

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/RP/22/4443

Title no: ROX3731

1 Drygrange Mains Farm Cottage, Melrose TD6 9DJ (“The Property”)

The Parties:-

Mr Austin Law, previously residing at 1 Drygrange Mains Farm Cottage, Melrose TD6 9DJ (“the former Tenant”)

Ms Aileen Fisher, Taradale Properties, Millbank Road, Clovenfords, Galashiels TD1 3LZ (“the Landlord”)

Tribunal Members: Richard Mill (Legal Member) and Greig Adams (Ordinary 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, and taking account of all representations received, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. The Tribunal made a Repairing Standard Enforcement Order (RSEO) dated 1 November 2023 which 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. to install interlinked smoke and heat detectors in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.
2. The Tribunal's Decision of 1 November 2023 explaining the reasons for making the RSEO set out the background whereby the Landlord had failed to engage in the process and had failed to comply with two earlier Directions which had been issued throughout the Tribunal process. This was despite a warning being given in terms of the Scottish Tribunals (Offences in relation to Proceedings) Regulations 2016. Attempts at entry to the property had failed. A broad number of complaints had been made but the Tribunal decided to restrict their attention to issues of public health and safety. This was all against the background of the Tribunal being satisfied that there was no longer any tenant in the property.
3. The Tribunal is aware that the Landlord is currently seeking to sell the property and is marketing it online by auction. That, however, does not remove the Landlord's obligation to comply with the RSEO previously made.
4. On 21 February 2024 the Tribunal issued a Direction in the following terms:

"The landlord has produced an EICR dated 23 October 2023 but this cannot be accepted for the undernoted reasons. In addition to this not being capable of being accepted there has been no evidence produced in respect of adequate smoke and heat detection.

The difficulty the Tribunal has with the EICR provided is that it does not appear to have been prepared by a person holding the qualifications required by the legislation.

The individual providing the EICR requires to be a SELECT, NICEIC or NAPIT registered electrician. If they are not registered with any of those bodies they require to show that they are a competent person in terms of the legislation. That requires them to evidence that they are :

- Employed by a firm that is a member of an accredited registration scheme operated by a recognised body
- A self-employed member of an accredited registration scheme operated by a recognised body, or

- Able to complete the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property dated October 2015 and revised in November 2016 ("Guidance"). In the event that the evidence to be relied upon is that the person is able to complete the checklist at Annex A of the Guidance, such a checklist completed by the person must be provided.

Please provide evidence that the person who signed the EICR dated 23 October 2023 is registered with SELECT, NICEIC or NAPIT or alternatively provide evidence that they are a "competent person" in terms of the legislation.

Evidence of the required smoke and heat detectors is also of course required.

In order to avoid the Tribunal making a Failure to Comply Decision, which has further ramifications for the landlord, (because a declaration of failing to comply with a Repairing Standard Enforcement Order is the constitution of a criminal offence) then the Tribunal is prepared to allow a further 28 days for a compliant EICR and evidence of adequate smoke and heat detection. If such further evidence is not forthcoming then a failure to comply decision will be issued.

The Landlord is hereby given notice of the terms of the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016, which state that in any proceedings before the First-tier Tribunal it is an offence for any person to—

- a) make a false statement in an application in a case;**
- b) alter, conceal or destroy, or fail to produce, something that is required to be produced in accordance with Tribunal Rules; or**
- c) fail to attend or give evidence, when required to do so in accordance with Tribunal Rules.**

A person who commits an offence as described above is liable —

- a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both);**
- b) on conviction on indictment, to imprisonment for a term not**

exceeding 2 years or a fine not exceeding £5,000 (or both).”

Reasons for Decision

5. Despite being afforded a further opportunity to avoid a Failure to Comply Decision (and the serious consequences of this), by the production of additional documentation, to evidence that the electrical contractor is either accredited or with sufficient skills, the Landlord has failed to do this.
6. The Tribunal has set out with complete clarity the required evidence which is necessary, namely that the electrician is a Select, NICEIC or NAPIT registered electrician. Neither has it been shown that the electrician who completed the EICR is employed by a firm that is such a member (or a self-employed member) of an accredited registration scheme operated by a registered body, nor has the Tribunal been provided with a completed Annex A checklist (and supported documentation).
7. The only further evidence which the Landlord has provided is a card (business card sized and which refers to an apprenticeship) but this does not name the electrician and clearly does not provide the evidence required. Further the reference to smoke detection in the previously supplied EICR (which cannot be accepted anyway) does not evidence that the statutory requirements for smoke and heat detection are present in the property. The reference to this is plainly insufficient.
8. The Tribunal has made every effort to be as flexible as possible and to avoid additional time to the Landlord to provide the necessary evidence to comply with the RSEO. It is now necessary to make a formal Failure to Comply Decision. As soon as the required evidence is provided regarding the electrician's accreditation, or a fresh EICR, is produced from such an accredited electrician, then the RSEO will be revoked and a Completion Certificate issued. Until that time, the RSEO will remain registered in the Land Register. There is no need for a Rent Relief Order as there is no tenant.

Right of Appeal

9. 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.

10. 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:

Date: 2 April 2024