

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### 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 26 (1) of the Housing (Scotland) Act 2006

Case Reference FTS/HPC/RT/23/1323

Property at 56 Mungalhead Road, Falkirk, FK2 7JG, being subjects registered in the Land Register of Scotland under Title Number STG13493 ("the Property").

The Parties: -

Falkirk Council, per their employee, Mrs Kate McFarlane, Private Sector Officer, Callander Business Park, Falkirk, FK1 5XR, as third party applicant in terms of section 22(1A) of the Act ("the Third Party Applicant") and

Diamond Administration Limited, having a place of business at 2 Carronvale Road, Larbert, Stirlingshire, FK53LZ ("The Landlord")

Tribunal Members:-

Andrew Cowan (Legal Member)

Greig Adams (Ordinary Member)

### Background

1. By application dated 24<sup>th</sup> April 2023, the Third Party Applicant (herein after referred to as "the Council") made an application to the First-tier Tribunal (Housing and Property Chamber) indicating that they believed that the landlord was failing to comply with the duties imposed upon him by section 14(1)(d) of the Housing (Scotland) Act 2006 ("the 2006 Act"). Following upon this application a hearing took place on 4<sup>th</sup> August 2023 and as a result of that hearing the Tribunal issued a Decision dated 4<sup>th</sup> August 2023 indicating that the landlord had failed to comply with the various duties imposed upon him by the Act and the Tribunal issued a Repairing Standard Enforcement Order (RSEO) in respect of the property.
2. Following the issue of the decision of the Tribunal on 4<sup>th</sup> August 2023 the Tribunal were advised by the Council that the Tenant, who had been residing in the Property, had vacated the Property at the end of April 2023. That tenant was thereafter deemed to no longer be a party to the application.

3. In terms of the RSEO the landlord was ordained to produce certain documents within a period of time specified in the RSEO. Following upon the expiry of that period of time no such documentation had been produced by the landlord to the tribunal.
4. Arrangements were made for the Tribunal to re-inspect the property and the re-inspection was carried out on 11<sup>th</sup> December 2023
5. The Tribunal attended the property for the purposes of a reinspection on 11<sup>th</sup> December 2023. The Council were represented at the inspection by Ms Kate McFarlane, Private Sector Officer. The Landlords did not attend, and were not represented, at the reinspection.
6. The Tribunal were unable to take entry to the Property for the purposes of the reinspection. The Tribunal noted that the Property was now occupied by a new Tenant. That new Tenant confirmed to the Tribunal that she had been given a tenancy agreement for the Property. She was unaware of the Tribunal's intention to inspect the property and had not received any notification of the planned reinspection by the Landlord. It was not convenient for the Tenant to allow the Tribunal to reinspect the Property at the time of their visit.

### **Decision**

7. The Tribunal has determined that the Landlord has failed to comply with the terms of the RSEO dated 4<sup>th</sup> August 2023. The Decision of the Tribunal is unanimous.

### **Reasons for Decision**

8. The terms of the RSEO issued by the Tribunal required the Landlord to produce certain documentation in relation to the Property. That documentation was required by the Tribunal to allow the Tribunal to be satisfied that the installations within the Property for the supply of gas and electricity were appropriately tested and safe to use. The documentation was also required to ensure that appropriate fire safety equipment had been installed within the Property in accordance with current regulations.
9. The Landlord has failed to provide the documentation required in terms of the RSEO.
10. The Landlord has accordingly failed to comply with the terms of the RSEO and is accordingly in breach of the Order.

### **Observations**

11. In terms of Section 26 of the Act, where the Tribunal has decided that a landlord has failed to comply with a RSEO the Tribunal must further decide whether to make a rent relief order. in terms of Section 27 of the Act.
12. The Tribunal noted that a new tenancy had appeared to be granted in respect of the Property. That tenancy had apparently been granted by the Landlord after the date of the RSEO. The Tribunal do not, however, have details of any current tenancy at the Property, including the names of the parties to such a tenancy or the rent paid under that tenancy agreement. In these circumstances the Tribunal are not able to make a decision to grant a rent relief order.

### **Right of Appeal**

13. 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.

14. 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

Chairperson  
Andrew Cowan

Date 19<sup>th</sup> December 2023