

Housing and Property Chamber
First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006 Section 24

Reference Number: FTS/HPC/RT/19/1022

RE: Property at 17 The Hedges, Falkirk, Camelon FK1 4DZ

(hereinafter referred to as “the Property”).

Title Number: STG67046 in the Land Register of Scotland

The Parties:-

**Falkirk Council, Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk
FK1 1XR**

(“the Third-party”)

And

Mohammed Javed, 19 Cobden Road, Leytonstone, London E11 3PH

(“the Landlord”)

NOTICE TO

Mohammed Javed, 19 Cobden Road, Leytonstone, London E11 3PH

(“the Landlord”)

Whereas in terms of their decision dated 19 June 2019, the First-tier Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) and, in particular that the Landlord has failed to ensure that the installations in the Property 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 a proper working order, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, that the Property has satisfactory provision for detecting fires and for giving warning of fire or suspected fire and that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The First-tier Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard under section 13(1) of the Act and that any damage caused by carrying out of any work required under this Order is made good.

In particular, the First-tier Tribunal requires the Landlord:-

- 1) To instruct an Electrical Installation Condition Report on the Property by an appropriately qualified electrician being a member of NICEIC, SELECT or NAPIT. To carry out all works identified as either category C1 or C2 in the said Electrical Installation Condition Report in order to ensure that the Property's electrical installations are in a reasonable state of repair and in proper working order. The Electrical Installation Condition Report and all invoices for work carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.**
- 2) To instruct and obtain a Gas Safety Certificate for the Property prepared by an appropriately qualified Gas Safe engineer in order to ensure that the Property's installations for the supply of gas are in a reasonable state of repair and in proper working order. A copy of the Gas Safety Certificate and all invoices for work carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.**
- 3) To instruct specialist heating contractors to inspect the installations for space heating within the Property, in particular in the kitchen, hallway and livingroom and identify any works required to remediate same. To carry out all works identified in the specialist report in order to ensure that such installations for space heating are in a reasonable state of repair and in proper working order. The specialist contractor's report and all invoices for work carried out to be sent to the office of the First-tier Tribunal: Housing and Property Chamber.**
- 4) To repair or replace the current battery powered Fire Detection system with one that meets current legislative requirements.**
- 5) To ensure that a Carbon monoxide detector is fitted to the Property that meets current legislative requirements.**
- 6) To repair or replace the broken door to the wall mounted unit nearest the window in the kitchen of the Property to ensure it is in a reasonable state of repair and in proper working order.**
- 7) To repair or replace the broken kitchen unit to the right-hand side of the cooker within the kitchen of the Property to ensure it is in a reasonable state of repair and in proper working order.**

The First-tier Tribunal order that works specified in this Order must be carried out and completed within the period of six weeks from the date of service of this Order.

A landlord, tenant or third-party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date of 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 Repairing Standard Enforcement Order (RSEO) commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (including any successor in title) also commits an offence if he or she or they enter into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to a house. This is in terms of Section 28(5) of the Act.

IN WITNESS HEREOF, these presents typewritten on this page and the preceding page are executed by Rory A. B. Cowan, Legal Member of the First-tier Tribunal: Housing and Property Chamber at Glasgow on 19 June 2019 before this witness:

Signed R A B Cowan

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Date: 19 June 2019

Rory A. B. Cowan
K Donnelly

.... Witness Date: 19 June 2019

KIRSTIE DONNELLY

..... Name of Witness

16 ROYAL EXCHANGE SQ

GLASGOW G1 3AG

..... Address of Witness

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 (1)

Chamber Ref: FTS/HPC/RT/19/1022

Property at 17 The Hedges, Falkirk, Camelon FK1 4DZ

("The Property")

The Parties:-

Falkirk Council, Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk FK1 1XR

("the Third-Party")

Mohammed Javed, 19 Cobden Road, Leytonstone, London E11 3PH

("the Landlord")

Decision

The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the written representations by the Third-Party, the inspection and representations at the hearing by the Third-Party, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:

