



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

RENT RELIEF ORDER under Section 27 of the Housing (Scotland) Act 2006 as amended ("the Act")

Chamber Ref: FTS/HPC/RP/23/1250

Re: Property at 1 King Street, Lossiemouth, Morayshire, IV31 6QA under Title Reference MOR9784 ("the Property")

Parties:

Laing Leasing Ltd, 6 Market Square, Oldmeldrum, Aberdeenshire, AB51 0AA ("the Landlord"); and

Angela Brannigan, 1 King Street, Lossiemouth, Morayshire, IV31 6QA ("the Tenant")

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)

NOTICE TO LAING LEASING LTD ("the Landlord")

Whereas in terms of its decision dated 21 March 2024, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Tribunal.

The Tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of **90%** of the rent which would, but for the order, be payable. The rent reduction shall take effect twenty eight days after the last date on which the decision to make the Rent Relief Order may be appealed.

To ascertain the last date on which the decision can be appealed, please refer to the information note on appeals and reviews, a copy of which is attached.

A landlord, tenant or third party applicant 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

Housing and Property Chamber
First-tier Tribunal for Scotland



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.

In terms of Section 63 of the Act, 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. If an application for permission to appeal is received, then the Tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

R O'Hare

Signed:

Legal Member

Date 21 March 2024



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RP/23/1250

Re: Property at 1 King Street, Lossiemouth, Morayshire, IV31 6QA (“the Property”)

Parties:

Laing Leasing Ltd, 6 Market Square, Oldmeldrum, Aberdeenshire, AB51 0AA (“the Landlord”); and

Angela Brannigan, 1 King Street, Lossiemouth, Morayshire, IV31 6QA (“the Tenant”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order (RSEO), determined that the Landlord has failed to comply.

The Tribunal further imposed a Rent Relief Order of 90% of the monthly rent due and determined that notice of the failure be served on the local authority and Police Scotland.

Background

- 1 Reference is made to the decision of the Tribunal dated 3 November 2023 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act, in that they had failed to comply to ensure that the property met the Repairing Standard. The Tribunal therefore made a RSEO. The works required by the RSEO were:-



- (i) Carry out appropriate mould treatment and redecoration of mould affected areas within the lounge, bedrooms and bathroom;
- (ii) Carry out such works as necessary to ensure there is no dampness present at the lounge and bedroom windows;
- (iii) Repair, overhaul or replace the windows to the property to ensure they are in a reasonable state of repair and in proper working order;
- (iv) Submit an up to date electrical installation condition report for the property to the Tribunal for further consideration;
- (v) Repair or replace the storage heaters in the property on a like for like basis and replace the previously removed wall mounted electric panel heaters in the bedrooms on a like for like basis;
- (vi) Repair the plasterwork in the bathroom;
- (vii) Repair or replace the blinds, including blind fittings and tracks; and
- (viii) Carry out such redecoration as may be required following completion of the works under (ii), (v) and (vi).

The Tribunal ordered that the works be completed within a period of eight weeks from intimation of the RSEO on the parties. A copy of the decision and RSEO was intimated on both the Landlord and the Tenant on 17 November 2023.

- 2 On 15 December 2023 the Tenant emailed the Tribunal to advise that she had contacted the Landlord requesting confirmation of his intention regarding the works and had received no response. She had made a second attempt and had been asked by the Landlord to provide a list of the repairs required. The Tenant emailed the Tribunal again on 12 January 2024 to advise that no works had been completed and the Landlord had made no attempts to arrange access. The Tenant had provided the Landlord with a link to the Tribunal's decision of 3 November, including the RSEO, but had received no further response from him.
- 3 Following the expiry of the period for completion of the works a re-inspection and hearing was scheduled for 20 March 2024. Notification was given to the Tenant by email, and to the Landlord by post on 23 February 2024.



- 4 The Landlord telephoned the Tribunal at the beginning of February 2024. He stated that he had received no correspondence from the Tribunal. He advised that the address provided was his office address which was used for administrative purposes. The Landlord confirmed that he would send in an alternative address to the Tribunal however nothing was received. The Tribunal therefore contacted the Landlord by telephone on or around 1 March 2024 but received no answer. The Tribunal subsequently received a call from a colleague of the Landlord who advised that she had sent him the correspondence regarding the re-inspection and had agreed to speak with the Tribunal as the Landlord was upset following the death of a close friend. She advised that the Landlord was considering requesting a postponement of the re-inspection and hearing due to being unable to arrange an engineer to carry out the works. The Landlord's colleague confirmed that she would speak to the Landlord and ask him to send in an alternative address to the Tribunal, together with any postponement request. Nothing further was received from the Landlord.

The Re-inspection

- 5 The Tribunal re-inspected the property at 10am on 20 March 2024. The Tenant was in attendance and permitted access. The Landlord was not in attendance.
- 6 The Tribunal proceeded to re-inspect the property. It was noted that the property remained unchanged from the date of the Tribunal's inspection on 20 September. Reference is made to the decision of the Tribunal dated 3 November 2023 in this regard. No works had been completed in compliance with the RSEO. The property continued to suffer from severe mould and damp, as was confirmed by the general atmosphere and damp meter readings taken throughout the re-inspection.

