

Housing and Property Chamber First-tier Tribunal for Scotland



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

**STATEMENT OF DECISION UNDER SECTION
26(1) OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Chamber Reference number: FTS/HPC/RT/19/1673

**Re: Property at Mid Hangingshaw Farm, Near Coulter, Near Biggar ML12 6HN
 (“the house”)**

The Parties:

- **South Lanarkshire Council (“Applicant”)**
- **Mrs Sina Graham (“Tenant”)**
- **Kingsbeck Limited SC499747 (“Landlord”)**

Tribunal members: Mrs Aileen Devanny (legal chairperson); Mr Mike Links (ordinary member (surveyor))

DECISION

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 findings from the inspection of the house on 6 August 2019, the Tribunal’s re-

inspection findings on 12 November 2019 and the oral representations of the Landlord and Tenant at a hearing on 12 November 2019, the Tribunal 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 in which the house is situated.

The Committee had 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 remain necessary.

Since the Tenant remains in occupation of the house, the Tribunal considers that a Rent Relief Order (hereinafter referred to as "RRO") is appropriate and issued an order confirming a reduction in rent of 70%.

1. Background

Reference is made to the Determination, Findings in Fact and Statement of Reasons of the Tribunal dated 25 August 2019, which has already been issued to the parties and is attached, which decided that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 and to the Repairing Standard Enforcement Order ("RSEO") dated 27 August 2019 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 8 weeks from the date of service of the RSEO on the Landlord. The RSEO was served on the Landlord on 27 August 2019 by e-mail, as an e-mail address was provided by the Landlord to the Tribunal on 1 August 2019 and, accordingly, Rule 6(5) of the First tier Tribunal for Scotland Procedure Rules 2017 (as amended) applies. The works in the RSEO required to be completed by 23 October 2019.

An email was sent by the Tribunal to Mr. Jon McCosh, the director of the Landlord, on 14 October 2019 seeking the documents referred to in the RSEO. The Tribunal received no reports or written representations from the Landlord for consideration at the hearing. The Tenant submitted an e-mail stating that she was arranging electrical work for the property. No representations were received from the Applicant.

The original date for the re-inspection and hearing was changed to 12 November 2019 to avoid hospital appointments of the Tenant.

2. Works required by the RSEO dated 27 August 2019:

- (a) To reinstate the electricity supply and in so doing ensure that the electrical installation for the supply of electricity is repaired (or as necessary replaced) to ensure that the installation (which includes the associated electrical fixtures forming part of the installation) are in a reasonable state of repair and in proper working order. Following this work an up to date electrical inspection condition report in respect of the house (which includes the outbuilding) from a competent person in terms of the statutory guidance should be provided to the tribunal. Following receipt of this report and any further tribunal inspection, the tribunal will decide if further evidence is required before deciding if the electrical installation meets the repairing standard.*
- (b) To reinstate the water supply to the house and to ensure that there is an adequate supply of wholesome water to the house (which includes the outbuilding) to ensure that the installation for the supply of water to the house is in a reasonable state of repair and in proper working order. All plumbing fittings within the house must be capable of operation to ensure that the Tenant is capable of being supplied with water within the dwelling house. The tribunal will require an expert report to be supplied from the Landlord on the water quality to the house following completion of works (It is hoped that the Applicant's environmental health department will be able to assist the Landlord with identifying an expert on water quality or obtaining an expert report). Following receipt of this report and any further tribunal inspection, the tribunal will decide if further evidence is required before deciding if the installation for the supply of water meets the repairing standard.*
- (c) To install satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire within the dwellinghouse. In carrying out the installation the Landlord should have regard to the statutory guidance issued by Scottish Government on electrical installations and appliances in private rented property.*
- (d) To install satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health within the dwellinghouse. In carrying out the installation the Landlord should have regard to the statutory guidance issued by Scottish Government on provision of carbon monoxide alarms in private rented housing.*

The Tribunal orders that the works specified in the RSEO (which includes the submission of the specified reports to the Tribunal) must be carried out and completed within the period of 8 weeks from the date of service of the notice of the RSEO. The works included making good any damage caused by the carrying out of

any work for the purpose of complying with the repairing standard duty.

