

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 Section 24

Chamber Ref: FTS/HPC/RT/23/3752

Property: 80 Lime Street, Grangemouth, FK3 8LX ('The House')

Title reference: STG41980

The Parties: -

Morag Nielson, 20 Dumyat Rise, Larbert, Falkirk, FK5 4FL ("the landlord")

Suzanne Armitage, 80 Lime Street, Grangemouth, FK3 8LX ("the tenant")

Falkirk Council, Private Sector Team, The Forum, Suite 2, Callendar Business Park, Falkirk FK1 1XR ("the third party")

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (the "Act") in relation to the house concerned, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

Sara Hesp, Ordinary Member (surveyor)

Background

1. By application dated 24th October 2023, the third party applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Housing (Scotland) Act 2006.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:
 - *the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.*
3. The application contained correspondence between the third party and the landlord dated 20th September 2023 which specified that the said failure was established as the following work needed to be carried out:
 - *provide a copy of the current electrical installation condition report (EICR), from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no category C1 or C2 items of disrepair. The report must include specific reference to the provision for smoke and heat detection in accordance with existing Scottish Government statutory guidelines*
 - *provide a copy of the current Portable Appliance Test*
 - *provide a current Gas Safety Certificate*
 - *install a carbon monoxide detector*
 - *install interlinked smoke and heat detectors.*
4. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 15th December 2023.
5. Prior to the hearing the landlord's agent lodged an electrical installation condition report ("EICR") dated 23rd October 2023 showing the electrical installations to be in an unsatisfactory condition at that date. A gas safety

record dated 16th October 2023 was also produced stating that the gas installations failed to meet the required standard at that date.

Hearing and Inspection

6. The Tribunal inspected the house on the morning of 22nd January 2024. The landlord was in attendance at the inspection. The third party had previously indicated they would not attend the inspection.
7. Photographs were taken by the Tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
8. A hearing took place by teleconference at 3.45pm on 22nd January 2023. Ms Mhairi Ferrie represented the third party. Neither the landlord nor the tenant was in attendance. The Tribunal was satisfied that both parties had been given proper notice of the hearing and proceeded in their absence.
9. At the inspection it was evident that the property was currently occupied and was in good decorative condition.
10. Shortly before the hearing the landlord emailed the following documents:
 - An EICR dated 11/01/2024 which showed the electrical installations to be in a satisfactory condition at that date.
 - Fire Detection and Fire Alarm Verification Certificate showing alarms to be in a good condition dated 23/10/2023
11. At the inspection and hearing the Tribunal considered each of the issues specified in the application in turn: -
EICR: The Tribunal noted during the inspection the landlord had stated that remedial works had been carried out to the electrical installations. The Tribunal examined the EICR which had been produced before the hearing and were satisfied with its terms.
12. Portable Appliance Test "PAT": The Tribunal noted that no PAT had been carried out as part of the EICR and accordingly this item was outstanding.
13. Gas Safety Certificate: The Tribunal noted that no certificate had been produced and the gas safety record produced and dated 16th October 2023 showed that the gas installations were not in a satisfactory condition.
14. Carbon monoxide detector: The Tribunal noted during the inspection that a functioning detector had been installed in the house.

15. Smoke and heat detectors: The Tribunal noted during the inspection that interlinked smoke and heat detectors which were functioning had been installed. The Tribunal also noted the contents of the Fire Detection and Fire Verification Certificate provided.

Summary of the issues

16. The issue to be determined is whether the house meets the repairing standard as laid down in section 14 of the Act and whether the landlord has complied with the duty imposed by sections 13(1)(c) and (d) of the Act.

Findings in fact: -

17. The tribunal find the following facts to be established: -

- a. The landlord has entered into a lease agreement with the tenant.
- b. The landlord has produced a satisfactory EICR for the house.
- c. The house has adequate provision for the detection of carbon monoxide.
- d. Interlinked smoke and heat detectors have been fitted in the house.
- e. No PAT has been provided to the Tribunal
- f. The landlord has failed to provide a satisfactory gas safety certificate in respect of the house.

Reasons for the Decision

18. The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.

19. The Tribunal was only able to consider those items which formed part of the intimated application.

20. In light of their findings in fact the Tribunal determined that the landlord had failed to demonstrate compliance with the repairing standard requirement in so far as it relates to the gas installations and portable appliances.

Decision

The tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

Right of Appeal

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.

M C K

Date: 30th January 2024