

Housing and Property Chamber

First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Sections 26 and 27 of the Housing (Scotland) Act 2006, as amended

Chamber Ref: FTS/HPC/RT/23/1314

Title no: STG45980

2/1 Falkirk Road, Larbert FK5 3AF (“The Property”)

The Parties:-

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

Diamond Administration Ltd, 2 Carronvale Road, Larbert, Stirlingshire FK5 3LZ (“the landlord”)

Tribunal Members: Richard Mill (Legal Member) and Andrew McFarlane (Surveyor Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having made enquiries for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the property concerned determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act. The tribunal also makes a Rent Relief Order.

Background

Reference is made to the Repairing Standard Enforcement Order (“the RSEO”) dated 10 October 2023.

The tribunal required the Landlord:-

1. to instruct an Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, and to instruct any work to rectify any category C1 or C2 items of disrepair.
2. if there is a gas supply, to instruct a Gas Safety Certificate from a registered Gas Safe engineer which refers to the provision for

carbon monoxide detection and details the condition of the gas boiler.

3. to install interlinked smoke and heat detectors in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

The tribunal ordered that the works specified required to be carried out and completed within a period of 4 weeks and that relevant documentary evidence is provided to the tribunal.

Reasons for Decision

The landlord has failed to engage with the tribunal process.

The third party applicant's representative, Kate McFarlane, Private Sector Officer, visited the property on 11 December 2023. Whilst it appeared that the relevant works had been undertaken, the landlord has repeatedly failed to provide copies of the EICR and Gas Safety Certificate to Falkirk Council and the Tribunal. There is therefore no evidence that the installations for electricity and gas are safe.

In order to seek to advance matters in a proportionate way, the tribunal issued a letter to the landlord on 22 December 2023 requesting that relevant documentation was provided to the tribunal by 5 January 2023. The landlord failed to provide this.

A subsequent reminder was issued by the tribunal to the respondent on 15 January 2024. The landlord was advised that in the absence of the relevant documentation, and implementation of the RSEO, being supplied by 29 January 2024 that a Failure to Comply Decision would be issued, together with a Rent Relief Order up to at a rate of 90%. Regrettably, the landlord has again failed to provide the required documentation confirming the implementation of the RSEO.

Whilst the third party applicant's representative confirms that it appears that relevant works have been carried out, there was still no confirmation from a suitably qualified electrical and gas engineer that the property is, indeed, safe. As well as the lack of EICR and Gas Safety Certificate there is no certification related to the interlinked smoke and heat detectors within the property.

Section 29 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. Accordingly, the Tribunal determined that Police Scotland should be notified of the Landlord's failure to comply with the Order.

Rent Relief Order

The tribunal also decided to make a Rent Relief Order in terms of Section 27 of the Act. Having taken into account all the circumstances of which it is aware, the tribunal decided that a Rent Relief Order for 90% of the rent was just, equitable and proportionate. In reaching this position the Tribunal considered that the potential consequences of failing to have adequate provision for the detection of fire and carbon monoxide is death. This is a weighty factor. This is not something which is a mere inconvenience to the tenant. All occupiers of the building of which the property forms a part are at risk. The failure therefore is at the most serious end of the scale which justifies the maximum permitted reduction.

If the landlord now finally produces the required documentation then the making of the Rent Relief Order will have little effect. The Rent Relief Order cannot take effect for a period of 28 days after being made. If the documentation is produced then the tribunal will proceed to issue a Certificate of Completion of the RSEO and revoke the Rent Relief Order.

Right of Appeal

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.

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 Mill

Legal Member

5 February 2024