3. Re-inspection of the Property

After expiry of the time limit stated in the RSEO, the house was re-inspected by the Tribunal members, Mrs. Aileen Devanny, chairperson and legal member, and Mr. Mike Links, ordinary (surveyor member). This re-inspection took place at 10am on 12 November 2019 and in attendance were the Tenant and Mr. Jon McCosh, representing the Landlord. No representative from the Applicant was in attendance

4. Hearing

After the re-inspection of the property, a hearing took place before the Tribunal members early afternoon on 12 November 2019 at Brandon Gate, Hamilton. The Applicant was not in attendance. Mr Jon McCosh, a chartered surveyor and director of the Landlord and the Landlord's representative, and the Tenant were present.

The Legal Member of the Tribunal explained the procedure for taking evidence and that the Tribunal was there to consider whether the RSEO had been complied with. She pointed out that the reports referred to in the RSEO had not been received from the Landlord. She pointed out that if the Tribunal decided that the Landlord had failed to comply with the RSEO, it was open to the Tribunal to consider if a Rent Relief Order should be made and, if so, the amount of the reduction, which would have the effect of reducing the rent payable by the Tenant for the property.

Mr. McCosh sought to lodge a letter dated 16 September 2019 from "N Curatolo" from NAC Electrics. The one page letter on un-headed notepaper was addressed to the Landlord.

At the original hearing Mr McCosh sought to lodge productions late in accordance with Rule 22(2) of the First-tier Tribunal for Scotland Procedure Rules 2017 (as amended). This rule requires the Tribunal to be satisfied that the party has a reasonable excuse for late lodgment. The Landlord's reason for seeking to lodge the letter on the morning before the hearing was due to his lack of organisational skills and his dyslexia. A copy of the letter was passed to the Tenant who objected to its lodgment. She disputed the accuracy of the contents of the letter which referred to the condition of the house alleging it was dirty, and infested with vermin. She disputed that the house and outbuilding was unsafe and an unhealthy environment as stated in the letter. The Tenant pointed out that NAC Electrics had carried out the electrical work in the outbuilding in 2017 at the instruction of the Landlord and

had installed new electrical wiring in that building. At no time had anyone from NAC Electrics been within the dwelling house and, therefore, Mr Curatolo was not in a position to have direct knowledge of the internal condition of the house. Mr McCosh accepted that Mr Curatolo had carried out electrical work to the outbuilding and had never been in the dwelling house but felt that Mr Curatolo could draw an inference from the exterior of the property.

The Tribunal refused the Landlord's request for late lodgment of the letter. Whilst at the previous hearing the Tribunal had allowed late lodgment of documents, this was in a situation where the Tenant did not object; she was familiar with the correspondence having been a party to it; and the written tenancy agreement with which she was unfamiliar was relevant and non-contentious. In contrast, the Tenant disputed the veracity of the assertions made in the letter which Mr McCosh now sought to lodge late. The Tribunal noted that at the original hearing the main reason provided for late lodgment was that the Landlord had mislaid the property file and only found it within days of the original hearing. In that instance, he had written in by e-mail prior to the hearing indicating that he had some documents which he had only just found which he considered relevant and wished the Tribunal to consider. In contrast, the Tribunal noted that he had been in possession of the letter from Mr Curatolo for almost 2 months and was only that day providing it to the Tribunal and the Tenant. The Tribunal did not consider that Mr. McCosh's lack of organisational skills and dyslexia, which had not in the past prevented him from sending an e-mail to the Tribunal, would prevent him from sending a one page copy letter to the Tribunal in advance of the 12 November hearing. The Tenant had had no notice that such a letter would be produced. Given the admission by Mr McCosh that the author of the letter has never been inside the dwelling house, the accuracy of the letter is in dispute and Mr Curatolo is not present at the hearing to speak to the contents of the letter or to be questioned on his conclusions. The Tribunal did not consider that the Landlord had a reasonable excuse for late lodgment of the letter.

