

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 section 25

Chamber Ref: FTS/HPC/RP/19/1457

Sasines Description: Property known as and forming ALL and WHOLE 2 Clune Cottages, Dores, Inverness, IV2 6TR, more particularly described in the Disposition by Neil Fraser-Tytler dated 1 and 7 April 1997 and recorded in the General Register of Sasines for the County of Inverness on 23 April 1997.

**2 Clune Cottages, Dores, Inverness, IV2 6TR
("the Property")**

The Parties:-

**Mr Howard McKee and Mrs Angela McKee, residing at the property
("the Tenants")**

**Mr Magnus Grant, residing at 1 Clune Cottages, Dores, Inverness, IV2 6TR,
represented by Mr Angus Brown of Messrs Harper MacLeod, Solicitors
("the Landlord")**

Tribunal Members

**Ms Helen Forbes – Legal Member
Mr 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 had complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that the Landlord should be given an extension to the period allowed for completion of the works required until 6th January, 2020 all in terms of Section 25(1) of the Housing (Scotland) Act 2006 ("the Act").

Background

1. The Tribunal, consisting at that time of Ms Patricia Pryce, Legal Member, and Mr Angus Anderson, Ordinary Member, determined in their decision dated 5th September, 2019 that the landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act in relation to the property and issued a Repairing Standard Enforcement Order (RSEO) dated 5th September, 2019. The RSEO required the Landlords:
 - (a) To ensure the terminal of the immersion heater is fitted with a secure cover and to produce an Electrical Installation Condition Report that confirms that the electrical installation is satisfactory with no C1 or C2 defects noted thereon.
 - (b) To replace the damaged tiling around the wash-hand basin.
 - (c) To repair or replace all of the windows in the property to ensure that they are all in a reasonable state of repair and in proper working order.

The Committee ordered that the works specified in the RSEO must be carried out and completed within a period of 6 weeks from the date of service of the RSEO, which was 16th September 2019.

2. By email dated 23rd October 2019, the Tribunal received representations from the Landlord's representative stating that items (b) and (c) required by the RSEO had been carried out, and that item (a) was in progress. The representative provided copy invoices to confirm the position.
3. By email dated 24th October 2019, the Tribunal received representations from the Landlord's representative including further invoices and an EICR report as required at item (a) of the RSEO.
4. On 29th October 2019, the Tenants made representations to the Tribunal, stating that the immersion heater did not work correctly, that the cover was still loose and that two electrical sockets were not operational, and that one socket had been blanked off and the Tenant now had to use an extension cable.
5. On 30th October 2019, the Landlord's representative lodged representations and invoices, stating that all the work had been carried out.
6. A re-inspection of the Property was carried out on 8th November 2019. The Ordinary Member's report is annexed and signed as relative hereto. The Ordinary Member found that the works required by the RSEO had been carried out; however, a blanking plate had been fitted to the electrical socket on the chimney breast of the lounge and it could no longer be used.
7. The Tenant also complained that a socket in the bedroom was not working, nor was the immersion heater working correctly. The re-inspection report was circulated to parties on 18th November 2019. Parties were given a period to 2nd December 2019 to make representations on the report.

8. By email dated 20th November 2019, the Landlord's representative submitted representations stating that the work had been carried out in compliance of the RSEO and that a Rent Relief Order should not be issued.
9. By email dated 2nd December 2019, the Tenants submitted representations stating that the RSEO had not been complied with and that a Rent Relief Order should not be issued.
10. The Tribunal considered matters. The representations from the Tenants appeared to introduce new matters that were not included within the last application and ensuing RSEO. These matters cannot be considered by the Tribunal within the existing application, and would require to be notified anew to the Landlord before any new application is made regarding those matters. In relation to the operation of the immersion heater, the matter had been considered at the initial inspection and hearing and it was found to be satisfactory. Any subsequent fault would likewise, be required to be notified anew to the landlord.
11. In addition, the Applicants seem to have misunderstood the finding of the Tribunal that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order. This is a category within the relevant legislation. The Landlord was found to have failed in respect of this category, by failing to ensure that the windows were in a reasonable state of repair and in proper working order, as outlined on page 2 of the RSEO. The Landlord has now rectified that position. There were no other complaints that fall within that category put to the Tribunal in this case.
12. Notwithstanding the production of a satisfactory EICR, the Tribunal takes the view that it is not acceptable for the Landlord to blank off the socket in the living room and leave a faulty socket in the bedroom. The disconnection of part of the electrical installation in order to achieve a fault-free "remaining" installation cannot be regarded as providing a satisfactory installation. The Tenants now have a lesser electrical system than they had previously.

Decision

13. The Tribunal considers that, in all the circumstances of the case, it would be reasonable to vary the RSEO to allow a further period so that the Landlord can address the electrical situation and ensure that the Tenants have full use of the full electrical system within the Property.
14. The Tribunal notifies the Landlords that, if the works have not been completed by 20th January 2019, it may consider that the Landlords have failed to comply with the RSEO.
15. The decision of the tribunal was unanimous.

16. If the Tribunal determines that there has been such a failure to comply, it must serve notice of that failure on the local authority. In terms of section 28(1) and 28(7) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of section 28(5) of the Act.

Right of Appeal

17. 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.

H Forbes

Date: 10th December 2019

Legal Member/Chair