

**2007 No. 173**

**HOUSING**

**The Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007**

*Made* - - - - - *6th March 2007*

*Laid before the Scottish Parliament* *7th March 2007*

*Coming into force* - - - *3rd September 2007*

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The Scottish Ministers, in exercise of the powers conferred by paragraph 8 of schedule 2 to the Housing (Scotland) Act 2006<sup>(a)</sup> and of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals and its Scottish Committee in accordance with section 8 of the Tribunals and Inquiries Act 1992<sup>(b)</sup>, hereby make the following Regulations:

## PART 1

### Preliminary

#### **Citation and commencement**

1. These Regulations may be cited as the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 and shall come into force on 3rd September 2007.

#### **Interpretation**

2.—(1) In these Regulations—

“the Act” means the Housing (Scotland) Act 2006;

“the Committee” means a Private Rented Housing Committee;

“the landlord’s duty” means the duty imposed by section 14(1) of the Act;

“the Panel” means the Private Rented Housing Panel;

“working day” has the same meaning as in section 187 of the Act;

where any formal communication requires to be served upon the parties, “the landlord” means the landlord or his or her authorised representative, if one has been nominated, and “the tenant” means the tenant or his or her authorised representative, if one has been nominated.

(2) A provision of these Regulations which provides for the sending of formal communications by the Panel or the Committee shall be read so that formal communications can be sent on behalf of the Panel or the Committee by an officer of the Panel appointed in accordance with Schedule 4 to the Rent (Scotland) Act 1984<sup>(c)</sup>.

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(a) 2006 asp 1.

(b) 1992 c.53, section 8 was amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), Part 8, article 335.

(c) 1984 c.58.

## PART 2

### Applications to the Panel

#### Application

3.—(1) An application to the Panel must be made by written notice and, where available, may be made on a form obtained from the Panel offices.

(2) The application must state—

- (a) the name and address of the tenant;
- (b) that the application is made under section 22(1) of the Act;
- (c) the name, address, and profession of the representative of the tenant, if any;
- (d) the name of the landlord;
- (e) the address of the landlord, or the name and address and profession, if known, of the landlord's representative;
- (f) the nature of the work requiring to be done;
- (g) that the landlord has been notified of the work;
- (h) the tenant's reasons, as required by section 22(2) of the Act, for considering that the landlord has failed to comply with the landlord's duty;
- (i) whether the tenant does, or does not, wish to attempt to resolve the dispute by mediation.

(3) The application must be signed and dated by the tenant or by the tenant's named representative.

#### Required attachments to application

4.—(1) The tenant should attach to the application a copy of the lease, tenancy agreement or rent book, if available, or as much information about the tenancy as he or she can give.

(2) The tenant must attach to the application details of the manner in which the landlord has been notified that the work specified in the application requires to be carried out.

#### Representation

5.—(1) A party may act in person or be represented.

(2) Where a representative begins to act for a party, the representative must immediately notify the Committee and the other party of that fact.

(3) A representative acting for a party may on behalf of that party do anything that these Regulations require or permit that party to do.

(4) Where a representative ceases to act for a party, the representative and the party must immediately notify the Committee and the other party of that fact, and of the name and address of any new representative (if known).

(5) Notification under paragraphs (2) and (4) may be given orally at a hearing to the Committee and to any other party present, but must otherwise be given in writing.

(6) If the Committee is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at a hearing.

## PART 3

### Process of the application

#### Action by the Panel

##### Acknowledgement of receipt of application

6. When an application has been received by the Panel—
- (a) the tenant shall be sent an acknowledgement of its receipt;
  - (b) particulars of it shall be entered in a register of cases and the tenant informed in writing of the case number allocated to it and of the address to which notices and other communications to the Panel must be delivered;
  - (c) the tenant shall be informed in writing that a decision will ordinarily be made within 14 days of the Panel's receipt of the application as to whether the application is to be referred immediately to the Committee, or rejected, or deferred to allow the parties to attempt to resolve the dispute; and
  - (d) where such a decision cannot be made within 14 days because the president considers that further information is required, the tenant shall be informed of that and given a date by which time a decision may be made.

