

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/23/4307

Title Number: STG52922

**Re: The Cross, Airth, Falkirk FKN 8JN
("the House")**

The Parties:

**Falkirk Council Private Sector Team, The Forum (Suite 2) Callendar
Business Park, Falkirk, FK1 1XR
(the "Third Party Applicant")**

Mr. Allan McGonigal, 13 East Drive, Larbert, FK5 3EL ("the Landlord")

Tribunal Members:

**Susan Christie (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 House, 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(1A) of the Housing (Scotland) Act 2006. The Third Party stated that the Landlord has failed to meet the repairing standard in relation to the House. In particular, the Landlord has failed to provide evidence that the House has the correct smoke and heat detectors, an electrical installation condition report (EICR) and a gas safety certificate (GSC) for the House.

The Third Party advised initially that the occupying tenant did wish to be a party to the application, however the tenant quit the House shortly thereafter and no longer had an interest.

2. A First Direction was issued to the Parties dated 7 December 2023. The Landlord was directed to provide: '(i) An up to date Electrical Installation Condition Report (EICR) for the House from a SELECT, NICEIC or NAPIT accredited electrician containing no category C1 or C2 items of disrepair. This should also address the state of repair and working order of any electrical appliances provided by the Landlord for use in the House ('PAT test Certificate'), and (ii) A current gas safety certificate for the House from a Gas Safe registered engineer addressing the working order, condition and safety of any gas installation and gas appliances in the House. This should also address whether there is a carbon monoxide alarm, which complies with current statutory guidance.'
3. On 22 January 2024, the Parties were notified that the Tribunal would inspect the House on 6 March 2024 at 10am and that a conference call Hearing would take place at 11.45 am.
4. In response to the First Direction, the Landlord replied by e mail on 13 February 2024 providing an EICR and stated that there was no gas in the House as it had been capped. He advised there were two smoke detectors installed and a heat detection system that was interlinked and that there were no white goods in the House.
5. The tribunal was unable to verify that the author of the EICR dated 9 February 2024 was a SELECT, NICEIC or NAPIT accredited electrician. Consequently, a Second Direction was issued to the Parties dated 20 February 2024 seeking the registration details of the author of the EICR *or alternatively* a complaint EICR from an accredited electrician on the same terms as required previously. Copies of invoices or receipts showing or tending to show evidence of interlinked smoke and heat detectors in the House were also required; including the specification of same to show that they comply with current regulations and guidance. However, the Direction was not received by the Landlord in advance of the Inspection.
6. The Tribunal inspected the House on 6 March 2024, slightly after 10am. Access was provided by the Landlord. The Third Party was unrepresented as the employee who was dealing with the application was unwell and unable to participate in either the Inspection or Hearing. He had intimated this to the tribunal in advance.
7. The Hearing took place by telephone conference call at 11.45 am on the same date. The only participant being the Landlord.

The Inspection

8. At the time of the Inspection the weather was dry and overcast.
9. The House is a first-floor flatted dwelling house that forms part of a larger building known as the Elphinstone Inn. Entry to the House is taken from a rear staircase accessed from the back car park.

10. The Inn itself had been a licensed public house that had ceased trading by the date of the Inspection. The Landlord facilitated access of the required areas for the tribunal, for the purposes of the Inspection.
11. At the time of the Inspection the House was empty and unoccupied.
12. No portable appliances were evident in the House.
13. There was a heat detector in the kitchen and smoke detectors in the hallway and living room. They were activated and are interlinked and working.
14. There were radiators fitted in the House which appeared to have been part of a fixed gas heating system.
15. Within one room of the House in a cupboard, there was a gas boiler which was said by the Landlord to be disconnected. The source of the gas supply to the House was said to be fed from the Elphinstone Inn below. The tribunal was given access to the property below and viewed a further gas boiler within the Elphinstone Inn. A pipe adjacent to it had been cut and capped, and the tribunal was advised this was the pipe that had originally serviced the House boiler.
16. There was no Carbon Monoxide detector in the House.
17. A Schedule of Photographs taken during the inspection is attached to this decision.