The Tribunal went through the various points in the RSEO giving Mr McCosh and the Tenant an opportunity to comment on each issue.

A. Reinstatement of the electrical supply to the house and outbuilding to ensure that it met the repairing standard and certification to vouch this

The Landlord confirmed that the electricity supply had not been reinstated. He stated that Mr Nick Curatolo of NAC Electrics had refused to work in the house because in his words "the house is a pig sty". He indicated that Mr Nick Curatolo of NAC Electrics is a local tradesman from Biggar and he carries out a significant amount of work for the Landlord's estate. Prior to the imposition of the RSEO, he had also

approached two other firms in the Biggar area to carry out electrical work but both had declined without seeing the property. They had given no reasons for doing so. He did not agree, as had been suggested by the Tenant, that their refusal was due to non-payment of accounts by the Landlord.

Mr McCosh explained that there were two electrical meters in the back porch of the house, one for the supply to the house which had been disconnected by Scottish Power many years ago, and the second meter to measure the electricity supplied to the outbuilding, a section of which is included in the tenancy and occupied by the Tenant. It is unclear as to whether the second meter also measures power drawn for electric fencing. Scottish Power staff access the back porch of the house and take regular meter readings and bill the Landlord for the electricity recorded on the second meter. No bill for electricity is issued for the house covered by the first meter. The Landlord issues an account to the Tenant for a proportion of the electricity as her share of the outbuilding's power and bills from Scottish Power continue to be received for the power measured by the second meter. Mr McCosh stated, and this was confirmed by the Tenant, that when Mr Curatolo had carried out works to the outhouse and the outside of the building, he had not required access to the second electric meter within the back porch located in the house. He disputed that a flick of a switch by the Tribunal's surveyor and the lack of light was proof that there was no power to the part of the outhouse occupied by the Tenant. He felt that the condition of the house was such that no workman should be asked to attend the house. He considered there to be rats and mice in the property. Neighbours had made complaints about rats which he considered came from the property occupied by the Tenant. He complained that the floor and surfaces of the dwelling house were covered in animal urine and faeces which contained parasites. He stated that the house is not safe for workmen.

In response the Tenant stated that she did not wish NAC Electrics to carry out the electrical works in the house. She stated that the electricians in the outhouse had only worked for one day after NAC Electrics had completed works. Accordingly, she had approached a Select registered electrician based in Carlisle called Greig Collins, and he had attended at the house. He had suggested that once Scottish Power reinstated the electrical supply to the meter, he would attend at the house and install a temporary electric board which would allow an electrical supply to the house. This would allow her to light the house and heat water. After this was carried out by Mr Collins, the Tenant said she would be able to wash the floors and the surfaces, something which she says that she is prevented from doing due to the absence of hot water. Once there is a temporary electric board and until the water supply is reconnected, she proposed to carry in water from the outhouse and heat it using an electric kettle. She stated that since the last hearing she has spent a considerable amount of time pressing Scottish Power to lead a cable connection to the house. This had delayed progress of the work by Mr Collins who had originally intended to attend and provide the temporary board at the start of November. She had made an

arrangement with Mr Collins that he would not charge for the temporary electrical board. She explained that Mr Collins hoped to be given the job by the Landlord of completing the remaining electrical work to the property. The Tenant disputed that there were rats and mice at the property and disputed that the house was unsafe.

Mr McCosh stated that he thought the Tenants actions "adventurous" and he had not met Mr Collins. He stated that he could not believe that a workman would go into the house.

B. Reinstatement of the water supply to the house to ensure that there is an adequate supply of wholesome water to the house and outbuilding occupied by the Tenant which meets the repairing standard and certification to vouch this

The Landlord stated that the water supply which served the house and outbuilding lay within the curtilage of the Landlord's ownership. However, because of other estate business, it is not possible to obtain appropriate access to the water supply. It is not possible to take a digger into the area to carry out works because of the effect on game, stock and the environment. It was possible to install an IBC 1000 litre container above the house and to refill it with water brought in to the site. He had written to Scottish Water approximately 3 weeks before the re-inspection and hearing in November and sought permission for connection of a new water pipe to the public supply on the main road. His intention is to lay a pipe from the main road to the property and he anticipates that there will be no problem with this as there is a statutory duty on Scottish Water to provide a supply to a connected pipe. He expected it would take about a week to lay a pipe from the connection site to the property.

