards and provide a gas safety certificate to the tribunal;
2. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a EICR to the tribunal and
3. Provide and install sufficient carbon monoxide detectors to comply with current regulations and
4. Make good any décor damaged as a result of these works.

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

Further, in terms of Section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence liable on summary conviction to a fine not exceeding Level 3 of the standard scale, and in terms of Section 28(5) of that Act, also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.

In Witness Whereof these presents printed on this and the preceding page are subscribed by Karen Moore, solicitor, Glasgow Chairperson of the First-tier Tribunal, at Glasgow on 13 April 2017 before this witness, Norman William Moore, solicitor, Dunnswood House, 10 Dunnswood Road, Cumbernauld.

N Moore

K Moore

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 ("the Act") in respect of an application under Section 22(1A) of the Act 2006

Parties : Mr David Strang, an employee of North Lanarkshire Council, Regulatory Services, Public Health and Housing team, 153, Main Street, Coatbridge, ML5 3RS (the "third party applicant") in respect of a tenancy between Mr Alan Maxwell residing at 72 Orbiston Drive, Bellshill, ML4 2LX ("the tenant") and Ms Nagina Kauser, residing at 7 Pollock Street, Bellshill, ML4 1QD ("the landlord") per her agent, Mr Nadim Kauser, also residing at 7 Pollock Street, Bellshill, ML4 1QD ("the landlord's agent")

Property: 72 Orbiston Drive, Bellshill, ML4 2LX registered in the Land Register for Scotland under Title Number LAN64474 ("the Property")

Chamber reference: FTS/HPC/RT/16/1015

Tribunal Members

Karen Moore (Chairperson)

Debbie Scott (Surveyor Member)

Background

1. By application received on 2 December 2016 ("the Application"), the third party applicant applied to the First-tier Tribunal for Scotland for a determination that the landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect

that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), 13(1) (c), 13(1) (f) and 13(1) (g) of the Act.

2. As part of the Application, the third-party applicant lodged a domestic Electrical Installation Condition Report (EICR) and a Portable Appliance Testing Certificate (PAT) both dated 4 October 2016 and signed by Garry O'Rourke on behalf of A.A. Electrical Services of 5, Calderpark Road, Glasgow. The third-party applicant caveated these certificates with the comment that the signatory might not be properly registered to issue the certificates. The third-party applicant also lodged two copy receipts showing rent of £450.00 paid by the tenant to the landlord.
3. The President of the Chamber, having considered the Application and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the Act, intimated to the Landlord by Notice of Referral dated 6 January 2017, a decision under Section 23 (1) of the Act to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 22 February 2017 at 10.00 a.m. and 11.30 a.m., respectively.

Written representations

4. By email dated 13 February 2017, the landlord submitted a written statement setting out her position that the tenant had not reported the repairs to her and had not allowed access to her or the tradesmen instructed by her. The landlord submitted an invoice dated 4 February 2017 from Gasfix, Heating and Plumbing of 197, Copland Road, Glasgow G51 2UT stating that access could not be gained in order to carry out a gas safety inspection and a letter dated 2 December 2016 from Electricaire, 6 John Brannan Way, Bellshill, ML4 3HD stating that the safety of the electrical system cannot be ascertained, however, no electrical current and voltage were found on the kitchen worktops.
5. The landlord also submitted correspondence from her lawyer to the tenant dated 13 December 2016 stating that a Notice to Quit had been served on the tenant.

Inspection

6. The Inspection took place on 22 February 2017 at 10.00 a.m. at the Property. Neither the third-party applicant nor the tenant was present at the Inspection. The landlord and the landlord's agent were both present at the Inspection. The tribunal inspected the parts of the Property referred to by the tenant in the Application namely:-
the electrics in respect of the emission of a humming noise and causing shocks;
the window in that attic which is allowing water to ingress;
the lack of carbon monoxide detectors and
the smoke detectors.
7. At the Inspection, the tribunal took digital photographs which photographs are annexed to this decision.
8. Following the Inspection, a Hearing was held at Orbiston Neighbourhood Centre, Busby Road, Bellshill on the same day at 11.30 a.m. Neither the third party applicant nor the tenant was present at the Hearing. The landlord and the landlord's agent were both present. Mr. Durawer Singh was present and provided interpretation services between the landlord, landlord's agent and the tribunal.