The Hearing- 6 March at 11.45am

18. The Landlord's correct postal address and e mail contact consent was noted.
19. The Landlord advised the tribunal that he intended to sell the Elphinstone Inn and the House as one. He explained that the Company that was the *in situ* tenant of the Inn had been dissolved and the public house business was being wound down. He had already had an expression of interest from a potential buyer.
20. The tribunal considered it appropriate to continue the Hearing to allow for the Third Party to be represented and to allow for the record of the findings of the Inspection to be issued to the Parties. The tribunal also advised the Landlord that he could seek advice on any legal matters arising and on the conveyancing aspects meantime.
21. The Schedule of Photographs was later issued to the Parties along with a Note on the Hearing and a Third Direction. The Note confirmed the next date of the Hearing as 17 April 2024 at 10am.
22. A Third Direction dated 20 February 2024 was issued to the Parties requiring documentation to be lodged with the tribunal by 5 April 2024. It required the Landlord to provide: '(i) Any documents evidencing the registration details of Calum Bisset of Calum Bisset Electrical Services with a government approved scheme for electricians such as SELECT, NICEIC or NAPIT accredited; with reference to Electrical Installation Condition Report for Elphinstone Cross Flat, Airth FK2 8JN, Certificate Number: CBES-000121-EICR;(ii) Alternatively, an up to date electrical inspection condition report ("EICR") for the house from a SELECT,

NICEIC OR NAPIT accredited electrician, which contains no category C1 or C2 items of disrepair;(iii) Copies of any other documentation that the Landlord wishes the tribunal to consider in relation to this application, for example in relation to sale or de-registration of the House or the Landlord in the Landlord Register’.

23. On 3 April 2024 solicitors acting on behalf of the Landlord issued to the tribunal a letter confirming that they are instructed by him in relation to the sale of the Elphinstone Inn and flatted dwellinghouse above. A date of entry had not yet been agreed but it was said that the conveyancing aspects were ongoing with the purchaser’s solicitors.

The Hearing- 17 April 2024 at 10am.

24. The Third Party was represented by Mr. Beatt. The tribunal noted that the Landlord had telephoned the tribunal office to say he would not attend due to a hospital appointment and stated the House was being sold. The tribunal noted that the landlord had not sought a postponement and, as proper intimation for the day and time and dial in details for the Hearing had been provided, proceeded in the Landlord’s absence.
25. The findings of the Inspection were discussed. The Schedule of Photographs are attached as a Schedule to this Decision.
26. It was noted that the House had satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
27. It was noted that there had been no further information or documentation given to the tribunal since the issue of the Third Direction, save the letter from the Landlord’s solicitor.
28. The tribunal adjourned for a short time to consider its position and reconvened. The tribunal having regard to the findings of the Inspection; the failures of the Landlord and unresolved health and safety issues for any potential tenant of the House; the House and Landlord remaining registered in the Landlord Register, proceeded to a determination.

Findings in Fact

29. The House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
30. There is a fixed radiator-based gas central heating system installed in the House.
31. The gas central heating system was not working at the time of Inspection by the tribunal.
32. The gas boiler in the House was not in operation at the time of Inspection by the tribunal.
33. There was no Carbon Monoxide detector in the House.
34. The Landlord has not provided a gas safety certificate (GSC) for the House from a Gas Safe engineer.
35. The safety or otherwise of any gas appliances and systems within the House, and whether they could be used safely by any tenant, cannot be

- confirmed by the tribunal in the absence of a gas safety check and certification.
36. A gas supply pipe within the Elphinstone Inn, said to be the supply pipe for the House, had been cut and capped. The tribunal was unable to ascertain whether this had been safely done or not; and did not know whether it had been carried out by a suitably qualified and registered gas safety engineer. The tribunal was unable to ascertain whether this was indeed the gas supply pipe for the House.
 37. The Landlord has provided an EICR for the House. The electrician who prepared the report is not registered with SELECT, NAPIT or NICEIC. No documentation has been provided to satisfy the tribunal that the EICR had been prepared by a skilled person suitably competent in such work.
 38. The House and Landlord are registered in the Landlord Register with the relevant local authority and the House is one to which the repairing standard applies.
 39. No evidence of completion of a sale by the landlord to a third-party buyer had been produced to the tribunal prior to the hearing on 17 April 2024, and detailing the third party's intentions with regards to the House, nor any information to show that the House is no longer to be used as a rental property.

