

Housing and Property Chamber First-tier Tribunal for Scotland



**First-tier Tribunal for Scotland (Housing and Property Chamber)
Determination by First-tier Tribunal for Scotland (Housing and Property Chamber)
Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property
Chamber) under Section 24(1) of the Housing (Scotland) Act 2006**

Reference Number: FTS/HPC/RT/19/1016

Re: Ground Floor Flatted Dwelling House situated at known as 80 Hazel Road, Banknock, Bonnybridge, FK4 1LQ, being the subjects registered in the Land Register of Scotland under Title Number STG23425("the property")

The Parties:-

Mr Steven Kirton-Vaughan, residing at 4 Bellwood Rise, High Wycombe, Buckinghamshire, HP11 1QH ("The Landlord")

Mrs Holly Kirton-Vaughan, residing at 4 Bellwood Rise, High Wycombe, Buckinghamshire, HP11 1QH acting as representative for the Landlord ("the Landlord's Representative")

And

Falkirk Council, Private Sector Team, having a place of business at Suite 1, The Forum, Callendar Business Park, Falkirk, FK1 1XR ("third Party Applicant")

Decision

The First-tier Tribunal ("The Tribunal"), having made such enquires as it saw 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 property concerned and, taking account of the evidence submitted by the Third Party Applicant and the Landlord in writing, determined that the Landlord has **not** failed to comply with the duty imposed by Section 14 (1)(b) of the Act

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The Committee

The Committee consisted of:-

Mr Andrew Cowan – Chairperson

Mr Andrew Murray – Surveyor (Ordinary Member)

Background

1. By an application dated 29 March 2019 (received by the Tribunal on 2 April 2019) the Third Party Applicant applied to the Tribunal for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The Third Party Applicants are (in terms of Section 22(1)(b) of the Act) a party who may apply to the Tribunal for a determination as to whether the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.
3. The Third Party Applicant has stated, within the application, details as to why they consider the Landlord has failed to meet the repairing standard. The Third Party Applicant has intimated to the Landlord a list of defects which they consider the Landlord requires repairing in order to bring the Property up to the Repairing Standard. A summary of the issues brought forward by the Third Party Applicant, which have been intimated to the Landlord are:-
 1. There are insufficient smoke/heat detectors.
 2. There is no carbon monoxide detector.
 3. There does not appear to be a current Electrical Installation Condition Report (EICR).
 4. There does not appear to be a current Energy Performance Certificate (EPC).
 5. There does not appear to be a legionella risk assessment report.
 6. In the bathroom – the electric shower does not provide hot water.
 7. In the bathroom – the casing of the electric shower is loose.
 8. In the bathroom – the control knob of the electric shower is loose.
 9. In the bathroom – the toilet pan sits at a slight angle.
 10. In the bathroom – the flooring maybe water damaged.

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11. In the bathroom – there appears to be brackets supporting the top part of the interior of the window.
 12. In the kitchen – the electricity supply to the cooker is via a 3 pin pug, into a socket and not via a 'spur'.
 13. In the kitchen – the floor at the back door is 'spongey' and may be water damaged.
 14. In the kitchen – the washing machine is excessively loud and causes the floor to shake, there seems to be a problem with the spin cycle.
 15. In the kitchen – the oven fan continued to run for up to 20 minutes after the cooker is switched off.
 16. In the rear bedroom – there are large cupboard doors off of their runner, need securing to conceal the boiler.
 17. In the rear bedroom – the pipe work (at floor level) to the boiler is not boxed in.
 18. Rear garden – fence and balustrades require replacing/repair.
 19. Rear garden – small wall outside door has loose bricks, decking broken.
 20. Exterior of the property both front and back is in a state of disrepair.
4. Following receipt of the application the Tribunal wrote to the current tenant of the property, Miss Michelle Bakais. The Tenant was advised that she would be regarded as an interested party in the application and that she could be treated as a participating party should she so wish. The tenant confirmed to the Tribunal that she vacated the property on 3 April 2019. Her tenancy was legally terminated. She ceased to be a tenant as at that date. As at that date, the tenant was no longer deemed to be party to the Tribunal proceedings and took no further part in these proceedings.
5. On 24 April 2019 a Notice of referral, Inspection and Hearing was served upon the Landlord and the Third Party Applicant. All parties were advised that the Tribunal intended to inspect the Property and the parties were further advised that the Tribunal intended to hold a hearing in relation to the application. Following the issue of the letters of 24 April 2019, the Landlord requested a period of time in which to carry out necessary repairs to the Property. No objection was made to this request by the Third Party Applicant. Inspection of the property

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was thereafter arranged for 26 August 2019. Parties were advised that the Tribunal would inspect the property on that date and a hearing in relation to the application would also be heard on that date.