C. Installation of satisfactory fire detection devices and carbon monoxide alarms to meet the requirements of the repairing standard

The Landlord indicated that there was no electricity on site and so, as a suitable temporary measure indicated in the RSEO, he had delivered two smoke detectors which had 10 year lithium batteries and carbon monoxide alarms that day to the Tenant. He was leaving it to the Tenant to install these alarms in the property as he could not ask a workman to attend the house for reasons of safety he had already stated.

The Landlord concluded by submitting that he felt that he had been abused by the law which placed a statutory duty on him to complete works to the property. Before his death, the Tenant's husband had carried out works to the property and not the Landlord's estate. The condition in the property had existed for a considerable period of time.

The Landlord stated that Scottish Power had now renewed the distribution poles next to the Tenant's house and there is no reason for power not to be restored to the house. He stated that a temporary electrical board is a workable solution and would allow the Tenant to carry out cleaning of the house. He stated that the burden of the animals which have been brought into the property by the Tenant is beyond reasonable. The increased disturbance from the animals and the rats affect neighbouring proprietors. He repeated submissions made at the original hearing that the Tenant was responsible for the burst pipe and the electricity disconnection was of long standing. He concluded by stating that the fact that the Tenant continued to pay rent was a tacit admission that she had caused the problem. He accused the Tenant of deception with regard to copy letters she had attached to her original application notifying the Landlord of complaints.

In response to questions by the Tribunal, the Tenant stated that she is used to having no water and attends a gym in Lanark daily to wash. This involves a 25 mile round trip. She estimated the cost of daily travel to the gym in Lanark is £5.00. She uses the toilet in the property as a chemical toilet which she cleans out daily. She buys bottled water for her use at 17 pence per bottle. She is attending an oncology clinic regularly. She minimized the impact of the lack of water and electricity to her home.

The Landlord considers that no rent relief order is appropriate in the circumstances.

5. Tribunal's observations at the re-inspection on 12 November 2019.

The Tribunal's findings at the re-inspection with particular regard to the works detailed in the RSEO are as follows:

1. The weather at the time of re-inspection was overcast but dry. The ground around the dwelling house was wet and muddy at parts.
2. The access to the property is gained by a private track which is in poor condition with large potholes and vegetation growth which restricts the type of vehicle which can be used for access to the property.

3. The house is a detached farmhouse in a remote location. The exterior of the house shows that it has received little maintenance for an extended period with render which has come away from the left hand gable, cracking of the render on various external walls and timber sash windows which show decay. These items do not form part of the application considered by the Tribunal.
4. In the grounds around the house, which are included as part of the tenancy agreement, there were farm and domestic animals and within the kitchen of the house numerous empty small animal cages. Whilst the Tribunal observed no animal faeces on the floor or surfaces of the downstairs rooms examined at the inspection on 12 November, there was a noxious smell within the house which is likely to be caused in whole or part from the animals which appear to occupy the house. Whilst the Tribunal was carrying out the inspection a few cats and dogs were removed by the Tenant from the area under inspection.
5. The section of the outbuilding which is included in the tenancy agreement had hay on the floor and, although no animals were present in the outbuilding at the time of the Tribunal's inspection of this building, animals had been temporarily removed by the Tenant to outside the building. The Tribunal's re-inspection on 12 November was confined to the downstairs of the house and the outbuilding to allow checking of the installations of water and electricity.
6. The lounge, kitchen and back porch (just off the kitchen area) had little furniture. The open fire in the lounge was being used to heat the property.
7. There were concrete floors and no carpets in the downstairs area of the house.
8. It was accepted by the Tenant and Mr McCosh that no works had been carried out to the electrical installation, fittings or water supply serving the house since the Tribunal's inspection on 6 August 2019. This is also the conclusion reached by the Tribunal members from their observations of the property at the re-inspection.
9. The members who carried out the re-inspection were the same Tribunal members who carried out the first inspection of the house on 6 August 2019. Nothing appeared to have changed in the appearance of the dwelling house in the intervening period.
10. Mr McCosh had in his possession at the re-inspection packaging which contained battery smoke detectors and carbon monoxide alarms. He passed these to the Tenant at the re-inspection.
11. The electrical power supply in the section of the outhouse occupied by the Tenant was checked by the Tribunal's surveyor member in the presence of those present at the re-inspection. There has been a dispute at the original hearing as to whether this supply was in working order. There was agreement at the original hearing between Mr McCosh and the Tenant that electrical works had been carried out to the outbuilding, including the section occupied by the Tenant, a few years' previous. The Tribunal members observed that

