

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 25(1) of the Housing (Scotland) Act 2006

Chamber Ref: PRHP/RP/16/0199

Property at Northfield Farm House, Auldgirth, Dumfries, DG2 0TR being part of the subjects described in Disposition in favour of Thomas William Kennedy recorded GRS (Dumfries) 19th May 1926 (Search Sheet 3608) ('the Property')

David Matthews and Claire Matthews ('the former Landlord')

Caroline Cook residing at Northfield Farm House, Auldgirth, Dumfries, DG2 0TR ('The heritable proprietor')

Michael Hunter residing formerly at Northfield Farm House, Auldgirth, Dumfries, DG2 0TR ('the Tenant')

The First-tier Tribunal for Scotland (Housing and Property Chamber), formerly the Private Rented Housing Committee, ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Kingsley Bruce (Ordinary Member).

Background

1. The Private Rented Housing Committee ('the Committee') issued a Repairing Standard Enforcement Order ('RSEO') in respect of the Property which required the Landlords to:-

'1. Repair or replace the front and back doors (including the locks) to render them in proper working order.

2. Repair or replace the side sheeting of the barn used as a wood store located on the south east corner of the Property to render it in proper working order.

3. Eradicate the dampness in the rear porch.

4. Install:

4.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.

4.2 One functioning smoke alarm in every circulation space, such as hallways and landings.

4.3 One heat alarm in every kitchen.

4.4 All alarms should be hardwired and interlinked and

4.5 One CO detector in every space containing a fixed combustion appliance.'

2. The Committee ordered that the works specified in the RSEO were to be carried out and completed by 30th November 2016.

3. On 1st December 2016 jurisdiction of the Private Rented Housing Panel passed to the Housing and Property Chamber.
4. On 7th March 2017 the Tribunal inspected the Property for the purpose of ascertaining whether the said repairs required by the RSEO had been completed. They found that the Tenant had vacated the Property and none of the required works had been completed. Thereafter they held a hearing at which the Landlords' agent requested a variation of the RSEO to allow additional time to complete the required works. On 13th March 2017 the Tribunal varied the RSEO to extend the time for completion of the works to 30th September 2017.
5. Caroline Cook contacted the Tribunal on or about 16th October 2017 to explain that she had recently purchased. On 3rd January 2018 Caroline Cook sent an email to the administration of the First-tier Tribunal advising that she has no intention of letting out the Property and therefore she feels that the repair order is unnecessary and she asked that the Tribunal revoke the RSEO. The administration of the First-tier Tribunal replied explaining that a reinspection and hearing would be necessary.
6. On 9th May 2018 the Tribunal carried out an inspection of the Property for the purpose of ascertaining whether the repairs required by the RSEO had been completed. Caroline Cook was not present at the inspection but was represented by her partner David Rae. He explained that some of the works had been carried out but not all of them. They have lodged a planning application to take down the porches, extend the Property and replaced the tin shed with an agricultural building. He confirmed that Caroline Cook lives in the Property and she does not let the Property.

The Tribunal found:

6.1 Repair or replace the front and back doors (including the locks) to render them in proper working order.

The locks of the front and back doors had been repaired and the locks were in proper working order. However the panels of the door were rotten and there were gaps which result in the doors not being wind and watertight.

6.2. Repair or replace the side sheeting of the barn used as a wood store located on the south east corner of the Property to render it in proper working order.

No repairs had been carried out to the barn. The barn was in a dilapidated state. The metal sheeting that forms the sides of the barn was loose and a number of the roof timbers were hanging down. The Tribunal considered the barn to be in an unsafe condition.

6.3. Eradicate the dampness in the rear porch.

There was still dampness present in the external wall of the rear porch. The ordinary member of the Tribunal tested the area of the external wall below the window with a damp meter and found that the levels of dampness were high.

6.4. Install:

6.4.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.

6.4.2 One functioning smoke alarm in every circulation space, such as hallways and landings.

6.4.3 One heat alarm in every kitchen.

6.4.4 All alarms should be hardwired and interlinked and

6.4.5 One CO detector in every space containing a fixed combustion appliance.

Hardwired smoke alarms had been fitted in the living room, the landing and the lower hall. A heat detector had also been fitted in the kitchen.

No Co detectors had been installed.

7. Following the inspection of the Property the Tribunal held a hearing at 11.30 am at the Sanquhar Town Hall. Caroline Cook did not attend and was not represented.

8. On 23rd May 2018 the Tribunal issued a Direction to Caroline Cook in the following terms:-

'The Tribunal have been advised that Caroline Cook intends to carry out a scheme of works to the Property and she has lodged two planning applications in relation to her proposals. The Tribunal suspect that the works required by the Repairing Standard Enforcement Order dated 11th August 2016, as varied, will be addressed as part of those works.

The required works are (using the original numbering) :

'1. Repair or replace the front and back doors (including the locks) to render them in proper working order.

2. Repair or replace the side sheeting of the barn used as a wood store located on the south east corner of the Property to render it in proper working order or alternatively take down and make safe the said barn.

3. Eradicate the dampness in the rear porch.

4. Install:

4.5 One CO detector in every space containing a fixed combustion appliance.'

The Tribunal therefore directs Caroline Cook to provide details of the scheme of works and a realistic timescale for completion of the outstanding required works by 30th June 2018, to enable the Tribunal to consider whether to extend the timelimit for completion of the said outstanding required works.'