Rory A.B. Cowan – Legal Member

Andrew Murray – Surveyor/Ordinary Member

Background

- 1) By application dated 29 March 2019 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) and Section 19B(4) of the Housing (Scotland) Act 2006 ("the Act").
- 2) The application by the Third-Party stated that they considered the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - a) The Property did not have a functioning smoke detection system that meets current legislative requirements;
 - b) The Property required but did not have a carbon monoxide detector;
 - c) The Property did not have an Electrical Installation Condition Report;
 - d) The Property did not have a Gas Safety Certificate;
 - e) The Property did not have an Energy Performance Certificate;
 - f) The radiators within the Property were leaking;
 - g) There was no door on the entrance to the kitchen;
 - h) Kitchen units were broken and there was a loose door to one of the cupboards;
 - i) The Living Room Door was off its hinges; and
 - j) The front door locks were insecure.
- 3) By letter dated 1 May 2019 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
- 4) The tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Third-Party.
- 5) Following service of the Notice of Referral, no written representations were received from the Landlord. Prior to service of the Notice of Referral, further information was received from the Third-Party on 1 May 2019.
- 6) The tribunal inspected the Property on the morning of 5 June 2019. The tenants, a Mr Mcgeachie (not a party to this Application) was present and provided access. The Landlord did not attend the inspection. Mr Craig Beatt a Private Sector Officer for the Third-Party was also present at the inspection.
- 7) Following the inspection of the Property, the tribunal held a hearing on 5 June 2019 at Stirling Enterprise Park, John Player Building, Stirling FK7 7RP. The Landlord did not attend the hearing. Mr Beatt attended on behalf of the Third-Party.

The Hearing

- 8) On behalf of the Third-Party it was submitted as follows:

Smoke Detection System

That the Property did not have a smoke detection system that met current requirements. There was a battery powered smoke alarm in the living room of the Property, but that had been installed by the Fire Service as a temporary measure following a fire at the Property. There was no alarm in the hallway nor was there a heat detector in the kitchen.

Carbon Monoxide Detector

The Property has gas fired boiler and central heating, but there was no carbon monoxide detector within the Property.

Electrical Installation Condition Report (EICR)

That despite requests to the Landlord, no current EICR had been sent to the Third-Party by the Landlord. No copy of an EICR had been found in the Property and Mr Beatt also stated that Mr Mcgeachie stated that he had not been provide with one.

Gas Safety Certificate

That despite requests to the Landlord, no current Gas Safety Certificate had been sent to the Third-Party by the Landlord. No copy of a Gas Safety Certificate had been found in the Property and Mr Beatt also stated that Mr Mcgeachie stated that he had not been provide with one.

Energy Performance Certificate (EPC)

That despite requests to the Landlord, no current EPC had been sent to the Third-Party by the Landlord. No copy of an EPC had been found in the Property and Mr Beatt also stated that Mr Mcgeachie stated that he had not been provide with one. Mr Beatt confirmed that he had not seen a copy of the original advert for the Property. He submitted that even if there had been an EPC which had lapsed, the Property should have an EPC.

Leaking Radiators

Mr Beatt confirmed that the radiators that appeared to be leaking were the ones in the Living Room, the hallway and the Kitchen. He also stated that he had not seen any leaking himself, only evidence of rust at the bottom of the radiators and water damage to the floor below the radiators in question.

Kitchen Door

At some point the door to the kitchen had been removed and replaced with shutters. Mr Beatt could not confirm when that had happened. He felt there should be a door for the purposes of fire safety.

Kitchen Units and Cupboard Door

Mr Beatt stated that to the right-hand side of the cooker there had been a unit with a small section of work top that had collapsed. He had viewed that on his initial visit to

the Property on or around August 2018. At the inspection on 5 June 2019, this had all been removed. He also referred to the wall mounted unit nearest the kitchen window and that it's door was loose.

Living Room Door

Mr Beatt stated that the door was off its hinges and still in the Property. It had been like that when he had first inspected the Property. He confirmed that he had been advised by Mr Mcgeachie that it had been like that at the start of the tenancy.

Front Door Locks

Mr Beatt stated that the door locks had been like that when he first visited the Property and that Mr Mcgeachie had advised him that the locks had become loose.

Summary of the issues

- 9) The issues to be determined are whether:
- a) The installations in the Property 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 a proper working order.
 - b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - c) That the Property has satisfactory provision for detecting fires and for giving warning of fire or suspected fire.
 - d) That the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Findings of fact

- 10) The tribunal finds the following facts to be established:-
- a) That there is tenancy for the purposes of section 14(1) of the Act.
 - b) That the tenancy commenced on or around 1 September 2017.
 - c) That the Property is a ground-floor self-contained two bedroomed flat within a two-storey traditional sandstone tenement constructed around 1900. Access to the flat is taken from a common entry close shared with other properties
 - d) That there is within the Property only one battery powered smoke detector in the living room.
 - e) That there is no heat detector in the kitchen.
 - f) That the Property does not have satisfactory provision for detecting fires and for giving warning of fire or suspected fire.