The Hearing

- 7 The hearing took place by teleconference on 20 March 2024. The Tenant was in attendance. The Landlord was not present, nor represented. The Tribunal noted that he had been sent notification of the date and time of the re-inspection and hearing, together with the details for joining the teleconference, and therefore determined to proceed in his absence.
- 8 The Tribunal heard submissions from the Tenant. She confirmed that she had initially waited for the Landlord to make contact after the RSEO was issued however she had heard nothing from him. She had therefore contacted the Landlord by email approximately three weeks after the RSEO was intimated to the parties. She received no response. She had followed up with a second



email to the Landlord who then responded to request a list of the works that were outstanding. The Tenant was unsure as to how to respond and had sought advice from the Citizens Advice Bureau. She had then emailed the Landlord with a link to the Tribunal's decision. There had been no further communication from the Landlord. The Tenant confirmed that nothing had been done since the RSEO was issued. No attempts had been made by anyone to carry out the repairs and no requests had been made for access to the property.

- 9 The Tenant was asked for comment on whether the Tribunal should consider a variation to the RSEO or alternatively conclude that the Landlord had failed to comply with the RSEO, which would lead to consideration as to whether a rent relief order should be made. The Tenant advised that she believed the latter was justified. The Landlord had persistently failed to address the outstanding repairs, despite a report from Environmental Health at Moray Council and the Tribunal's RSEO. The Tenant was making attempts to move from the property but was presently unable to do so, therefore she felt a rent relief order was fair in the circumstances with the highest possible reduction. The Tenant outlined the impact of the Landlord's failure on her enjoyment of the property. The mould and damp was widespread throughout the house. Her son suffered with a bad cough which she attributed to the presence of mould. The health of her family was therefore suffering. She was paying out a lot of money to keep the property heated due to the lack of adequate heating facilities. She had done her best to treat the property as her home by reporting issues as they arose but the Landlord had failed to meet the standard required of him. If he had addressed the repairs at an earlier stage they wouldn't have escalated to the stage they were currently at.
- 10 The Tenant explained that she couldn't have visitors to the house due to its condition. She would have to meet friends and family elsewhere, at her own cost. She felt embarrassed by the state of the property. It didn't feel like a home and was very cold at night. She had three portable oil radiators to heat the entire house and it was not practical to keep moving these from room to room. As a result she and her son were often unable to use the living room as a functional room, and would stay in the bedrooms.
- 11 The Tribunal concluded the hearing and determined to issue its decision in writing.

Reasons for decision

- 12 The Tribunal determined the application having regard to the terms of the application, the written representations and the findings of the Tribunal's inspection and re-inspection. The Tribunal was satisfied having regard to all of



the available evidence that there was sufficient information upon which to reach a fair determination of the application.

- 13 The Tribunal found it difficult to believe that the Landlord was unaware of the RSEO and the obligation upon him to complete the works outlined therein. The documents had been intimated upon him at the address provided in the application which reflected the information contained within the Landlord's registration. The Landlord had attended the previous inspection and hearing, the details of which had been intimated upon him at the same address. The Tenant had also made the Landlord aware of the decision by providing a link to the document on the Tribunal website. The Landlord had been asked on two occasions to provide an alternative address to the Tribunal if he was having difficulties receiving correspondence but had failed to do so. With the exception of a telephone call at the beginning of February the Landlord had failed to engage any further with the Tribunal and had failed to attend both the re-inspection and the hearing despite being given the opportunity to do so.
- 14 The Tribunal accepted based on the Tenant's evidence at the hearing that no attempts had been made to contact her to arrange access to the property for this purpose. There was no evidence before the Tribunal to explain why the Landlord had failed to take any action. It was clear that the outstanding repairs were continuing to have a detrimental effect on the health of the Tenant and her son, as well as their enjoyment of the property.
- 15 The Tribunal had regard to Section 25 (1) of the Act which states:-*"(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it."* With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. In light of the serious nature of the disrepair and the ongoing impact on the occupants the Tribunal was not of a mind to revoke the RSEO.
- 16 The Tribunal then considered Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply. The Tribunal, being satisfied that the Landlord had had notification of the Inspection and Hearing, the RSEO and the Re-Inspections, took the view that the Landlord was ignoring these to the extent that he had not taken any steps to comply with the RSEO and there was no reasonable explanation as to why this was the case. The Tribunal so determined that there was no reason to vary the RSEO and allow further time for the Landlord to comply.
- 17 The Tribunal then had regard to Section 26 of the Act which states:-*"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.” The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the RSEO without reasonable excuse. The Tribunal, having taken the view that the Landlord was ignoring the RSEO to the extent that he had not taken any steps to comply with it, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO.

18 Having concluded that the Landlord had failed to comply with the RSEO, the Tribunal considered whether to make a rent relief order (“RRO”) under section 27 of the Act. The Tribunal took the view that, in the circumstances of the application and procedure to date, an RRO was wholly appropriate. The Tribunal took into account that no works had been carried out by the Landlord and that the condition of the Property is such that it affected the occupant’s health and full enjoyment of the property. Accordingly the Tribunal determined that an RRO of 90% of the monthly rent be imposed to reflect the effect of the disrepair on the occupants. The Tribunal further determined that notice of the decision be served on the local authority and Police Scotland.

19 The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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 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 determined.

R O'Hare

21 March 2024

Legal Member/Chair

Date