

Housing and Property Chamber
First-tier Tribunal for Scotland



Variation of the Repairing Standard Enforcement Order
Ordered by the First-tier Tribunal for Scotland
(Housing and Property Chamber)
In terms of Section 25 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).

NOTICE TO

The said Caroline Cook

The Tribunal in their decision dated 23rd May 2018 have determined to vary the Repairing Standard Enforcement Order dated 11th August 2016.

Consequently the said **Repairing Standard Enforcement Order is VARIED as follows:**

First, Item 2 of the RSEO is varied as follows:

'The words 'or alternatively take down and make safe the said barn' are inserted at the end of the said item 2.

Second, Item 4.1, 4.2, 4.3 and 4.4 is revoked as they have been satisfactorily completed.

Fourth, the date for completion of the works required by the RSEO, as herein amended, is varied to 30th June 2018.

Subsection 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes and landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of section 28(5) of the Act. IN WITNESS WHEREOF these presents typewritten on this and the preceding page are subscribed at Irvine on 23rd May 2018 by Jacqui Taylor, Chairperson of the Tribunal in the presence of the witness KEIRSTEN BYRNE, 65, High Street, Irvine.

J Taylor

Signed.....

.....

Chairperson

K Byrne

.....witness: KEIRSTEN BYRNE

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')

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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 to 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. (is this correct ?)

Photographs taken at the inspection are annexed and executed as relative hereto.

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.

Decision and Reasons

8. 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.

9. The Tribunal determined that item 1 of the RSEO which required:
'the front and back doors (including the locks) to be repaired or replaced to render them in proper working order'
had not been satisfactorily completed as the front and back doors are not wind and watertight and consequently they are not in proper working order.

10. The Tribunal also determined that items 4.1, 4.2, 4.3 and 4.4 of the RSEO which required:

'Installation of:

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'

had been satisfactorily completed

11. The Tribunal were concerned that the condition of the barn had deteriorated and it was in an unsafe condition. They determined that due to safety considerations item 2 of the RSEO should be amended to require the barn to be taken down or

made safe. The Tribunal therefore decided that they would vary the RSEO as stated.

12. The Tribunal took account of David Rae's comments at the inspection to the effect that Caroline Cook intends to carry out a scheme of works and she has lodged two planning applications in relation to her proposals. The Tribunal suspect that the works required by the RSEO will be addressed as part of those works. The Tribunal therefore determined to issue a Direction requiring Caroline Cook to provide details of the scheme of works and a realistic timescale for completion of the outstanding works.

13. 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 May 2018



J Taylor

Schedule of Photographs:

**Northfield Farm,
Auldgirth,
Dumfries,
DG2 0TR**

Date of Re-inspection: 9 May 2018

- 1. Front door**
- 2. Rear Door**
- 3. Rear door lock**
- 4. Rear door close up**
- 5. Dilapidated Shed**
- 6. Dilapidated Shed**
- 7. CO Detector on boiler**
- 8. Smoke alarm hall**
- 9. Smoke alarm Livingroom**
- 10. Heat Detector kitchen**
- 11. Exterior detail porch front**
- 12. Exterior detail porch front**
- 13. Dampness inside porch**
- 14. Front door close up**