##### Resolution by the parties

7. The Panel Secretary must bring to the attention of the parties the availability of mediation as an alternative procedure for the resolution of the dispute and explain and, if the parties consent to mediation, facilitate that mediation.

#### Action by the Committee

##### Additional applications

8. Where the property under consideration fails to meet the repairing standard in more than one respect, the tenant may raise all issues relating to the repairing standard in one application.

##### Notification to landlord of need for additional work

9. Where further relevant issues come to light in the course of investigation by the Committee, the tenant may make a further application to include such further issues, but may not do so until he or she has notified the landlord that further work requires to be done for the purposes of complying with the landlord's duty.

##### Further application to follow same procedure

10.—(1) Any further application must provide the information set out in regulation 3, and must follow the same procedure as the original application, subject to the proviso that any time scales applicable may be shortened with the consent of both parties.

(2) If the Committee dealing with the original application is satisfied that it is expedient that the further application be made by way of amendment to the original application, it may allow such an amendment.

(3) The Committee shall make suitable directions to the parties to ensure that the amended application may be properly and fairly considered.

##### Hearing two or more applications together

11.—(1) Where two or more applications relating to the same property are pending at the same time, the Committee may direct them to be heard together.

(2) Where two or more applications by different tenants with the same landlord are pending at the same time, the Committee may direct them to be heard together.

(3) The Committee may require the parties to take any steps necessary to enable two or more applications to be heard together.

### **Inquiries of the Committee**

**12.** The Committee shall give parties no less than 10 working days notice of any date specified for production of documents or information.

### **Service of formal communications**

**13.** If a formal communication is served on a person who has notified the Committee that he or she is acting as the representative of a party, it shall be deemed to have been served on that party.

### **Directions**

**14.—(1)** On its own initiative, or on the application of any party, the Committee may give directions to the parties relating to the conduct or progress of the application.

(2) The power to give directions is to be exercised subject to any specific provision of these Regulations.

(3) Directions must be given to every party and may be given orally or in writing.

(4) Directions of the Committee may, in particular—

- (a) relate to any matter concerning the preparation for a hearing;
- (b) specify the length of time allowed for something to be done;
- (c) vary any time limit in directions previously given by the Committee for anything to be done by a party;
- (d) provide for—
  - (i) a particular matter to be dealt with as a preliminary issue;
  - (ii) a party to provide further details of his or her case, or any other information which appears to be necessary for the determination of the application;
  - (iii) the witnesses, if any, to be heard;
  - (iv) the manner in which any evidence is to be given.
- (e) require any party to lodge and serve—
  - (i) statements of any evidence which will be put forward at the hearing;
  - (ii) a paginated and indexed bundle of all the documents which will be relied on at the hearing;
  - (iii) a skeleton argument which summarises the submissions which will be made at the hearing and cites all the authorities which will be relied on, identifying any particular passages to be relied on;
  - (iv) a list of witnesses whom any party wishes to call to give evidence.

(5) When making directions the Committee shall take into account the ability of parties to comply with the directions.

(6) Where a party attends a hearing and is not represented by another person, the Committee may assist that party to make the best of his or her case, without advocating the course that party should take.

## **Evidence**

**15.**—(1) Where the Committee has set time limits for the lodging and serving of written evidence, it must not consider any written evidence which is not lodged or served in accordance with those time limits unless satisfied that there are good reasons to do so.

(2) Where a party seeks to rely upon a copy of a document as evidence, the Committee may require the original document to be produced.

## **Correction of orders and statements of reasons**

**16.**—(1) The chair (or in the event of absence or incapacity, another member of the Committee) shall have the power, by a certificate under his or her hand, to correct any clerical error or omission in any document issued by the Committee.

(2) Where an order, notice of decision or statement of reasons is amended under paragraph (1), the Committee must serve an amended version on the party or parties upon whom it served the original.