- g) That the Property has a gas fired boiler and gas central heating.
- h) That there is no carbon monoxide detector within the Property.
- i) That the Property does not have satisfactory provision for detecting carbon monoxide in quantities hazardous to health.
- j) That no Electrical Installation Condition Report has been provided by the Landlord for the Property.
- k) That no Gas safety certificate has been provided by the Landlord for the Property.
- l) That no Energy Performance Certificate has been provided by the Landlord for the Property.
- m) That the radiators within the living room, the hallway and the kitchen show evidence of leaking with rust at the bottom and water damage to the flooring beneath.
- n) That the kitchen door had been removed at some point in the past and replaced with shutters.
- o) That the kitchen unit to the right-hand side of the cooker within the Property had been damaged and subsequently removed by the Landlord.
- p) That the door to the wall mounted cupboard within the Property's kitchen was loose.
- q) That the door to the Property's living room was off its hinges.
- r) That the front door lock was loose rendering the Property insecure.

Reasons for the decision

- 11) The tribunal was not satisfied that the installations in the Property for the supply of gas, electricity or space heating were in a reasonable state of repair and in a proper working order for the following reason:
 - a) There was no EICR evident for the Property.
 - b) There was no Gas Safety Certificate evident for the Property.
 - c) The radiators within the living room, hallway and kitchen showed signs of water damage as well as to the flooring below.
- 12) The tribunal was not satisfied that the Property had satisfactory provision for detecting fires and for giving warning of fire or suspected fire for the following reasons:

- a) There was only a temporary battery powered smoke alarm within the living room.
 - b) There was no smoke alarm within the hallway and no heat alarm within the kitchen.
 - c) All such alarms required to be either hardwired or long-life lithium tamper proof alarms. They also require to be interlinked.
- 13) The Tribunal was not satisfied that the Property has satisfactory provision for the detection of carbon monoxide in quantities hazardous to health for the following reason:
- a) Despite having a gas fired boiler within the kitchen, the Property did not have a carbon monoxide detector.
- 14) The Tribunal was not satisfied that the fixtures and fittings supplied by the Landlord were in a reasonable state of repair and in proper working order for the following reasons:
- a) That the kitchen unit to the right-hand side of the cooker had been damaged and had collapsed.
 - b) That the door to the wall mounted kitchen unit nearest the kitchen's window was loose and did not operate properly.
 - c) The door to the living room was off its hinges.
 - d) The front door lock was loose and rendered the Property insecure.
- 15) In relation to the Energy Performance Certificate, the Tribunal could not be sure the Landlord was in breach of any duty under the Housing (Scotland) Act 2006. Whilst a landlord has a duty to have an EPC at the point of letting a property, there is no ongoing obligation to renew such a certificate during an ongoing tenancy. As such, as Mr Mcgeachie's tenancy is ongoing, the tribunal felt that no order could be made in this regard.
- 16) In relation to the lack of a kitchen door, whilst it is accepted that under current building regulations any kitchen requires to have a door, when the Property was constructed that was not the case. It was also noted that the shutters to the kitchen had been installed some time previously and before Mr Mcgeachie's tenancy. As such, the tribunal felt that no order could be made in that regard.

Decision

- 17) The tribunal accordingly determined that the Landlord has failed to comply with his duties imposed by Section 14 (1)(b) of the Act.
- 18) The tribunal therefore decided to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
- 19) The decision of the tribunal was unanimous.

- 20) The Surveyor/Ordinary Member of the tribunal took several photographs which form the schedule attached to this decision.

Right of Appeal

- 21) In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.
- 22) 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.

R A B Cowan

Signed

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Date

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19 June 2019.....

Chairperson

Photographic Schedule – 17 The Hedges, Falkirk FK1 4DZ

To Accompany Case reference: FTS/HPC/RT/19/1022

Date of Inspection: 5 June 2019

Those present ;

Tribunal Attendees – Mr R Cowan (Legal Member) Mr A Murray (Ordinary Member)

Tenant – Mr J McGeachie

Third Party – Mr C Beatt (Falkirk Council)



1 The front elevation



2 The battery operated smoke detector in the living room



3 The gas boiler in the kitchen (no CO detector)



4 An example of a hot water radiator (evidence of flooring damage through leaks)



5 No door entering the kitchen



6 The defective wall mounted unit in the kitchen



8 The living room door situated in the entrance hall



9 The damaged front entrance door lock



10 The exposed electrical wiring at the missing light switch in the living room