the electrical wiring within the outbuilding occupied by the Tenant looked new as did the consumer unit located in this section but engagement of the switch did not operate the electric lights.

6. Tribunal's Findings in Fact following the hearing on 12 November 2019.

6.1 The Tenant has a tenancy of the house let for human habitation. The tenancy commenced on 1 November 1987.

6.2 A RSEO was issued to the parties which required the Landlord to complete the works detailed therein by 23 October 2019. A decision was issued with the RSEO which detailed the Tribunal's findings in fact and reasons for deciding that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006. This decision was not appealed.

6.3 The works detailed in the RSEO have not been completed as at 12 November 2019, a date after expiry of the time limit in the RSEO.

6.4 The Landlord does not lack rights of access to the property and that is not the reason for the lack of works to the property. The Landlord owns the land over which access is required to make a water connection to the property.

6.5 The Tribunal is not satisfied that the Landlord is unable to comply with the RSEO because of a lack of necessary rights.

6.6 The house is not clean. Cats and dogs (the numbers of which are difficult to assess since few were in the house at the time of the re-inspection) are being housed in the house.

6.7 In 2017 the Landlord arranged for an electrical contractor NAC Electrics to carry out upgrading of the electrics within the section of the outbuilding occupied by the Tenant. This did not include any electrical works to the dwelling house.

6.8 Before the RSEO was issued, the Landlord approached NAC Electrics and two other local electrical contractors to carry out electrical works to the house but they all declined. The reason for declining to complete works was not provided by two of the contractors and the third, NAC Electrics, stated to the Landlord that they would not send workmen to a house which they felt was a health and safety risk. No workman from NAC Electrics has entered the house before reaching this conclusion. Since the

issue of the RSEO, the Landlord has made no arrangements for electrical works to the house.

6.9 Around three weeks before 12 November 2019 the Landlord made an approach to Scottish Water seeking permission for connection of a new water pipe to the public supply on the main road.

6.10 The Tribunal is not satisfied that the work required by the RSEO is likely to endanger any person.

6.11 The Tenant travels to Lanark for washing facilities which involves a 25 mile round trip.

7. DETERMINATION AND REASONS

The Tribunal considered the evidence provided by the re-inspection of the property along with the oral evidence provided at the hearing by the Landlord's director and by the Tenant. The issue for determination by the Tribunal is whether or not the works required in the RSEO have been completed.

Section 26 of the Housing (Scotland) Act 2006 details the provisions with regard to the effect of failure to comply with an RSEO. The provisions are as follows

"26 Effect of failure to comply with repairing standard enforcement order

- (1) It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal.*
- (2) Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must—*
 - (a) serve notice of the failure on the local authority, and*
 - (b) decide whether to make a rent relief order.*
- (3) The First-tier Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—*
 - (a) unless the period within which the order requires the work to be completed has ended, or*
 - (b) if they are satisfied, on the submission of the landlord or otherwise—*
 - (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*
 - (ii) that the work required by the order is likely to endanger any person.*
- (4) Where the First-tier Tribunal is prevented by reason only of subsection (3)(b) from deciding that a landlord has failed to comply with a repairing standard enforcement order, the First-tier Tribunal must serve notice on the local authority stating that they consider the landlord to be unable to comply with the repairing standard enforcement order."*

The parties at the hearing accepted that the works in the RSEO had not been completed. This was also the observation of the Tribunal Members at the re-inspection of the property.