## **Withdrawal of the application**

**17.**—(1) A tenant wishing to withdraw an application under section 22(1) of the Act may do so orally at a hearing or in writing at any time by serving a notice of withdrawal upon the landlord and his or her representative (if any), and upon the Committee.

(2) Notice of withdrawal may be made in writing and, where available, may be made on a form which may be obtained from the Panel offices.

## **Inspections**

**18.**—(1) An inspection of the property may be made before or during the hearing or after an adjournment of the hearing, or at such stage in relation to the consideration of the representations in writing as the Committee shall determine.

(2) The Committee may make or commission such further inspections as they consider appropriate to enable them to determine whether or not the work required by a repairing standard enforcement order has been completed adequately, or to decide whether to grant a certificate under section 60 of the Act in relation to the work required by any such order.

(3) Any such second or subsequent inspection may be carried out by the full Committee, or by one member alone, or by any person authorised by the Committee to carry out such an inspection.

(4) The Committee shall give such notice in writing as they deem sufficient of an inspection to the party or parties and shall allow each party and his or her representative to attend any such inspection.

## **Hearings**

**19.**—(1) A Committee shall give not less than 14 working days notice in writing to the tenant and the landlord of the date, time and place appointed for the hearing.

(2) A hearing shall be in public unless the Committee on an application by the parties or on its own cause otherwise decide to ensure a fair hearing, but nothing in these Regulations shall prevent a member of the Council on Tribunals or of its Scottish Committee in that capacity from attending any hearing.

(3) At a hearing—

- (a) a party or a party's representative may conduct his or her case;
- (b) the parties shall be heard in such order and, subject to the provisions of these Regulations, the procedure shall be such as the Committee shall determine;
- (c) a party may call witnesses, give evidence on his or her own behalf and cross-examine any witnesses called by any other party.

(4) The Committee at their discretion may on their own motion, or at the request of the parties or one of them, at any time and from time to time postpone or adjourn a hearing, subject to the provisions of regulation 21.

(5) The Committee shall give to the parties such notice of any postponed or adjourned hearing as they deem to be reasonable in the circumstances.

### **Exclusion of persons disrupting proceedings**

**20.**—(1) Without prejudice to any other powers it may have, the Committee may exclude from any hearing, or part of it, any person (including a party or a representative of a party) whose conduct has disrupted the hearing or whose conduct has otherwise interfered with the administration of justice.

(2) In deciding whether to exercise the power conferred by paragraph (1) the Committee must, apart from other considerations, have regard to—

- (a) the interests of the parties; and
- (b) in the case of the exclusion of a party or a representative of a party, whether the party will be adequately represented.

(3) If the Committee decides to exclude a party it must allow the representative of that party sufficient opportunity to consult the party.

### **Adjournment**

**21.**—(1) Where a party applies for an adjournment of a hearing of an application, he or she must—

- (a) if practicable, notify all other parties of the application for adjournment;
- (b) show good reason why an adjournment is necessary; and
- (c) produce evidence of any fact or matter relied upon in support of the application for adjournment.

(2) The Committee must not adjourn a hearing of an application at the request of any party unless satisfied that the application cannot otherwise be justly determined.

(3) The Committee must not, in particular, adjourn a hearing on the application of a party in order to allow the party more time to produce evidence, unless satisfied that—

- (a) the evidence relates to a matter in dispute;
- (b) it would be unjust to determine the case without permitting the party a further opportunity to produce the evidence; and
- (c) where the party has failed to comply with directions for the production of the evidence, he or she has provided a satisfactory explanation for that failure.

### **Amendment**

**22.**—(1) Either party may at any time up to 5 working days prior to the date fixed for the hearing, amend his or her written representations in relation to the issue of disrepair raised in the application.

(2) Such amendment shall be made in writing.

(3) On receipt of any such written amendment, the Committee shall forthwith intimate any such amendment in writing to the other party.

