

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**STATEMENT OF DECISION TO VARY: Section 25 Housing (Scotland) Act 2006 (“the Act”)**

**Chamber Reference: FTS/HPC/RT/19/4020**

**Sasines Description: Castle Lodge, Castle Street, Banff, which subjects form part and portion of ALL and WHOLE the subjects known as Castle of Banff being the subjects described in Disposition to the Trustees of Banff War Commemoration Fund recorded in the Division of the General Register of Sasines for the County of Banff on 24<sup>th</sup> May 1948.**

**House address: Castle Lodge, Castle Street, Banff, AB45 1 DL (‘the House’)**

## **The Parties**

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

**Banff Castle Community Association, Banff Castle, Castle Street, Banff, AB45 1DL (‘the Landlords’)**

## **Tribunal Members**

**Ms H Forbes (Legal Member)**

**Mr A Anderson (Ordinary Member)**

## **Decision**

The Tribunal decided to vary the Repairing Standard Enforcement Order dated 28<sup>th</sup> August 2021 to the effect of extending the period during which the works required can be carried out for a period of three months from the date of issue of the Notice of Variation.

## **Background**

1. By decision of the Tribunal dated 26<sup>th</sup> August 2021, the Landlords were required to comply with the Repairing Standard Enforcement Order (“RSEO”)

relative to the House and dated 28<sup>th</sup> August 2021. The RSEO required the Landlords to:

1. Take such reasonable steps as are required to address the problems with the windows and external doors to ensure that they are in a reasonable state of repair and in proper working order;
2. Investigate and repair the leak above the kitchen ceiling, and redecorate as required;
3. Repair the gap between the skirting boards and the kitchen flooring;
4. Investigate the cause of water ingress into the cellar and take the necessary steps to prevent further ingress and dampness.

The Tribunal ordered that the works specified in the RSEO must be carried out within 6 weeks from the date of service of the RSEO

2. A re-inspection took place on 15<sup>th</sup> December 2021.
3. A hearing took place by telephone conference on 10<sup>th</sup> May 2022. The discussion that took place at the hearing is set out in the Tribunal Decision dated 12<sup>th</sup> May 2022, whereby the Tribunal decided to vary the RSEO to allow a further period of six weeks from the date of issue of the Notice of Variation in order to allow access, investigation of continuing issues, and completion of work.
4. By letter dated 22<sup>nd</sup> June 2022, parties were notified of an inspection to take place on 23<sup>rd</sup> August 2022.
5. By response dated 28<sup>th</sup> June 2022, the Tenants stated that the RSEO had not been complied with as works had not been completed.
6. By email dated 7<sup>th</sup> July 2022, the Landlords' representative stated that they had not been able to complete the works as access had been denied by the Tenants.
7. On 15<sup>th</sup> July 2022, parties were sent the following:

The Tribunal would remind the Tenants that access must be allowed in order that the work can be carried out. The Tribunal should be informed if there is a good reason that access cannot be given. Parties are asked to provide an update to the Tribunal in relation to progress with repairs by 15<sup>th</sup> August 2022, in order that the Tribunal can determine what further procedure may be required.

8. By email dated 12<sup>th</sup> August 2022, the Third Party Applicant stated that the Tenants had written to the Tribunal by Recorded Delivery letter in response to the request for information. A certificate of posting was later provided, as was

information stating that the letter had been signed for at the correct address. However, the letter was not received by the Tribunal.

9. By email dated 16<sup>th</sup> August 2022, the Landlords' representative stated that they had not been able to complete the works as access had been denied by the Tenants.
10. By email dated 25<sup>th</sup> August 2022, the Third Party Applicant informed the Tribunal that the Tenants were unable to allow access due to medical issues.
11. By letter dated 8<sup>th</sup> September 2022, an apology was issued to the Tenants in regard to the Recorded Delivery letter and a further request was made for the information contained therein to be submitted to the Tribunal.
12. By email dated 21<sup>st</sup> September 2022, the Landlords informed the Tribunal that their current committee members would be standing down at an AGM on 26<sup>th</sup> September 2022.
13. By Direction dated 17<sup>th</sup> October 2022, parties were directed as follows, a response to be provided within 10 days:

#### **The Third Party Applicant**

1. A note detailing the reasons why access has not been given to the Landlords by the Tenants to complete the repairing works;
2. An indication of when access can be expected to be given to the Landlords by the Tenants to carry out the works.

#### **The Landlords**

1. A note detailing the works still to be carried out.
2. Details of the appropriate contact person for the Landlords in this matter.

14. By email dated 27<sup>th</sup> October 2022, the Third Party Applicant responded as follows:

##### **Question 1**

I sent an email to the Housing & Property Chamber (HPC) on the 25/08/22 where I gave reasons why access had not been given by the tenants, see copy reason below:-

Penny could not allow any access to workmen to her property to carry out RSEO repairs due to her eye condition. Penny was advised by her Dr, Surgeon and nurse NOT to get any dust in her eyes.

□ Penny posted additional information by Recorded Delivery to the HPC, and her envelope was indeed signed for as received, but it seems to have been mislaid at the HPC.

#### Question 2

Penny has undergone several major eye operations/treatments in hospital this year, the most recent being last week. I can confirm access can now be allowed for the RSEO repair works to recommence. The tenants would appreciate as much notice as possible, prior to contractors arriving.

15. By letter dated 25<sup>th</sup> October 2022, the Landlords stated that there is a new committee, and explained that major works may be required to the House. They requested that time be allowed to look at short term solutions for the outstanding works.

#### Decision

16. The Tribunal decided to vary the RSEO to allow a further period of three months from the date of issue of the Notice of Variation in order to allow access, investigation of continuing issues, and completion of the works set out in the RSEO.

17. The decision of the Tribunal was unanimous.

#### Right of Appeal

18. **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

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Legal Member

Legal Member and Chairperson  
Date: 8<sup>th</sup> November 2022