Preliminary Issue in respect of tenancy

9. The tribunal having regard to the copy letter from her solicitor to the tenant stating that a Notice to Quit and been served and having regard to the fact that, from the Inspection, the tenant appeared to have vacated the Property, considered if the Application had been withdrawn. The tribunal had regard to Paragraph 7 of Schedule 2 to the Act which states:- *"(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)" and "(1A) A third party applicant may withdraw an application under section 22(1A) at any time."*
10. The tribunal considered the status of the tenancy and took the view that, although the tenant appeared to have vacated the Property, and, although the letter from the landlord's lawyer referred to a Notice to Quit being served, without having sight of the Notice to Quit, the tribunal could not be

certain that tenancy had been lawfully terminated. The tribunal noted that, in any event, the Application had been made by a third-party applicant who had not withdrawn it. Accordingly, the tribunal determined that the Application had not been withdrawn

11. The tribunal had regard to the nature of the matters complained of, and as these gave rise to serious concerns in respect of the health and safety of occupants, took the view that, even if the tenancy had been lawfully terminated, the tribunal might have continued with the Application of its own accord and in terms of Paragraph 7 of Schedule 2 to the Act which states:- *"(3) Where an application is withdrawn after it has been referred to the First-tier Tribunal, the First-tier Tribunal may(b) despite the withdrawal (i) continue to determine the application."*

Evidence of the landlord

12. The landlord and the landlord's agent both gave evidence that the tenant had not notified of them that repairs required to be carried out. Both stated that the tenant had not allowed access for the gas and electricity safety inspections and had cancelled appointments made to carry out these inspections.
13. With regard to the Electrical Installation Condition Report (EICR) and a Portable Appliance Testing Certificate (PAT) both dated 4 October 2016 and signed by Garry O'Rourke on behalf of A.A. Electrical Services of 5, Calderpark Road, Glasgow lodged by the third-party applicant, the landlord's agent stated that these had been carried out shortly after the commencement of the tenancy.
14. With regard to the letter of 2 December 2016 from Electricaire, the landlord's agent stated that the tenant had not allowed access but that as he, the landlord's agent, had accompanied the electrician, he had provided access.
15. The landlord and the landlord's agent both gave evidence that the tenant had vacated the Property and had removed white goods owned by them and that the tenant had not paid rent for some months.
16. Both submitted to the tribunal that they understand their legal responsibilities as landlords and had done their best to comply with these.

17. Both submitted to the tribunal that they do not intend to re-let the Property due to the stress and financial loss incurred by them and they are likely to sell the Property.

Summary of the Issues

18. The issues to be determined by the tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13(1) (a), 13(1) (c), 13(1) (f), and 13(1) (g) of the Act at the date of the Inspection and Hearing.

Findings of Fact

19. The landlord is the owner of the Property. Although no tenancy agreement was lodged with the tribunal, copy receipts showing rent paid by the tenant to the landlord were lodged with the Application. The evidence given by the landlord and the landlord's agent at the Hearing acknowledged that a tenancy exists and so the tribunal is satisfied that Mr. Alan Maxwell is the tenant and accordingly the tribunal has jurisdiction.
20. The Property is an upper cottage flat in a block of four flatted properties with a roughcast exterior and pitched tiled roof, constructed circa 1930. The Property comprises a living room, two bedrooms, a kitchen and bathroom and has double glazed windows and gas central heating. There are gardens to the side and rear.
21. From the Inspection, the tribunal found the following:
There is evidence of dampness at the window in that attic which could be caused by a number of factors;
There is a carbon monoxide detector in the kitchen but it is not hard wired nor is it affixed to a wall or ceiling and
There are sufficient hard wired smoke detectors and circular marks on the ceilings where it appears that other detectors have been removed.
22. In respect of the EICR and PAT lodged with the Application, the tribunal found that these do not comply with the requirements set out in the Domestic Technical Handbook 2015 and so the tribunal could not be certain that these installations are functioning properly.