The Inspection

6. The Tribunal proceeded with an Inspection of the Property on 26 August 2019. The inspection was attended by both members of the Tribunal and the Tribunal Clerk, Miss Rebecca Forbes. The Landlord was present at the Hearing as was the Landlord's representative. The Third Party Applicant did not attend the inspection. The Third Party Applicant had indicated to the Tribunal, in advance of the hearing, that they did not intend to attend the inspection or the hearing.
7. Photographs were taken during the inspection by the Tribunal. Copies of the photographs taken by the Tribunal are attached as a schedule to this report.
8. At the inspection the Tribunal noted the following points:-

In general, the Landlord's had carried out works within the property to ensure the property now complies with the Repairing Standard.

In particular (by reference to the numbered list of complaints raised by the Third Party Applicant) the Tribunal noted that:

1. The Landlord has now installed hard wired smoke and heat detectors.
2. The Landlord has provided a Carbon Monoxide Detector
3. The Landlord holds a current Electrical Installation Condition Report dated March 2019.
4. Whilst the Landlord was not able to exhibit a copy of the current Energy Performance Certificate, they confirmed they did hold such certificate. No such certificate is required to comply with the terms of the Repairing Standard.

5. The Landlord understood the Risk Assessment requirements in relation to Legionella. It was noted that the property did not have a water tank and the water supply came from the mains. The Tribunal was satisfied in this respect.
- 6-11. The Landlord has installed a new shower and toilet within the bathroom. He has also laid new flooring. The brackets that had previously been at the bathroom window had been removed. The Tribunal were accordingly satisfied that all matters in relation to the bathroom in the Property had been attended to, and there was no continuing failure to meet the Repairing Standard in respect of these matters.
- 12-15. The Tribunal noted that a new oven and hob had been installed within the kitchen. The flooring in the kitchen had also been renewed. Works had been carried out to upgrade the electrical supplies within the property. The Tribunal were satisfied that complaints numbered 12-15 as intimated to the Landlord by the Third Party Applicants had now been repaired and there was no continuing failure to meet the Repairing Standard in these respects.
- 16-17. In the rear bedroom of the property of the property, the Tribunal noted that the cupboard doors had been repaired and the pipe work at floor level for the boiler had been boxed in. The Tribunal were satisfied that there was no continuing failure to meet the Repairing Standards in relation to these matters.
- 18-19. Within the rear garden of the Property, the Tribunal noted that works had been carried to repair the fencing and balustrades within the garden area. The Tribunal noted that some minor work was still required to loose stonework but did not consider this to be a failure of the Repairing Standard.
20. The Tribunal noted that the exterior of the front and back of the Property was in need of repair. Whilst the property is in need of repair, it was noted the Landlord had started communication with the neighbouring owner who jointly owns the walls of the Property in common with the Landlord. The Landlord intends to carry out repairs in due course. There is, however, no continuing failure to meet the Repairing Standard in relation to these matters at this time.

9. It was evident to the Tribunal that recent works carried out by the Landlord of the Property ensured compliance with current regulations and, in particular, ensured that the Property now met the Repairing Standard in relation to the matters which had been complained of by the Third Party Applicant in the application.

The Hearing

10. A Hearing had been arranged for the 26 August 2019 in relation to the application. The Third Party Applicant had previously indicated that they would not be attending that Hearing. The Landlord did not attend the hearing.

Decision

11. The Tribunal were satisfied, on the basis of their observations that the Landlord had taken steps to address the issues which had been raised by the Third Party Applicant and, as at the date of the inspection, the Property met the Repairing Standard in relation to the issues complained of by the Third Party Applicant.
12. Having inspected the Property, the Committee determined that there was no evidence of any continuing failure by the Landlord to maintain the Property at the Repairing Standard. The Committee therefore determined that the Landlord had not failed to comply with the duties imposed in Section 14(1)(b) of the Act.
13. The decision of the Tribunal was unanimous.

Rights of Appeal

14. In terms of section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the Decision of the Tribunal may appear 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 from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

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15. 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.

A Cowan

Signed

Andrew Cowan, Chairperson

Date: 28 August 2019

M Luke

Witness

Megan Luke, Legal Executive, TC Young LLP

Date: 28 August 2019

Photograph Schedule – 80 Hazel Road Banknock Bonnybridge FK4 1LQ

Case reference: FTS/HPC/RT/19/1016

Date of Inspection: 26 August 2019



1 Rear elevation of 80 Hazel Road



2 The new shower unit in bathroom A Cowan



3 The new hard-wired heat detector in the kitchen



4 The new bathroom fittings

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5 The new hard-wired smoke detector in the living room



6 The new cooker and units in the kitchen

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