

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)**

**Chamber Reference: FTS/HPC/RT/23/1309**

**7 Balfour Crescent, Larbert FK5 4BB (“the property”)**

**Diamond Administration Ltd, 2 Carronvale Road, Larbert, FK5 3LZ (“The Landlord”)**

**Falkirk Council - Private Sector Team, Suite 2, The Forum, Callendar Business Park, Falkirk, FK1 5XR (“the Third-Party Applicant”)**

### **Tribunal Members**

**Josephine Bonnar (Legal Member)**

**Sara Hesp (Ordinary Member)**

### **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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, determined that the Landlord has not complied with the duty imposed by Section 14(1)(b) of the Act.**

### **Background**

- 1. The Third Party applied to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The Third Party stated that the Landlord has failed to meet the repairing standard in relation to the property. In particular, the Landlord has failed to provide an electrical installation condition report and a gas safety certificate for the property and evidence that the property has the correct smoke and heat detectors. The tenant did not wish to be a party to the application.**
- 2. On 20 June 2023, the parties were notified that the Tribunal would inspect the property on 9 August 2023 at 10am and that a hearing would take place on 9 August 2023 at 11.45 am. The Third Party was notified that they should arrange for access to the property and a letter was issued to the Tenant advising them about the inspection. At the request**

of the tenant, the inspection and hearing were re-arranged to 27 September 2023 at 11.30 am and 2pm.

3. On 4 July 2023, the Tribunal issued a direction to the Landlord. The Landlord was directed to provide:- (i) A current Electrical Installation Condition Report (EICR) for the property from a SELECT, NICEIC or NAPIT accredited electrician containing no category C1 or C2 items of disrepair, which also confirms that smoke and heat detectors have been installed at the property in accordance with Scottish Government guidance, and (ii) If there is a gas supply to the property, a copy of the current gas safety certificate from a Gas Safe registered engineer which refers to the provision of carbon monoxide detection and details the condition of the boiler. The Landlord was notified that if he failed to provide the said documents and evidence, the Tribunal might draw an inference from that failure that the property does not comply with the repairing standard. The documents were to be provided by 21 July 2023. The Landlord did not respond to the direction. Prior to the inspection and hearing, the representative from the Third Party notified the Tribunal that she would be unable to attend the inspection.
4. The Tribunal inspected the property on 27 September at 11.30 am. Access was provided by the tenant, Joan McLaren. Neither the Third Party nor the Landlord was represented. The hearing took place by telephone conference call at 2pm on the same date. The only participant was Mrs McFarlane on behalf of the Third Party.

### **The Inspection**

5. The Tribunal noted that there is a gas supply to the property with a gas boiler located in the kitchen. A carbon monoxide alarm was sitting on top of the boiler. It was tested and appeared to be in working order. The Tribunal also noted a total of six smoke alarms and one heat alarm in the property – three smoke alarms in the living room, two in the hall, one in the kitchen and one heat detector in the kitchen. The older, hardwired smoke and heat detectors were tested and appeared to be interlinked and in working order. The newer alarms were also tested. These appeared to be in working order but not interlinked. The Tenant advised the Tribunal that an electrician had been at the property several months ago. He carried out repairs and may have also inspected the electrical installation, but she does not have a copy of his report. The Tenant also stated that the boiler has been checked by a gas engineer in the past, but she was unable to recall the date of the last visit. A schedule of photographs taken at the inspection is attached to this decision.

## **The Hearing**

6. Mrs McFarlane told the Tribunal that she has not been inside the property. Her team were contacted by the Council's Housing Needs Team about another rented property owned by the same landlord. She inspected that property and noted the absence of smoke and heat detectors. She issued a letter to the Landlord in connection with that property and four others owned by the Landlord, including the property which is the subject of the application. The Landlord was instructed to provide an EICR, Gas Safety Certificate and evidence that the correct smoke and heat detectors had been installed. A director of the Landlord telephoned on 5 May 2023, in response to the letter. He said that they would provide the documents and evidence which had been requested. No further response was received. Mrs McFarlane invited the Tribunal to determine that the property does not meet the repairing standard and to issue an RSEO requiring the landlord to provide an EICR from an accredited electrician and a gas safety certificate.

## **Findings in Fact**

7. The Landlord has installed smoke and heat detectors at the property which comply with current regulations and guidance.
8. The Landlord has not provided a gas safety certificate for the property.
9. The Landlord has not provided an EICR for the property.

## **Reasons for decision**

10. The Tribunal considered the issues of disrepair set out in the application and the information and evidence provided by the Third Party.
11. Section 14(1) of the 2006 Act states "The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy." In terms of Section 14(3) of the 2006 Act "The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it". Section 22(3) of the 2006 Act states that an application can only be made if the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with the repairing standard. The Tribunal is satisfied that the Third Party notified the Landlord of the repairing standard issues at the property prior to lodging the application.
12. At the inspection the Tribunal noted the presence of interlinked smoke and heat detectors which comply with current regulations and guidance and a carbon monoxide alarm. The Tribunal is satisfied that the Landlord

has not failed to comply with the repairing standard in relation to the satisfactory provision of smoke, heat, and carbon monoxide detection.

13. The Tribunal issued a direction to the Landlord on 4 July 2023 which stipulated that the Landlord was required to provide a gas safety certificate for the property from a Gas Safe registered engineer and an EICR issued by an electrician accredited by one of the three recognised professional bodies. In the direction, the Landlord was put on notice that failure to provide the evidence and documents may result in the Tribunal drawing an inference that the property does not meet the repairing standard. The Tribunal also notes that the Third Party also wrote to the Landlord for these documents, before lodging the application, without success. As the Landlord has failed to provide the stipulated documents, the Tribunal is satisfied that the property does not comply with the repairing standard.
14. The Tribunal concludes that the Landlord has failed to comply with the repairing standard as set out in Section 13(c) of the Act.

### **Decision**

15. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
16. The decision of the Tribunal is unanimous.

### **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.**

In terms of Section 63 of the Act, 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.