23. Although the PAT Certificate dated 4 October 2016 mentions a washing machine and a fridge, there is neither appliance in the Property.
24. From the Hearing, the tribunal found the evidence of the landlord and the landlord's agent to be truthful and accepted it without reservation. Although speculation on their part, the tribunal found that on the balance of probabilities, there is merit in their assertion that the tenant had removed the washing machine, the fridge and some of the smoke detectors.

Decision of the tribunal

25. The tribunal's decision is based on the Application with supporting documents, the Inspection and the Hearing.
26. In respect of the complaint in terms of Section 13 (1)(a) that the property is not wind and watertight and reasonably fit for human habitation, the tribunal found that although there was dampness close to the attic window, this was remote from the living areas of the Property and so did not impact on fitness for human habitation. Therefore, in respect of Section 13 (1) (a) of the Act, the tribunal found that at the date of the Inspection and Hearing the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act. However, the tribunal recommends that the landlord, in the first instance, ensures that the water tank lid is secured and that insulation is cleared from the air vents to increase the airflow and, thereafter, monitors the area surrounding the skylight, and, if, the dampness is not alleviated within a period of two months, the tribunal recommends that the landlord consider instructing a damp and timber specialist to investigate
27. In respect of Section 13(1) (c) of the Act, the tribunal found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that as there are no gas or electric safety certificates, the tribunal cannot be certain that the installations in the Property 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.

28. In respect of Section 13(1) (f) of the Act, the Committee found that at the date of the Hearing the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that tribunal is satisfied that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
29. In respect of Section 13(1) (g) of the Act, the Committee found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that the carbon monoxide detector in the property does not appear to comply with current regulation and so the tribunal cannot be certain that the property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
30. The decision was unanimous.

Repairing Standard Enforcement Order

31. Having determined that the landlord has failed to comply with the duty imposed by section 14(1)(b), the tribunal had regard to the course of action open to it thereafter. Section 24(2) of the Act states:- *"Where the First-tier Tribunal decides that the landlord has failed to comply with that duty, it must by order (a "repairing standard enforcement order") require the landlord to carry out such work as is necessary for the purposes of ensuring (a) that the house concerned meets the repairing standard, and (b) that any damage caused by the carrying out of any work in pursuance of that duty or the order is made good"*.
32. Accordingly, the tribunal has no discretion and having made a finding of failure to comply, it must impose an order.
33. The tribunal then had regard to the scope and content of the order and referred again to Section 24 (2) which states that the order *"must specify works required to ensure that the house concerned meets the repairing standard"*. Therefore, the tribunal must specify works to be carried out in the order.
34. The tribunal took account of the landlord's submission that the tenant had not allowed access to the Property for the purpose of repairs and safety certification. The tribunal accepted the veracity of this submission and had

a great deal of sympathy with the landlord and the situation in which she finds herself. The tribunal also accepted the landlord's submission that she does not intend to re-let the Property and considered if, in this event, it could take account of these matters in determining if an order is required. The tribunal came to the view that the terms of Section 24(2) are absolute and that the landlord's submissions did not alter this.

35. The tribunal considered the terms of Section 25 and its powers in respect of revoking an order once made and considered if it could immediately revoke an order which it had made.
36. The tribunal had regard to Section 25 (1) which states: *"Where the First-tier Tribunal has made a repairing standard enforcement order, it may, at any time, (b) where it considers that the work required by the order is no longer necessary, revoke it."*
37. The tribunal also had regard to the statutory procedure which follows the making of the order. This is set out at Paragraph 6 of Schedule 2 to the Act which states:-
"This paragraph applies to any decision of the First-tier Tribunal (a) under section 24(1) (decision on an application), (2) A decision to which this paragraph applies ..must be recorded in a document and (3) The First-tier Tribunal must, as soon as reasonably practicable after making a decision to which this paragraph applies, serve notice of the decision on (a) the landlord, (b) the tenant... (d) in the case of an application under section 22(1A), the third party applicant and (e) the local authority (unless the local authority is the third party applicant in relation to the decision)"
38. Therefore, as the tribunal having made an order must record it in writing and must serve it on the parties, it has no power to immediately revoke the order.
39. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

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.

