

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 sections 26 and 27

Chamber Reference: FTS/HPC/RP/18/3305

Sasines Description: Blair Atholl Railway Station which subjects form part of ALL and WHOLE that plot or area of ground extending to 1.61 hectares or thereby lying partly in the Parish of Blair Atholl and partly in the Parishes of Logierait and Little Dunkeld in the County of Perth being the subjects more particularly described in, and shown outlined and coloured red on the plan annexed and signed as relative to Notice of Title in favour of Railtrack recorded in the Division of the General Register of Sasines for the County of Perth on 31st December 1996.

House address: Station House, Blair Atholl Railway Station, Blair Atholl, by Pitlochry ('the House')

The Parties

Mr Edward Morrow residing at Station House, Blair Atholl Railway Station, Blair Atholl, by Pitlochry ('the Tenant')

Abellio Scotrail Limited, 5th Floor, Culzean Building, 36 Renfield Street Glasgow, G2 1LU, c/o Amey Consulting, and Network Rail Infrastructure Limited, 58 Buchanan House, 58 Port Dundas Road, Glasgow, G4 0LQ ('the Landlords')

Tribunal Members

Ms Helen Forbes (Legal Member)

Mrs Debbie Scott (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') having made such enquiries as it saw fit determined that the Landlords have failed to comply with the Repairing Standard Enforcement Order ("RSEO") dated 19th April 2019 in relation to the House. The Tribunal has determined to grant a Rent Relief Order reducing the rent payable by 75%.

Background

1. By application received in the period between 7th December 2018 and 4th January 2019, the Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination as to whether the Landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').
2. Following an inspection and hearing on 28th February 2019, the Tribunal found that the Landlords had failed to comply with the duties imposed by the Act. The Tribunal imposed an RSEO dated 19th April 2019 requiring the Landlords to carry out the following works:
 1. Repair the porch to ensure that it is suitably wind and watertight;
 2. Produce a satisfactory electrical safety certificate from a suitably qualified and registered SELECT or NICEIC electrical contractor on the installation within the House for the supply of electricity.
 3. Repair or replace the soffits to ensure that they are in a reasonable state of repair and in proper working order;
 4. Ensure that the moss is cleared from the roof and roof valley, thus ensuring that the gutters are put into proper working order.

The Tribunal ordered that the works specified in the RSEO were to be carried out within a period of 6 weeks from the date of service of the RSEO, which was 26th April 2019.

3. A re-inspection of the House was carried out on 26th August 2019 by the Ordinary Member of the Tribunal. A copy of the re-inspection report is annexed and subscribed as relative to this Statement of Decision. The Tenant was present and gave access to the property. No one was present on behalf of the Landlords. The Ordinary Member noted the following:
 - (i) The porch appeared to be in the same condition as at the original inspection. No further works have been undertaken to the porch, no changes noted externally or internally. The tenant commented that an inspection had been undertaken by Scotrail, however, no repairs have been undertaken to the porch. Further commented that during the rain in July that the driving rain was entering into the porch. The damp staining was noted on the wood panelling, however, was found to be dry.
 - (ii) A new consumer unit was installed in the property. No electrical safety certificate has been presented to the tribunal or the tenant.
 - (iii) A partial repair to the soffit and fascia was noted.
 - (iv) The tenant commented that the moss has not been cleared from the roof or valley gutter. The tenant attempted to clear and pressure washed the drains to assist in clearing the build-up of moss. The tenant had attempted to create a filter device for the drain to prevent moss build up.

4. Parties were provided with a copy of the re-inspection report on 1st October 2019 and given an opportunity to make comments.
5. On 2nd October 2019, the Tenant made written representations stating that he did not agree with the re-inspection report. He stated that he had paid to have the electric consumer unit fitted. The House required rewiring and no EICR had been produced by the Landlords. Temporary repairs had been carried out to the soffits and a representative of the Landlords had told him on 5th June 2019 that the whole soffit was rotten and required to be replaced. He stated that he had carried out significant works to the House over the years and *'due to the cost and time put in over the years and up until the 4 outstanding items are completed'* a 90% rent relief order should be imposed.
6. On 16th October 2019, the Landlords' representative made written representations stating that they did not agree with the re-inspection report. They stated that repairs to the soffits had been carried out (patching); replacement of the consumer unit and a test certificate issued; the gutters were cleared; and no water ingress was found at the porch. They stated that the roof is watertight and any attempt to remove the moss could affect the integrity of the roof, therefore it was not recommended.
7. By email dated 11th November 2019, the Landlords' representative was informed by the Housing and Property Chamber that the Tribunal required an EICR certificate. Further information was requested on the nature of the repairs to the soffits and the water ingress at the porch.
8. The Landlords' representative replied on 18th November 2019 with detailed information of electrical investigations carried out. No EICR was provided. It was stated that the soffits had been patch repaired and all water ingress to the porch was historical, therefore no repairs were required.
9. On 20th November 2019, the Tenant provided a response to the Landlords' representations, providing further detailed information of various visits by electrical contractors to the Property. No EICR had been issued by the contractors. The Tenant stated that new wood had been placed over the rotten soffits and reiterated the comments made by a representative of the Landlords that the soffits required replacement. He said that the water ingress to the porch only happens after strong rain and wind. He had sent photos showing water ingress following a downpour on 23rd July 2019. He has applied further pointing to the stonework but does not yet know if this has worked.

Decision

10. The Tribunal considers that the Landlords have had sufficient time to carry out the works and have failed to do so. The Landlords have failed to repair the porch to ensure that it is suitably wind and watertight; they have failed to produce a satisfactory EICR; they have failed to repair or replace the soffits to

ensure they are in a reasonable state of repair and in proper working order; and that they have failed to ensure that the moss is cleared from the roof and roof valley.

11. Accordingly, the Tribunal takes the view that the Landlords' failure to implement the RSEO amounts to a breach of the RSEO.
12. In accordance with the relevant provisions of section 26(2)(d) of the Act, the Tribunal required to determine whether a Rent Relief Order ("RRO") should be made. The Tribunal took into account the seriousness of the issues affecting the Property and whether they have had a detrimental effect upon the Tenant's enjoyment of the Property. The Tribunal agreed that the nature, seriousness and duration of the issues meant that the Tenant's enjoyment of the Property was significantly affected. The Tribunal decided that a RRO should be imposed, reducing the rent payable by 75%. This reflects the considerable detriment suffered by the Tenant in respect of the Property.
13. The Tribunal, having made such enquiries as are fit for the purposes of determining whether the Landlords have complied with the RSEO, determined that the Landlords have failed to comply with the RSEO in terms of section 26(1) of the Act and that a notice of the failure be served on the Local Authority for the area in which the House is situated.
14. The decision of the Tribunal is unanimous.

Right of Appeal

15. **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 the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Helen Forbes

Legal Member/Chair

10th December 2019