(4) Within 5 working days of any date fixed for a hearing, parties may amend their written representations only with the consent of the Committee and on such conditions as the Committee thinks fit.

(5) Where amendment is allowed by the Committee in the course of a hearing, the terms of the amendment can be made orally in the presence of the other party and noted by the Committee.

(6) The Committee may, at its discretion, allow evidence to be heard on any matter the Committee considers to be relevant whether or not this matter has been specified in the written representations.

#### **Amendment raising new issues of disrepair**

**23.**—(1) Where the effect of any proposed amendment of the application by the tenant would be to introduce a new issue of disrepair, such amendment may only be made with the consent of the Committee and, subject to the provisions of these Regulations, on such conditions as the Committee thinks fit.

(2) No such amendment may be made until the tenant has notified the landlord that further work requires to be done for the purposes of complying with the landlord's duty.

(3) Where an application is amended to include a new issue of disrepair, the landlord will be entitled to make written representations in response to the amendment, or request the opportunity to make oral representations, by a specified date not less than 14 days from the date on which intimation of the amendment is served.

(4) The tenant may also make further written representations or request the opportunity to make oral representations, by the specified date.

(5) The date by which such representations must be made may, at the request of either party, be changed to such later day as the Committee thinks fit.

(6) The Committee must notify both parties of any change under paragraph (5).

(7) Where an application is amended to include a new issue of disrepair, on the application of the landlord, the Committee will allow such further time as it considers reasonable for the necessary work to be completed.

(8) The period of time allowed under paragraph (7) will not, in any case, be less than 21 days.

#### **Hearing case in the absence of a party**

**24.** If a party does not appear at a hearing, the Committee, on being satisfied that the requirements of regulation 19 regarding the giving of notice of a hearing have been duly complied with, may proceed to deal with the reference upon the representations of any party present and all the material before it.

#### **Prohibition on electronic recording of proceedings by parties**

**25.** The Committee may prohibit photography, or any audio or visual recording of the proceedings, except in so far as is required for the purpose of making reasonable adjustments to accommodate the disability of a party or a party's representative.

#### **Giving of decision**

**26.**—(1) The decision of the Committee upon a tenant's application shall be recorded in a document signed by the chair (or, in the event of absence or incapacity, by another member of the Committee).

(2) A statement of reasons will be prepared by the chair with the assistance of the other members of the Committee and will contain reference to the decision being a majority (if that is the case) and in the event of a majority decision being reached will provide a brief note of the opinion of the minority.

(3) The decision of the Committee and statement of reasons shall be made publicly available.

## **Expenses**

27. Any person entitled to seek payment of allowances and expenses in terms of paragraph 5 of schedule 2 to the Act should do so in writing and, where available, may do so on a form obtained from the Panel offices .

## **Death or disability of a party**

28.—(1) Where a party dies or becomes subject to a legal incapacity while an application is pending, any person claiming to represent that party or his or her estate may apply to be sisted as a party to the cause.

(2) The Committee may continue to consider the application despite the death or legal incapacity of either the landlord or the tenant, and may allow the representative of or successor to either party to be sisted in place of the deceased or incapax.

St Andrew's House,  
Edinburgh  
6th March 2007

*DES McNULTY*  
A member of the Scottish Executive

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make further provision about the making or determination of applications by tenants to the private rented housing panel under section 22(1) of the Housing (Scotland) Act 2006.

Part 1 deals with preliminary matters on citation, commencement and interpretation.

Part 2, comprising regulations 3 to 5, sets out procedure for applications by a tenant.

Part 3, comprising regulations 6 to 28, provides for subsequent procedure. Regulation 6 deals with acknowledgement of receipt of the application. Regulation 7 provides for potential resolution of the dispute by the parties.

Regulations 8 to 11 deal with the conduct of applications and additional or conjoined applications. Regulations 12 to 26 provide for the procedure of a committee of the panel.

A procedure for the payment of expenses is set out in regulation 27.

Regulation 28 provides for a situation where a party to the action dies or becomes subject to a legal incapacity.

