

# 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/RP/22/0018**

**Sasines Description: Subjects forming part and portion of the farm and lands of Wester Calcots in the County of Moray being the subjects more particularly described in Feu Disposition to Robert Petrie Mutch recorded in the Division of the General Register of Sasines for the County of Moray on 26<sup>th</sup> May 1926**

## **The Parties**

**Mr Kevin Lynch and Mrs Kelly Lynch, Wester Calcots Farm, Elgin, IV30 5PH (“The Tenants”)**

**Mr Alistair MacKay, Brackla Farm, Cawdor, Nairn, IV12 5QY (“The Landlord”)**

**Subjects: The Farmhouse, Wester Calcots Farm, Elgin, IV30 5PPH (“the Property”)**

## **Tribunal Members**

**Ms H Forbes (Legal Member)**

**Mr M Andrew (Ordinary Member)**

## **Decision**

The Tribunal decided to vary the Repairing Standard Enforcement Order dated 18<sup>th</sup> May 2022 to the effect of extending the period during which the works required can be carried out to 3<sup>rd</sup> March 2023.

## **Background**

1. By decision of the Tribunal dated 16<sup>th</sup> May 2022, the Landlord was required to comply with the Repairing Standard Enforcement Order (“RSEO”) relative to the Property and dated 18<sup>th</sup> May 2022. The RSEO required the Landlord to:

1. Ensure the roof above the utility room is properly constructed and flashed, and the roof timbers are repaired or replaced;
2. Install suitable insulation to the roof and walls of the utility room;
3. Reinstate the interior walls and ceiling of the utility room;
4. Repair or replace the flooring throughout the utility room;
5. To the rear elevation, relocate or replace the downpipe by installing a new gully or downpipe;
6. To the side elevation, install a second downpipe and gully close to the chimney;
7. To the front elevation, repair sections of corroded guttering and any broken downpipes;
8. Install a bathroom extractor fan with humidistat;
9. Repair or replace both skylights and redecorate damaged areas;
10. Instruct a building surveyor or structural engineer to
  - (i) inspect the attic space and roof timbers to determine what work is required in the short term to repair damaged or decayed roof timbers.
  - (ii) determine whether there is water ingress in the roof space;
  - (iii) carry out any essential repairs.
11. Repair or replace the gate to the Property.
12. Repair or replace the fence around the Property;
13. Replace the void rendering to prevent water ingress. Consideration should be given to applying lime mortar pointing and/or render.

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, which was issued on 25<sup>th</sup> May 2022.

2. Following representations from parties, the Tribunal decided by decision dated 5<sup>th</sup> September 2022 to vary the RSEO to allow a further period to 31<sup>st</sup> October 2022 to complete the works required by the RSEO.
3. By email dated 10<sup>th</sup> October 2022, the Landlord's representative stated the following:

*There has been a material change in circumstances relative to this case that I wish to advise the Tribunal of.*

*The tenants have decided to move out of Wester Calcots Farm and have now started paying rent on a different property. They have not yet moved but this is expected to happen before the end of the month. In view of this the tenant no longer wishes the repair works to be carried out whilst they are in the property and the landlord feels that it would be much easier to carry out the required works once the property is empty.*

*In view of the foregoing it is requested that a further extension be granted to the 31st October deadline for the works to be carried out please.*

*It is accepted that you will wish to check these circumstances with the tenant. It is also accepted that no further tenants will be able to enter the property until such time as the repair works have taken place and the property has passed a further inspection.*

4. By letter dated 14<sup>th</sup> November 2022, parties were notified of an inspection set down for 21<sup>st</sup> December 2022.
5. By email dated 23<sup>rd</sup> November 2022, the Landlord's representative stated the following:

*It's noted that it's the intention of the Tribunal to re-inspect the farmhouse in question on 21<sup>st</sup> December. We would respectfully request that this re-inspection be postponed please.*

*The position is that the tenants have now terminated their tenancy and moved out, with the result that the property is now empty. In view of this the Landlords would like to take this opportunity to carry out various larger pieces of work to the house and it's anticipated that this will take longer than 4 weeks to complete. What we'd like to propose, therefore, is that we get back in touch with you once the works have been completed so that a re-inspection can be carried out at that point.*

