

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Statement relative to revocation of Repairing Standard Enforcement Order in terms of Section 25 (1) (b) of the Housing (Scotland) Act 2006 ("the 2006 Act")

Chamber Ref: FTS/HPC/RT/18/2234

Mid Cottage, Warmanbie House, Annan, DG12 5LL, registered in the Land Register of Scotland under Title Number DMF23699 ("the property")

The Parties:-

Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD ("the Third Party Applicant")

Kenneth and Betty Barnett, residing at the Property ("the Respondent")

Kevin Barnett, Longfold, Clay Lane, Moston, Sandbach, Cheshire, CW11 3QY ("the Respondent's Representative")

Tribunal Members:

Martin McAllister, solicitor, (Legal Member) and Andrew Murray, chartered surveyor (Ordinary Member)

Decision

The Repairing Standard Order in respect of the Property dated 18th December 2018 and registered in the Land Register of Scotland on 24th January 2019 is revoked in terms of Section 25 (1) (b) of the Housing (Scotland) Act 2006.

Background:

1. On 18TH December 2018, the First-tier tribunal for Scotland (Housing and Property Chamber) made a repairing standard enforcement order (RSEO) in respect of the property.
2. The RSEO was in the terms contained in the reinspection report prepared by the Ordinary Member following upon his inspection of the Property on 6th August 2021 and which is attached to this Determination:
3. The tenancy of the Property was terminated in December 2018 and the property was acquired by the Respondents on 9th April 2019.
4. The Respondent's Representative advised the Tribunal that the Property has not been on the rental market since it was acquired by the Respondents.
5. On 10th August 2021, the Ordinary Member inspected the Property and found that some items required by the RSEO had not been completed and that others had. Details are in the reinspection report which is attached.
6. A copy of the reinspection report was sent to the Respondent's Representative who responded on 16th September 2021. He said that it was planned that works outstanding from the RSEO would be done as part of a schedule of work which might take three years to complete. He said that it had taken a year and a half for a building warrant to be granted and that this had been issued in June 2021. In previous representations, the Respondent's Representative had stated that the Property is a listed building and that this would result in some delay in works being done. The Respondent's Representative stated that the Property has not been on the rental market since it had been acquired by the Respondents and that they feel aggrieved that they are being required to do works which the previous owner should have done.
7. In his response of 16th September 2021, the Respondent's Representative effectively asked if the RSEO could be revoked because the Property is not rented.

Discussion and Reasons

8. The tribunal noted that, in terms of the reinspection report, the RSEO had not been complied with and that, in these circumstances, it required to consider whether or not to issue a determination of non compliance in terms of Section 26 of the 2006 Act.
9. The tribunal considered that the circumstances were somewhat unusual. It accepted that the Property has not been on the rental market since it was purchased by the Respondents and that there appeared no intention of it being rented in the future.

10. The tribunal noted that some works required by the RSEO have been completed and, in the particular circumstances as set out in the immediately preceding paragraph, it determined that it is appropriate to revoke the RSEO in terms of Section 25 (1) (b) of the 2006 Act because it considers that the work required by the order is no longer necessary.

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.

These presents on this and the preceding page signed at Saltcoats on 13th October 2021 by Martin Joseph McAllister, Solicitor, Legal Member of the Housing and Property Chamber of the First-tier Tribunal for Scotland before Christopher Lennox, 33 Fleming Crescent, Saltcoats

M McAllister

Martin J. McAllister, Solicitor,
Legal Member
13th October 2021