Reasons for decision

40. The Tribunal considered the issues of disrepair set out in the application and the information and evidence provided by the Parties.
41. 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 repairs issues at the House prior to lodging the application.
42. The Tribunal observed wireless smoke and heat detectors at the House during the Inspection. When tested these were found to be in working order and interlinked.
43. The Tribunal noted that the Landlord had not provided a gas safety certificate for the property from a Gas Safe registered engineer. The findings of the visual Inspection of the House showed that the infrastructure was present for a fixed gas central heating system and there was a gas boiler. Whilst the tribunal had been told that the gas supply had been cut for the House, the safety of any gas appliances and their connections within the House cannot be confirmed. A gas supply pipe within the Elphinstone Inn, said to be the supply pipe for the House,

had been cut and capped. The tribunal was unable to ascertain whether this had been carried out safely or not; and did not know whether there had been carried out by a suitably qualified and registered gas safety engineer. In the absence of a gas safety report and certification by a Gas Safe registered engineer addressing the order, condition and safety of the gas installations and gas appliances in the House, the tribunal determined there to be a health and safety issue for any tenant and a failure in the Landlord's responsibility. References: The Gas Safety (Installations and Use) Regulations 1998 as amended; Housing (Scotland) Act 2006, section 13.

44. In addition, the tribunal observed that landlords generally need to have regard to new measures that are in place from 1 March 2024 for fixed heating systems, which necessitates fixed heating systems to be provided by landlords in let properties.
45. There was no Carbon Monoxide detector seen in the House. The Tolerable Standard requires a house to have a CO detector in all rooms where there is a fixed combustion appliance such as a gas boiler. References: The Housing (Scotland) Act 1987, section 86, as amended, Scottish Government Guidance-Carbon monoxide alarms in private rented properties; and sections 13 &14 of the Housing (Scotland) Act 2006.
46. An EICR has also been provided but, as the electrician is not registered with one of the three recognized professional bodies, the Tribunal is not satisfied that he is suitably qualified. The report is therefore not satisfactory. References: Private landlords are required by Sections 19A and 19B of the Housing (Scotland) Act 2006 to ensure that the installations in the house for the supply of electricity and electrical fixtures and fittings and appliances provided by the landlord under any tenancy are in a reasonable state of repair and in proper working order; Scottish Government Guidance on Repairing Standard: statutory guidance for private landlords.
47. The tribunal notes that the Landlord has instructed a solicitor in connection with the sale of the House and attached property. However, the tribunal has not been provided with any further evidence of actual sale to a third party. The tribunal noted in the paperwork submissions and from oral comments made, that there had been two tenants previously occupying the House when potentially the necessary safety checks might not have been done. The tribunal has not been made aware of any change in the landlord registration for the House, despite a Direction having been issued inviting the Landlord to supply any information he wished considered before a decision was made on the application. The tribunal did not have any new information to show that the House is no longer to be used as a rental property.
48. The Tribunal is therefore satisfied that the Landlord has failed to comply with the repairing standard in relation to gas safety aspects (with associated carbon monoxide detection) and the EICR requirements.
49. The Tribunal concludes that the Landlord has failed to comply with the repairing standard as set out in Section 13 (1)(c) of the Act.

Decision

50. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

51. 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.

S Christie

Susan Christie, Legal Member

17 April 2024

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



*Glasgow, 17 April 2024
This is the Schedule
of Photographs
referred to in the Decision
of even date.
S Christie*

The Cross, Airth, Falkirk FK2 8JN

FTS/HPC/RT/23/4307

Legal Member. **Schedule of photographs taken on 6 March 2024**



Photograph 1: Front elevation

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Photograph 2: Kitchen: heat detector



Photograph 3: Kitchen: general view: no portable appliances



Photograph 4: Living room: smoke detector



*Photograph 5: Living room: gas boiler – said to be disconnected;
no carbon monoxide detector*



Photograph 6: Hallway: smoke detector



Photograph 7: Gas boiler in Elphinstone Inn (adjacent): said to feed into boiler at subject showing pipe cut on right hand side