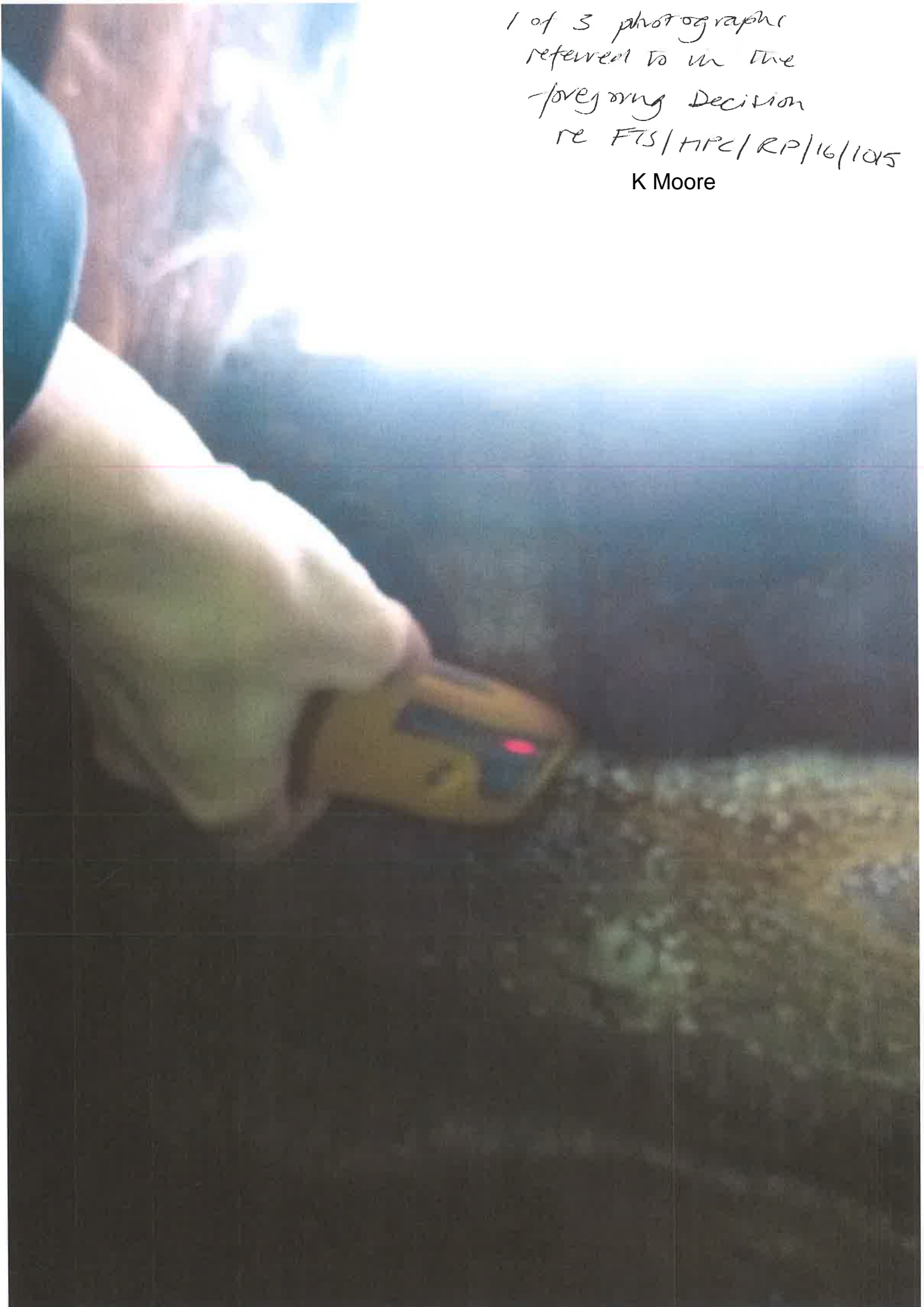
Effect of Section 63

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

Karen Moore
Chairperson
13 April 2017

1 of 3 photographs
referred to in the
foregoing Decision
re FTS/HPC/RP/16/1015

K Moore



2 of 3 photographs referred to in foregoing petition



3 of 3 photographs
referred to in
foregoing decision

K Moore