The Tribunal then considered if the circumstances in Section 26(3) apply. The Tribunal were satisfied that the timescale detailed for completion of works had expired at the date of the re-inspection and hearing on 12 November 2019. The Landlord did not argue that he lacked rights of access to carry out the works and the Tribunal established in evidence that the Landlord owned the surrounding land over which the necessary water pipes could be laid or over which other works could be undertaken to re-connect the water supply. There was no evidence provided to suggest that the Landlord lacked the necessary rights to carry out the works. The effect of works on game, stock and the environment is not a reason to state that the Landlord lacks rights of access or otherwise.

The reason for non-compliance raised by the Landlord was a practical matter that the work required by the RSEO raised health and safety concerns for workmen who had to work within the dwelling house. The Landlord stated that the house was in an un-hygienic condition due to the presence of animals within and the presence of faeces and urine from these animals on surfaces within the house. The Tribunal had had the benefit of seeing the interior of the house on two occasions when inspecting the downstairs of the house on 12 November 2019 and on 6 August 2019 when inspecting the downstairs and upstairs in the house. Whilst it is not disputed by the Tenant that the house requires to be cleaned, the Tribunal did not see any evidence during the re-inspection of any animal faeces lying on the floor or on work surfaces. The Tribunal did observe bird droppings on attic floors within an unoccupied area during the first inspection. The Tenant provided a credible plan for providing a temporary electrical supply to the house which would allow her to clean the house before further electrical works would be carried out to all parts of the house. The Tenant provided details of a Select registered contractor whom she had approached and who had viewed the interior of the house and who had indicated a willingness to provide a temporary electrical board at no cost to the parties which would provide light and allow the Tenant to heat water which would in turn allow her to carry out cleaning to the house before further electrical work was initiated. This work must await works by Scottish Power to reconnect the power supply to the meter serving the house by Scottish Power and the Tenant is liaising with Scottish Power to arrange this. The Tribunal was impressed with the Tenant and considered her evidence in this regard both credible and reliable. She had taken active steps to facilitate works to the house for which she is not responsible. In contrast the Landlord has made no approach to any other electrical contractor since the RSEO was issued nor had he approached Scottish Power. The Tribunal noted the inconsistent approach stated by the Landlord that NAC Electrics had been willing to

carry out electrical works to an outbuilding used by farm animals but considered that the interior of a house which they had not seen was a health and safety concern for workmen. The Landlord is a chartered surveyor and accepted that a temporary electrical board could be installed in the house. The Tribunal did not consider that this staged approach to the reconnection of the electrical supply, which the Landlord confirmed was an option, was likely to endanger any person.

The Tribunal was not impressed with the inaction of the Landlord to take reasonable steps to restore the water supply until around the period when the time limit within the RSEO was due to expire at which point he wrote to Scottish Water seeking permission for connection of a new water pipe to the public supply on the main road. If such an approach had been made by the Landlord at an earlier stage within the period of the RSEO, the permission could have been granted and the pipe laid by the time of the re-inspection. The Landlord's argument concerning the unhygienic nature of the house did not apply to this external work. The water supply to the house goes to the back porch which houses the kitchen sink and to a downstairs adjoining bathroom. Neither of which rooms on the Tribunal's viewings of the property could be said to be in such an unclean condition as to meet the test of "likely to endanger life". The Tribunal observed that the Tenant had been living in such conditions for many years.

The Landlord provided to the Tenant two fire detectors and carbon monoxide alarms contained within packaging at the re-inspection. He did not install these as arguably the repairing standard requires since the statutory guidance, to which regard has to be had, contains specific provisions concerning the location of these alarms within the house. Installation would involve attaching the alarms to walls and ceilings downstairs and upstairs to the hall ceiling outside the bedroom. There is no evidence to support that these areas of the walls and ceiling are a health and safety risk. The attic rooms which had evidence of bird droppings are in an unoccupied part of the house accessed by a separate stair to the living quarters.