*In the meantime the Landlords confirm that no attempt will be made to put any further tenants into the property until such time as the property has been reinspected and approved by you.*

6. By email dated 24<sup>th</sup> November 2022, the tenants confirmed that the tenancy ended on 14<sup>th</sup> November 2022.
7. The Tribunal considered matters and decided not to grant a postponement of the inspection. The Landlord was noted by email dated 25<sup>th</sup> November 2022, as follows:

The Tribunal has not granted the request for a further postponement of the re-inspection, therefore the re-inspection will take place as

scheduled. The Tribunal would point out that the RSEO in this case has already been varied to allow further time for compliance. It is hoped that the works required by the RSEO will be completed by the date of the re-inspection. The Landlord should be aware that he is not permitted to let the property again while there is an RSEO in place.

8. By email dated 11<sup>th</sup> December 2022, the Landlord's representative replied as follows:

*In all the circumstances this decision seems to me to be particularly harsh and I wonder whether I can update the Tribunal of the circumstances that are present here.*

*The Tribunal will be aware that that the tradesmen were on site in January 2022 to carry out the required works but the tenant refused to allow them in since he didn't think the works were going to be carried out properly. Matters were then clarified through an inspection from a building surveyor who agreed that everything that the landlord was planning to do was correct*

*After the Tribunal Hearings the tradesmen were again lined up to carry out the required works in the period beginning 14th October. Since the tenant indicated that he would be moving out on 20th October it was agreed with him that no works would be carried out then, so as to make his removal from the property that bit easier. It was also felt that it would be easier for the tradesmen to carry out their work in an empty property, particularly after the significant difficulties that had been encountered between them and the tenant in the past, which difficulties have been brought to the attention of the Tribunal previously. As it happened the tenant didn't actually move out and hand over the keys until 14th November, having moved his departure date several times after his initial communication that the property would be empty from 20th October onwards.*

*The actions of the landlord were intended to benefit the tenant and were in accordance with the wishes of the tenant. Since the tenant has moved out the landlord has had to re-engage with his tradesmen and have the required works carried out. The Landlord wishes to have the work completed, as well as further works, and ultimately have the property re-let and he is not seeking to avoid this or unnecessarily prolong matters. It seems a shame, however, that the landlord is effectively being penalised for behaving in a reasonable manner towards the tenant who did not wish to have workmen in the house during his family's last days in the property and who then stayed for weeks longer than indicated.*

*In all the circumstances, therefore, I would again ask the Tribunal to postpone the Inspection date from the current date of 21st December so as to give the landlord a bit longer to complete the works that have been requested. I would submit that the landlord has behaved both*

*reasonably and responsibly in this matter and he is in all good faith trying to get the works completed as quickly as possible.*

9. By email dated 13<sup>th</sup> December 2022, the Landlord's representative was informed as follows:

Further to your email dated 11 December, I can confirm that the matter is being considered by the Tribunal. In the meantime, the Tribunal has requested that you please provide, as a matter of urgency, details of all work carried out and proposed timescales for the remaining work.

10. By email dated 16<sup>th</sup> December 2022, the Landlord's representative replied as follows:

*I'm told that the works that have been carried out to date are as follows:-*

- all guttering and slate works have been done*
- skylights have been ordered*
- gate has been repaired*
- fence has been repaired*
- rendering has been removed and replaced*

*In essence, therefore, all works outside of the property have been done, which was so as not to cause any interruption to the tenant whilst he was moving. The work to the utility room has still to be carried out as well as the skylights and rafters and extraction fan. The workmen are being lined up to start on this in the new year, as well as having the whole property totally redecorated and alterations made to the bathroom. The essential works that the tribunal have instructed will be done first and it's expected that all works will be finished by the spring. In all the circumstances it's hoped that the Tribunal will grant a further extension to the Inspection date.*

## **Decision**

11. The Tribunal decided to allow a further variation to the RSEO to enable all works to be carried out by 3<sup>rd</sup> March 2023. The decision of the Tribunal was unanimous.

## **Right of Appeal**

12. 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: 21<sup>st</sup> December 2022