

Housing and Property Chamber First-tier Tribunal for Scotland



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 26th 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 18th May 2022 to the effect of extending the period during which the works required can be carried out to 31st October 2022.

Background

1. By decision of the Tribunal dated 16th May 2022, the Landlord was required to comply with the Repairing Standard Enforcement Order (“RSEO”) relative to the Property and dated 18th 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 25th May 2022.

2. By email dated 7th June 2022, the Landlord's representative submitted an application for review of the Tribunal's decision, including representations that the timescale allowed by the RSEO was unlikely to be sufficient to allow all works to be carried out.

3. By decision dated 21st June 2022, the Tribunal found the application for review to be wholly without merit, stating that a variation of the RSEO may be the appropriate route to take in due course.
4. A re-inspection was scheduled for 29th September 2022 and compliance documentation was issued to the parties on 16th August 2022.
5. By response dated 22nd August 2022, the Tenants stated that the RSEO had not been complied with, and listed the following:

- 1) *Utility room roof construction - No work has been carried out inside or outside.*
- 2) *Insulation of utility room roof and walls - No work has been carried out.*
- 3) *Interior walls and ceiling of utility room - No work has been carried out.*
- 4) *Utility room floor - No work has been carried out.*
- 5) *Rear elevation down pipe - Down pipe has been relocated as per instruction.*
- 6) *Side elevation down pipe - No work has been carried out.*
- 7) *Front elevation - Sections of corroded guttering / broken down pipe have been replaced as per instruction.*
- 8) *Bathroom extractor fan - No work has been carried out.*
- 9) *Skylights x 2 - No work has been carried out.*
- 10) *Decayed roof timbers / water ingress in roof space - No investigation or work has been carried out and it is worth noting that cracking / damp in rooms affected has worsened.*
- 11) *Front gate - Partial repair carried out however gate is still broken.*
- 12) *Fence - Partial repair carried out however fence is still rotten and broken in multiple places.*
- 13) *Render - Partial repair carried out to some areas of render, however there are still areas of blown render and it has not been removed from gable end above utility room roof. The corresponding internal wall in the roof space is still damp. It is also worth noting that the person who carried out the work to the render has not refitted the guttering down pipe properly and has broken one of its securing brackets.*

6. By email dated 25th August 2022, the Landlord's representative stated the following:

I need to advise that despite the absolute best efforts of the Landlords it has proved to be impossible to have all of the works completed by the deadline set. The Tribunal will remember that this was anticipated soon after the last Tribunal Hearing and unfortunately this has proved to be the case.

I can confirm that the fence and gate have been repaired, the guttering has been repaired or adapted to suit, the building survey has been carried out and the harling has been repaired. All of the other works

that are not yet complete involve the Landlord's joiner and electrician. I'm attaching an email from the joiner which indicates that he has not been able to allocate the time over the summer holiday period to carry out the works. It is agreed that this is not desirable, but the Landlord has simply not been able to meet the deadline set despite his best efforts to do so. The Tribunal will see that instructions have been given for the work to be carried out, and the work is being scheduled, but this seems unlikely to be before the intended inspection date. The timing for the work has also been delayed because the Tenant has indicated that he will not permit the workmen to have access to any part of the property whilst he is on holiday.

The Landlords would like to respectfully ask the Tribunal to extend the deadline for the works to be carried out until the end of October please.

7. By email dated 31st August 2022, the Tenants stated the following:

In response to the Landlord's request for a variation of the RSEO, I would like to request that the Tribunal do not consider granting it. In Mr Mackay's original request for an extension via email dated 07/06/22, it was stated that "In some cases workmen have stated that it will be four to six weeks before they can call out to look at the job", yet this was never arranged, and nobody was booked in. It is also worth noting that Mr Mackay's Son who was present at the Tribunal stated that they knew what they were doing and already had a plan, yet still nothing has been done. I would like to know why after being refused the extension in June did Mr Mackay not contact any other local tradesmen or instruct his Agent to get the works completed using his own trusted tradesmen - when surely that is part of the role of the Agent. More embarrassingly, we had to provide his Agent with a copy of the RSEO as he didn't have a clue what was going on.

In reference to the email from Mark Henderson dated 22/08/22, I cannot see how they can rely on the fact that he will carry out the work at the beginning of October based on the statement of "providing all other works go to plan for me and the others", when that is not a definitive booking and no dates have been given. We have also been waiting for him to finish the work he started in the utility room since October 2021 and nothing has been done.

I don't consider that any effort has been made by the Landlord to get work arranged or completed, but if he has proof to the contrary then I would like to see it - e.g. proof of contacting numerous tradesmen to come and carry out quotes for the work.

I would also like to see the report from DM Hall that Mr Mackay had done yet failed to submit when he asked for an extension originally.

I also do not see why he appears to be intimating that us going abroad for two weeks from 29/08/22 has suddenly become an issue to work

being carried out. Mr Mackay's deadline for completion was 26/08/22 and our holiday was booked for after that date on the assumption that the work would already have been completed. We have always made ourselves available on request where possible and even at short notice, whether it be convenient or not. We informed Mr Mackay's Agent on 17/08/22 that we would be on holiday from 29/08/22 - 14/09/22 and stated that we did not want anyone in the house unsupervised whilst we were abroad, due to our 18 year old daughter staying alone in the property. It had never been mentioned that any work may be carried out during those dates prior to us informing the Agent that we were going away, yet all of a sudden it has been made into an issue. I wish the Tribunal to take into account the fact that these repairing issues have been raised with the Landlord since March 2021 and because of his inaction, it was raised to Moray Council Environmental Health Team in October 2021. Subsequent requests by them for Mr Mackay to carry out works were ignored, which led to us raising the Tribunal action in January 2022.

I find it absolutely incomprehensible that he has been unable to get any tradesmen (not just ones he knows) to do the work for the past 18 months. It has been excuse after excuse and it is just not good enough. At no point during this time has Mr Mackay taken account of the severe detrimental effect that this has had on myself, my Husband and my children. We are living in a house that has been deemed to fall below the tolerable standard, and yet we are still paying full rent. We are miserable every day and cannot enjoy the property anymore. It feels like this is a deliberate attempt by the Landlord to force us out because we have complained about the property.

I feel that if an extension is given then it will just mean that it is two more months of excuses and nothing being done, just like it has been for the past 18 months.

This simply cannot go on any longer, and although we want the works carried out so we no longer have to live like this, I feel that granting an extension will just be rewarding Mr Mackay for his lack of effort and compliance.

Decision

- 8.** The Tribunal considered the representations from both parties. While the Tribunal had sympathy with the Tenants' position, and considered it unsatisfactory that further progress has not been made, it took into account the terms of the email from the joiner, which confirmed the situation as set out in the representations made on behalf of the Landlord.
- 9.** The Tribunal decided to vary the RSEO to allow a further period to 31st October 2022 to complete the works required by the RSEO.
- 10.** The decision of the Tribunal was unanimous.

Right of Appeal

11. 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

Legal Member

Legal Member and Chairperson
Date: 5th September 2022