The Landlord tried throughout the hearing to deflect criticism of the Landlord's lack of repairs to the property and to blame the Tenant's lifestyle for her lack of water, electricity and fire and carbon monoxide alarms. At one point in the November hearing he suggested that the electrical disconnection many years ago was due to the Tenant's unpaid electricity accounts but then agreed that the Tenant had paid full rent for many years until recently. No evidence was produced to evidence his claim that electrical disconnection was due to unpaid bills by the Tenant. He argued that because the Tenant did not heat the house there had been a burst pipe but evidence at the last hearing was accepted that the burst occurred as a result of a protracted period of winter weather with temperatures at or below freezing. This burst occurred after the electrical supply was disconnected leaving a coal fire as the sole source of heating within the house. His accusation of deception on the part of the Tenant with regard to the copy letters of complaint produced with the application is discounted. He did not raise the allegation at the hearing on 6 August and indeed provided

further documentation at that hearing in support of the Tenant's notification of repairs. The allegation is inconsistent with his previous position and is not relevant to this stage of the proceedings and the issue of his compliance with the RSEO. He concluded by stating that the fact that the Tenant continued to pay rent was a tacit admission that she had caused the problem. The Tribunal was unimpressed by his assertion that the work required by the order is likely to endanger workmen attending the property and reject that assertion as applying to the condition of the house.

A variation of the RSEO to extend the timescale for completion of works in the RSEO in terms of Section 25 of the Housing (Scotland) Act 2006 was not sought by the Landlord. Even if such a submission had been made, the Tribunal would have been disinclined to grant it given the inaction of the Landlord to date.

The Tribunal, having decided that a failure to comply decision is appropriate, considered if a rent relief order should be granted and, if so, by what amount the rent should be reduced. The Tribunal is mindful of the statutory provisions concerning a Rent Relief Order ("RRO"). The provision is contained in Section 27 of the Housing (Scotland) Act 2006.

"27 Rent relief orders

- (1) A rent relief order is an order by the First-tier Tribunal which reduces any rent payable under the tenancy in question by such amount (not exceeding 90% of the rent which would, but for the order, be payable) as may be specified in the order.
- (2) The First-tier Tribunal may make a rent relief order only where it has decided that a landlord has failed to comply with a repairing standard enforcement order which has effect in relation to the house concerned.
- (3) A rent relief order does not affect the terms or validity of the tenancy to which it relates (otherwise than by reducing the rent payable under the tenancy)."

The Tribunal considers that a RRO is appropriate in this case given the disregard shown by the Landlord for the requirements of the RSEO; the serious nature of the disrepair as recorded in the Tribunal's previous decision; the length of time that the house has been in disrepair since the Landlord became the owner in 2015; the effect of the disrepairs on the Tenant's use and enjoyment of the dwelling house; and inconvenience caused to the Tenant due to the lack of water and power to the house, the inability to use electrical appliances, travelling for washing facilities and daily cleaning of a chemical toilet. The Tribunal noted that the Tenant has been living in a house which is unprotected by fire detection devices and a carbon monoxide alarm and the irresponsibility of the Landlord in not addressing this safety issue. As for the amount of the rent reduction, normally a house which has this level of disrepair would merit an extremely high reduction in rent. However, as well as considering the forgoing issues, the Tribunal took into account that the Landlord

inherited the disrepair when the house was bought; and the Tenant has continued to enjoy occupation of the outbuildings and land included in the tenancy agreement. The Tribunal appreciates that the Landlord is frustrated at the number of animals in and around the property which he feels is an unreasonable use of the property and is contrary to the terms of the agreement.

The Committee determined that an appropriate reduction in rent is 70% from the rental figure specified in the Lease. The Committee considered in accordance with the provisions of Section 63(4) and (5) of the Act that the rent reduction should be effective from 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the Act.

It is worth pointing out that if the Landlord proceeds to carry out the works, the impact of the rent reduction will be limited in duration.

8. 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

Legal Member

Dated: 3 December 2019

