

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

Chamber Ref: PRHP/IV44/78/10

**Property at Cnoc Farm Cottage, Teangue, Sleat, Isle of Skye, IV44 8RE
("the Property")**

The Parties:-

PETER CHAPMAN, formerly residing at Cnoc Farm Cottage, Teangue, Sleat, Isle of Skye, IV44 8RE ("the Tenant")

THE EXECUTORS OF THE LATE SIR IAIN ANDREW NOBLE lately residing at Ardkinglas and Eilean Iarmain Baronet, Fearann Eilean Iarmain, Eilean Iarmain and An t-Eilean Sgitheanach, the Executors being Lady Noble, Christopher Mackenzie, James Galbraith, Nigel Pollock and Robin Malcolm all c/o Gillespie MacAndrew LLP, 5 Atholl Crescent, Edinburgh, EH3 8EJ ("the Landlord")

Skye B V incorporated in the Netherlands (commercial registration Number 57567085) and having its Registered office at Siriusdreef 22, 2132 Wt, Hoofddorp, Netherlands ("the Owner")

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 Owner has complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property concerned and taking account of the recent reinspection of the Property, determined that the Owner had now complied with the terms of the RSEO and resolved to issue a Certificate of Completion in respect of the works required by the RSEO. The Tribunal also resolved to issue a revocation of the Rent Relief Order in place over the Property.

Background

- 1. This matter was originally heard before The Private Rented Housing Panel. On 1 December 2016 the power and functions of The Private Rented Housing Panel were transferred to The First Tier Tribunal for Scotland (Housing and Property Chamber). Accordingly the Tribunal has the necessary jurisdiction to continue with and determine this matter.**

2. By way of a Decision dated 22 November 2010, the Tribunal had issued a determination that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
3. The Tribunal had placed an RSEO on the Property, also dated 22 November 2010, the RSEO required the Landlord:-
 - (a) To repair or replace as appropriate the Rayburn in the kitchen within the Property and to ensure that it is connected properly back into the hot water system and to ensure it is in proper working order
 - (b) To repair or replace the windows and skylights within the Property and ensure that they are properly wind and watertight and capable of being open, shut and lockable with the snib in a normal fashion. Following repair or replacement of the windows, redecoration of the paintwork must also be carried out.
 - (c) To repair or replace the broken floorboard in the upstairs spare bedroom.
 - (d) To repair or replace the rainwater disposal system at the Property to ensure that it is in proper working order and free of leaks.
 - (e) To carry out such works as are necessary to fix the leaks coming from the tap and drain at the kitchen sink and to make good any damage occasioned by the said leaks to the kitchen unit surrounding.
 - (f) To repair or replace the front door lock.
 - (g) To repair or replace the two metal edging strips that are currently loose within the Property and carry out any redecoration works required as a result.
 - (h) To attend to the general drainage or carry out such other works as are necessary to the ground surrounding the Property to ensure safe access to and egress from the rear door to the driveway

The RSEO had required the Landlord to carry out the works within a period of 12 weeks from the date of service of the original RSEO.

In due course a further inspection of the Property was carried out on 4 April 2011 by the original members of the Private Rented Housing Committee, Mr E K Miller, Chairman and Legal Member and Mr R Buchan, Ordinary/Surveyor Member. It was apparent at that reinspection and Hearing that no further works had been carried out. It was accepted that there were some financial pressures on the Landlord and the fact that it was executors who were dealing with a complex estate was hindering matters. However the parties were keen for matters to progress between them and there was an agreement at the Hearing that all works would be

completed by the Landlord by 31 August 2011. Accordingly at that stage the Private Rented Housing Committee issued a further decision dated 19 April 2011 that the RSEO would be varied and extended by way of an extension until 31 August 2011. On 7 September 2011, Mr Buchan had again attended at the Property to carry out a reinspection. Some minor works had been done but they were of poor standard and were incomplete. A period of time was given to the Landlord to allow them to complete the works. Further information as to progress was, however, proving difficult to obtain and, after further deliberation, the Committee decided a further re-inspection and Hearing was required to try and resolve the matter. A further re-inspection and Hearing took place on 1 July 2013. Again, Mr E K Miller and Mr R Buchan of the Committee attended at the Property. They were unable to gain access due to the Tenant having broken his leg. However at the Hearing the Landlord's agent confirmed that little further works had been carried out and the estate still did not have the necessary funds.

Having considered matters further the Committee issued a further decision on 3 July 2013 determining that the Landlord had failed to comply with the RSEO. The Committee was conscious that the Landlord had carried out some works and was in a difficult position. It did decide, however, that it was appropriate to serve a Rent Relief Order ("RRO") on the Landlord and it set this at 30%. This was issued on 3 July 2013 along with the appropriate notice to the relevant local authority. In terms of the powers of the Committee, the matter could go no further and accordingly no further procedure or hearings took place. There was then no further correspondence with any of the parties for a considerable period of time.

However in early 2018, the Owner contacted the Tribunal to advise that they had acquired the Property. They advised they had been carrying out works on the Property and had converted the cottage into workers accommodation and an office in connection with a new distillery that had been built at the site. The Tribunal noted from a check of the relevant local authority planning portal that this did seem to be the case. However, the Tribunal were mindful that this Property had been in very poor condition and it would be an appropriate safeguard for a member of the Tribunal to re-inspect the Property.

On 18 March 2018, Mr R Buchan again inspected the Property. A copy of his re-inspection report and associated photographs are annexed to this Decision for information. In summary, the Property had been altered and upgraded to a significant degree. The Rayburn had been removed. The windows had been replaced and redecorated. They were now in proper working order. The flooring on the first floor had been renewed. The rainwater disposal system had been renewed. The kitchen sink had been replaced with a new sink. There was a new front door with a new lock. The metal edging strips had been removed. The general surrounds and access had been upgraded and properly landscaped. The property was no longer to be used for residential letting.

The Tribunal (comprising Mr E K Miller, Chairman and Legal Member and Mr R Buchan, Ordinary Member) considered matters. It was clear that the Property had been significantly refurbished and put to an alternative use by the Owner. Accordingly the RSEO was no longer required and on that basis the Tribunal determined that the RSEO should be lifted and a Certificate of Completion discharging the RSEO under Section 60 of the Act would be granted. The Tribunal also resolved to revoke the RRO that had been in place on the Property.

The decision of the Tribunal was to lift the RSEO and grant a Certificate of Completion discharging the RSEO and also to revoke the RRO.

4. The decision of the tribunal was unanimous.

Right of Appeal

5. 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 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.

Effect of section 63

6. Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Ewan Miller

Signed ..

Date

Chairperson