

SCHEDULE 1

The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016

PART 3

Procedure in respect of private rented applications

Procedure in respect of Repairing Standard Applications

Applications under section 22(1) or (1A) of the Act

42.—(1) An application under section 22(1) or (1A) of the Act must be by written notice and may be made on a form obtained from the First-tier Tribunal.

(2) Where a tenant makes an application under section 22(1) of the Act—

(a) in addition to the tenant's reasons as required by section 22(2) of the Act (reasons for considering that the landlord has failed to comply with the landlord's duty), the application must state—

- (i) the name and address of the tenant;
- (ii) that the application is made under section 22(1) of the Act;
- (iii) the name, address, and profession of any representative of the tenant;
- (iv) the name of the landlord;
- (v) the address of the landlord or, if known, the name, address and profession of any representative of the landlord;
- (vi) the landlord's registration number, if known;
- (vii) the nature of the work requiring to be done;
- (viii) that the landlord has been notified of the work; and

(b) the application must be signed by the tenant or by a representative of the tenant.

(3) Where a third party applicant makes an application under section 22(1A)—

(a) in addition to the third party applicant's reasons as required by section 22(2) of the Act, the application must state—

- (i) the name and address of the third party applicant;
- (ii) that the application is made under section 22(1A) of the Act;
- (iii) the name and address of the tenant;
- (iv) if known, the name, address and profession of any representative of the tenant;
- (v) if known, whether or not the tenant wants to be a party to the proceedings;
- (vi) the name of the landlord;
- (vii) the address of the landlord or, if known, the name, address and profession of any representative of the landlord;
- (viii) the landlord's registration number, if known;
- (ix) the nature of the work requiring to be done;
- (x) that the landlord has been notified of the work; and

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- (b) the application must be signed by the third party applicant or by a representative of the third party applicant.
- (4) Where a property fails to meet the repairing standard in more than one respect, the applicant may raise multiple issues relating to the repairing standard in one application.
- (5) The application must be accompanied by—
 - (a) a copy of the lease or tenancy agreement, or if these are not available as much information about the tenancy as the applicant can give; and
 - (b) a copy of the notification referred to in paragraph (2)(a)(viii) or (3)(a)(x) and any subsequent correspondence relating to that notification.

Mediation

43. In cases identified by the Chamber President as suitable for mediation, the First-tier Tribunal must—

- (a) bring to the attention of the parties the availability of mediation as an alternative procedure for the resolution of the dispute;
- (b) provide information explaining what mediation involves; and
- (c) if the parties consent to mediation, facilitate that mediation.

Need for additional work

44. Where further relevant issues come to light in the course of investigation by the First-tier Tribunal, the tenant or third party applicant may make a further application in respect of those issues, but may not do so until that person has notified the landlord that further work requires to be done for the purposes of compliance with the landlord's duty.

Procedure for further applications

45.—(1) Any application under rule 44 must provide the information set out in rule 42(2) or, as the case may be, rule 42(3), and must follow the same procedure as the original application, except that any time scales applicable may be shortened with the consent of the parties.

(2) If the members of the First-tier Tribunal dealing with the original application are satisfied that it is expedient that the further application be made by way of amendment to the original application, they may allow such an amendment.

(3) The First-tier Tribunal must give suitable directions to the parties to ensure that the amended application is properly and fairly considered.

Inspections

46.—(1) An inspection of the property may be carried out before or during the hearing or after an adjournment of the hearing, or at such stage in relation to consideration of the written representations as the First-tier Tribunal shall determine.

(2) The First-tier Tribunal may make or commission such further inspections as it considers appropriate to enable it 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) An inspection may be carried out by the First-tier Tribunal, a member of the First-tier Tribunal or any person authorised to do so by the First-tier Tribunal or the Chamber President.

(4) The First-tier Tribunal must give sufficient written notice of an inspection to the party or parties.

(5) Each party and any representative of a party are entitled to attend the inspection.

Hearings

47.—(1) The First-tier Tribunal must give each party reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing.

(2) The notice period for a hearing must be no less than 10 working days from the date of receipt of the notice, unless the parties consent to a shorter period or there are urgent or exceptional circumstances.

(3) A hearing must be in public unless the First-tier Tribunal decides that exclusion of the public is appropriate.

(4) At a hearing—

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

(5) The First-tier Tribunal may postpone or adjourn a hearing, subject to rule 48.

Adjournment

48.—(1) Where a party applies for an adjournment of a hearing, that party 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 on in support of the application for adjournment.

(2) The First-tier Tribunal may only adjourn a hearing at the request of a party if satisfied that the application cannot otherwise be justly determined.

(3) If the reason for such an adjournment is to allow the party more time to produce evidence, the First-tier Tribunal may only adjourn the hearing if satisfied that—

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

Amendment

49.—(1) Subject to rule 50 and on such conditions as the First-tier Tribunal thinks fit, a party may amend that party’s written representations—

- (a) any time up to 5 working days prior to the date fixed for a hearing;
- (b) within 5 working days prior to the date fixed for the hearing or during the hearing, with the consent of the First-tier Tribunal.

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(2) Such amendment must be in writing unless it is made during the hearing, in which case the terms of the amendment may be stated orally in the presence of the other party or parties and noted by the First-tier Tribunal.

(3) On receipt of a written amendment, the First-tier Tribunal must intimate the amendment to the other party or parties in writing.

Amendment to the party's written representations raising new issues of disrepair

50.—(1) Where the effect of any proposed amendment to written representations by the applicant would be to introduce a new issue of disrepair, such amendment may only be made with the consent of the First-tier Tribunal and on such conditions as the First-tier Tribunal thinks fit.

(2) Such an amendment may only be made if the applicant 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 may 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 applicant 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 a party, be changed to such later date as the First-tier Tribunal thinks fit.

(6) The First-tier Tribunal must notify all parties of any change under paragraph (5).

(7) Where an application is amended to include a new issue of disrepair and the landlord requests further time to complete the work necessary to effect the repair, the First-tier Tribunal must allow such further time as it considers reasonable for that work to be completed.

(8) The period of time allowed under paragraph (7) must not be less than 14 days unless the First-tier Tribunal considers that the repair is urgent.

Hearing case in the absence of a party

51. If a party or a party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 47 regarding the giving of notice of a hearing have been duly complied with, may proceed to deal with the application upon the representations of any party present and all the material before it.

Voting for and giving of decision

52.—(1) The decision of the First-tier Tribunal on an application must be made by majority but, in the event of a tie, the chairing member has a casting vote.

(2) The decision must be recorded in a document signed by the chairing member.

(3) A statement of reasons must be prepared by the chairing member with the assistance of the other members of the First-tier Tribunal.

(4) Where the decision of the First-tier Tribunal is not unanimous, the chairing member must give a brief note of the opinion of the minority.

(5) In the absence or incapacity of the chairing member, the chairing member's functions under this rule may be carried out by another member of the First-tier Tribunal.

(6) The decision of the First-tier Tribunal, statement of reasons and note under paragraph (4) must be published.

Death, insolvency or incapacity of a party

53.—(1) Where a party dies, becomes insolvent, or becomes subject to a legal incapacity, while an application is under consideration, a person claiming to represent that party or that party's estate may apply to be a party to the cause.

(2) For the purposes of paragraph (1) a person is insolvent if—

- (a) the person's estate is sequestered;
- (b) the person has granted a trust deed for creditors; or
- (c) the person is the subject of another kind of arrangement analogous to those described in sub-paragraphs (a) and (b), anywhere in the world.

(3) The First-tier Tribunal may continue to consider and determine the application despite the death, insolvency or legal incapacity of either the landlord or the tenant.