9. The Tribunal received no response to the said Direction dated 23rd May 2018.

10. On 1st August 2018 the Ordinary Member of the Tribunal carried out an inspection of the Property for the purpose of ascertaining whether the outstanding repairs required by the RSEO had been completed. Caroline Cook was not present at the inspection but was represented by her partner David Rae. The reinspection

report dated 8th August 2018 and relative photographs taken at the reinspection are annexed and executed as relative hereto.

11. Caroline Cook was sent a copy of the reinspection report dated 8th August 2018 and invited to make representations to the Tribunal but no such representations were received.

Decision and Reasons

12. The Tribunal are mindful that Section 194 of the Housing (Scotland) Act 2006 defines 'Landlord' as 'any person who lets a house under a tenancy, and includes the Landlord's successors in title.' Also Section 7 of Schedule 3 of the Act states that the Tribunal may still determine the application even although the lease has been lawfully terminated. Therefore it is the intention of the legislation that the RSEO should remain in place even although the Property has been sold by the original landlords and even although the original tenants have vacated the Property, until such time as the required works have been completed.

13. Given the terms of the said reinspection report dated 8th August 2018 the Tribunal find, using the original numbering of the RSEO:-

1. Repair or replace the front and back doors to render them in proper working order.

The front and back doors had been repaired to render them in proper working order.

2. Repair or replace the side sheeting of the barn used as a wood store located on the south east corner of the Property to render it in proper working order or alternatively take down and make safe the said barn.

The required works to the barn had not been completed.

3. Eradicate the dampness in the rear porch.

The dampness in the rear porch had not been eradicated.

4. Install: 4.5 One CO detector in every space containing a fixed combustion appliance.'

The required CO detectors had been installed.

14. As stated, the Tribunal determine that items 2 and 3 of the RSEO which required:

'2. Repair or replace the side sheeting of the barn used as a wood store located on the south east corner of the Property to render it in proper working order or alternatively take down and make safe the said barn.

3. Eradicate the dampness in the rear porch.'

had not been satisfactorily completed as the required works have not been carried out. Consequently, the Tribunal, having made such enquiries as is fit for the purposes of determining whether the said Caroline Cook, being heritable proprietor of the Property, has complied with the Repairing Standard Enforcement Order, in

relation to the Property concerned, determined that the said Caroline Cook has failed to fully comply with the RSEO in terms of section 26(1) of the Housing (Scotland) Act 2006 and that a notice of the failure be served on the Local Authority in which the Property is situated.

15. As there is no Tenant in the Property the Tribunal did not proceed to consider if a Rent Relief Order should be made.

The decision of the Tribunal was unanimous.

Appeals

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 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.

J Taylor

Signed.....
Chairperson

.....Date 23rd September 2018



HPC Re-inspection Report

Property: Northfield Farm House, Auldgirth, Dumfries, DG2 0TR
Ref No: HPC/RP/16/0199

J Taylor

Surveyor: Kingsley K Bruce, MRICS

Access:

I attended for the purposes of undertaking a re-inspection the property at 10:00 on Wednesday 1 August 2018.

In Attendance:

The property was occupied, the Landlord (Owner) was represented by Mr David Rae, who was also present at the previous inspection.

Weather:

Conditions were generally dry and overcast at the time of my re-inspection.

Requirements of the Repairing Standard Enforcement Order (RSEO):

Following an initial inspection and hearing, the tribunal had determined as follows:

- 1. Repair or replace the front and back doors (including the locks) to render them in proper working order.*
- 2. Repair or replace the side sheeting of the barn used as a wood store located on the south east corner of the Property to render it in proper working order.*
- 3. Eradicate the dampness in the rear porch.*
- 4. Install:*
 - 4.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.*
 - 4.2 One functioning smoke alarm in every circulation space, such as hallways and landings.*
 - 4.3 One heat alarm in every kitchen.*
 - 4.4 All alarms should be hardwired and interlinked and*
 - 4.5 One CO detector in every space containing a fixed combustion appliance.'*

The Tribunal had required these works to be completed by 30 November 2016.

Following the most recent inspection and hearing on 9 May 2018, the Tribunal determined as follows:

6.1 Repair or replace the front and back doors (including the locks) to render them in proper working order.

The door locks to both front and back doors had been replaced, no repairs to decayed/deteriorated timbers were evident.

6.2. Repair or replace the side sheeting of the barn used as a wood store located on the south east corner of the Property to render it in proper working order.

No repairs had been carried out to the barn. The barn was in a dilapidated state. The metal sheeting that forms the sides of the barn was loose and a number of the roof timbers were hanging down. The Tribunal considered the barn to be in an unsafe condition.

6.3. Eradicate the dampness in the rear porch.

There was still dampness present in the external wall of the rear porch. The ordinary member of the Tribunal tested the area of the external wall below the window with a damp meter and found that the levels of dampness were high.

6.4. Install:

6.4.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.

6.4.2 One functioning smoke alarm in every circulation space, such as hallways and landings.

6.4.3 One heat alarm in every kitchen.

6.4.4 All alarms should be hardwired and interlinked and

6.4.5 One CO detector in every space containing a fixed combustion appliance.

Hardwired smoke alarms had been fitted in the living room, the landing and the lower hall. A heat detector had also been fitted in the kitchen.

no CO detectors had been installed.

Works required by the RSEU which have been undertaken:

- Some repairs had been undertaken to exterior doors to cut out and replace deteriorated timbers.
- CO detectors were present in the Living space, bedroom and adjacent to the boiler.

Kingsley K Bruce, MRICS

Member

The First Tier Tribunal for Scotland (Housing and Property Chamber)

8 August 2018

**Photographs taken during re-inspection 1 August 2018
Northfield Farm House, Auldgirth, Dumfries, DG2 0TR**







