

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

**Determination: Housing (Scotland) Act 2006: Sections 26 and 27**

**Chamber Ref: FTS/HPC/RT/24/1081**

**15 Mackie Avenue, Tarves, Ellon AB41 7LA being the subjects registered in the Land Register of Scotland under Title Number ABN68905 (“the Property”)**

**The Parties:-**

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51 3WA (“the Third Party Applicant”)**

**Garry Milne, Crimondhill Workshop, Manse Road, Methlick, Ellon, Aberdeenshire AB41 7EH (“the Landlord” and “the Respondent”)**

**Laura Murray, 15 Mackie Avenue, Tarves, Ellon AB41 7LA (“the Tenant”)**

**Tribunal Members:**

**Martin McAllister, Solicitor (Legal Member) and David Godfrey, Chartered Surveyor (Ordinary Member) (“the tribunal”)**

**Decision**

**The tribunal determined:**

**(One) that the Landlord had failed to comply with a repairing standard enforcement order (RSEO) dated 26 August 2024 (subsequently varied) and that a notice of failure be served on the local authority (Section 26 of the Housing (Scotland) Act 2006;**

**(Two) that a rent relief order be made reducing the rent payable under the tenancy by 90% (Section 27 of the Housing (Scotland) Act 2006).**

## Background

1. By application dated 5 March 2024, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act. The application was in terms of Section 22 (1) (B) of that Act.
2. The tribunal inspected the Property on 21 August 2024 and issued a Decision dated 26 August 2024. On 26 August 2024, the tribunal issued a repairing standard enforcement order (RSEO) in the following terms:

The Landlord is required to

- I. repair or replace the sitting room window so that it is capable of being opened and closed fully as designed and without any significant impairment;
- II. carry out works to the roof to ensure that there are no loose or broken tiles;
- III. ensure that the oil fired central heating system is working efficiently and safely in compliance with current regulations including proper installation of the oil tank and a system free from fuel leaks. The Respondent is to provide certification from a technician qualified to install and inspect oil fired boilers and oil storage tanks and registered with the Oil Firing Technical Association (OFTEC) that the heating system meets these requirements;
- IV. ensure that a properly installed carbon monoxide detector is installed in the sitting room;

V. provide an up to date electrical inspection condition report (EICR) on the house by a competent electrician on the working order and condition of the installation in the house for the supply of electricity and the report should also address the state of repair and working order of the electrical fittings and appliances provided by the Respondent in the house (PAT test certificate). The report should contain no items of Category C1 or C2 faults. The provisions relating to competent electricians are contained in the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property. This information is available on the Chamber website at [https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%20REVISED%20NOV%202016\\_0.pdf](https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%20REVISED%20NOV%202016_0.pdf)

### **Reinspection and response of Landlord**

3. The tribunal inspected the Property on 3 February 2025.
4. It was found that repairs appeared to have been carried out to the central heating boiler and that the oil storage tank had been replaced. The certification required by the RSEO was not available at the inspection and had not been submitted prior to it.
5. The other items in the RSEO had not been complied with.
6. A copy of the reinspection report was sent to parties for comment.
7. The Third Party Applicant sent a copy of an EICR dated 14 November 2024 which it had received.

8. The Landlord submitted a response form in which he stated that he wanted the tribunal to consider a variation of the RSEO.
  
9. The Landlord stated that it was “near impossible to get tradesman to come.” He stated that a new window had been ordered, that he awaited paperwork from the heating contractor and that a roofer had been instructed but had not yet arrived.

### **Decision on 25 March 2025**

10. The tribunal considered the EICR and determined that it was in satisfactory terms. It noted that steps had been taken in relation to the central heating system.
  
11. The Landlord had stated that he has had difficulty in getting tradespeople to carry out repairs to the Property. The tribunal had some sympathy because of the semi-rural nature of the location of the Property. It noted that some works had been done and, having regard to Section 25 (3) (b) (ii) of the Housing (Scotland) Act 2006, it determined to vary the RSEO and give the Landlord until 16 June 2025 to complete the works required by it.
  
12. Although the tribunal varied the RSEO, it considered it appropriate to stress that the Landlord requires to comply with the RSEO and that it would be unlikely to allow more time for compliance. By 16 June 2025, the Landlord would have had almost ten months to comply with the RSEO.

### **Compliance with the varied RSEO**

13. After 16 June 2025, parties were contacted and asked to comment on whether the RSEO had been complied with.

14. On 31 July 2025, the Third Party advised the Tribunal that the sitting room window had been replaced but that no roof works had been done, the carbon monoxide detector had not been relocated and that it had not had sight of any certification with regard to the oil-fired central heating system.

## **The Law**

### **Section 26 Housing (Scotland) Act 2006**

#### ***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 the First-tier Tribunal is 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 it considers the landlord to be unable to comply with the repairing standard enforcement order.*

### **Section 27 Housing (Scotland) Act 2006**

#### ***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).*

*(4) The First-tier Tribunal may decide to revoke a rent relief order at any time; and the First-tier Tribunal must decide to do so if—*

*(a) the repairing standard enforcement order to which the rent relief order relates is revoked, or*

*(b) a certificate is granted under section 60 in relation to the work required by that repairing standard enforcement order.*

*(5) The revocation of a rent relief order does not make a tenant liable to pay any rent which the tenant would, but for the rent relief order, have been liable to pay under the tenancy while the rent relief order had effect.*

15. The Respondent has not complied with the RSEO. In view of the significant safety issues arising from the failure, the tribunal considered that it consideration would be given to making a rent relief order of up to 90% of the rent.

16. In view of the overriding objective of the Tribunal, it is considered appropriate that parties be invited to make representations on the matter and the tribunal made a direction requiring such representations to be submitted by 21 September 2025.

17. No representations were received from the Respondent.

18. The Third Party Applicant responded and indicated that it was content for the tribunal to make an order as it saw fit.

#### Determination

19. The tribunal had regard to Section 26 (2) of the 2006 Act:

*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.*

20. The tribunal noted that the Respondent had not responded to the Direction.
21. The tribunal determined that, from the findings from the reinspection, the Respondent has not complied with the RSEO and it determined to serve notice of the failure to comply on the local authority.
22. There were three items in the RSEO which had not been complied with. Two of those items concerned potential safety issues for residents of the Property. The tribunal took this into account when exercising its discretion as to whether or not to make a rent relief order and to what percentage should be applied to the reduction of rent.
23. The tribunal determined that it would be appropriate to make a rent relief order. The amount by which the rent due under the tenancy is reduced is a matter of discretion and the tribunal determined that a rent relief order of 90% be made to reflect the significant safety issues involved with non-compliance with the RSEO. This reduces the rent payable under the tenancy by 90% of the rent which would, but for the order, be payable.

**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.**

Martin J. McAllister,  
Solicitor, legal member of  
Tribunal.  
9 October 2025