

# 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)**

**Reference number: FTS/HPC/RT/23/4345**

**Re: Property at 4 Canal Street, Camelon, Falkirk, FK1 4QU (“the Property”)**

**The Parties:**

**Falkirk Council, Private Sector Team, Suite 2, The Forum, Callendar Business Park, Falkirk, FK1 1XR (“The applicant”)**

**Peter Coils, 78 Maggie Woods Loan, Falkirk, FK1 5EH (“The respondent”)**

**Jamie-Lee Dickson, 4 Canal Street, Camelon, Falkirk, FK1 4QU (“the tenant”)**

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Sara Hesp (Surveyor 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) in relation to the house concerned, and taking account of the evidence submitted by the applicant, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. On 5 December 2023 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet the Repairing Standard.
2. The applicant says that the respondent has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“The Act”) and in particular that the landlord has failed to ensure that:-

(a) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order

(b) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and

(c) The property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

3. 2 (b) and (c) are claims that the property does not meet the tolerable standard.

4. On 7 December 2023 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Respondent, the Applicant, and the Tenant on 7 December 2023.

5. The tribunal issued directions on both 7 December 2023 and 6 March 2024 directing the Respondent to produce a satisfactory gas safe certificate and an up to date EICR.

6. On 9 December 2023 the Respondent sent the applicant a gas safety certificate dated 17 November 2023.

7. On 9 March 2023 the Respondent sent an EICR to the tribunal. On 20 December 2023 the Respondent made written representations.

8. Tribunal members inspected the Property at 10am on 9 April 2024. The Tenant was present. Neither the Respondent nor Applicant were present nor were they represented. During the inspection on 9 April 2024, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

9. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 2pm on 9 April 2024. Neither the tenant, nor the Respondent attended. The applicant was represented by Ms M Ferrie, one of their housing officers.

### **Summary of the issues**

10. The issues to be determined are

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006?

Does the property meet the tolerable standard (as defined in s.13 of the Housing (Scotland) Act 2006?)

### **Findings of fact**

11. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of 4 Canal Street, Camelon, Falkirk, FK1 4QU ("the property"). The landlord lets the property to the tenant.

(b) The property is a ground floor flatted dwelling house

(c) On 9 March 2024, in response to tribunal directions, the landlord produced an up to date Electrical Installation Condition Report (EICR). The EICR has been prepared by a contractor who is not a suitably qualified SELECT, NICEIC or NAPIT registered electrician.

(d) All of the portable electrical appliances in the property belong to the tenants.

(e) The gas central heating boiler is in the kitchen. There is a carbon monoxide detector in the kitchen, but it has been placed halfway up the side of a kitchen fitting, in a place almost as far away from the gas central heating boiler as it is possible to reach. The carbon monoxide detector does not comply with current regulations.

(f) There are smoke detectors throughout the property, but the smoke detector in the hall has been fixed to a wall rather than the ceiling, and none of the smoke detectors are interlinked. The property does not have smoke and heat detectors which comply with current regulations.

(g) The gas safety certificate produced by the landlord is dated 27 November 2023. The certificate declares that the next gas safety check is due on 27 November 2023. A clerical error has been made. The next gas safety check is due in November 2024.

### **Reasons for the decision**

12. (a) Tribunal members inspected this property at 10:00am on 9 April 2024. It was a wet winter's morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) When asked, the tenant told tribunal members that the landlord has not provided any portable electrical appliances. All of the portable electrical appliances in the property belong to the tenant.

(c) Tribunal members could see that a carbon monoxide detector has been fixed in an unusual place in the kitchen. It is far from the gas central heating boiler, and fixed at a height much lower than the top of the kitchen door or the top of the kitchen window. The Carbon monoxide detector is in the wrong place, and must be moved to a position which will comply with the current regulations.

(d) Throughout the property there are smoke detectors. Tribunal members tested the smoke detector in the kitchen several times and could hear that only the smoke detector in the kitchen sounded. The smoke detectors throughout the rest of the house remained silent. The smoke detectors are not interlinked. The property does not have a heat detector.

(e) The Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019 incorporated smoke and heat alarms into the tolerable standard in recognition of the danger fire poses to the occupants of a house. The revised tolerable standard includes criteria for '*satisfactory equipment for detecting fire and giving warning in the event of fire or suspected fire*'. There is now a requirement for

- one smoke alarm installed in the room most frequently used for general daytime living purposes (normally the living room/lounge);
- one smoke alarm in every circulation space, such as hallways and landings;
- one heat alarm installed in every kitchen;
- all smoke and heat alarms to be ceiling mounted; and
- all smoke and heat alarms to be interlinked.

(f) The Landlord has not complied with Scottish Government regulations and guidance on the fire safety of the Property, so the Property fails to meet the tolerable standard. There is an immediate risk to the Tenant in the event of fire. The property is occupied by the tenant and her young children.

(g) The Landlord should take immediate steps to install interlinked smoke and heat detectors within the Property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(h) Since 2015, Landlords have been under a duty to arrange for an Electrical Installation Condition Report (EICR) to be prepared by a suitably qualified

contractor and the installation must be re-inspected every 5 years or less. A copy must be given to the tenant.

(i) The landlord produced an EICR, but it has not been prepared by a contractor who is a suitably qualified SELECT, NICEIC or NAPIT registered electrician. That EICR cannot be accepted by the tribunal. An up to date EICR (prepared by a contractor who is a suitably qualified SELECT, NICEIC or NAPIT registered electrician) is necessary and must be obtained after the interlinked smoke and heat detectors are installed.

(j) The gas safety certificate produced by the landlord says that the next gas safety check is due on 28 November 2024. After listening to the tenant describe a recent visit by a gas safety engineer, and taking account to the email exchange which accompanied the gas safety certificate, tribunal members are satisfied that the gas safety certificate contains a clerical error, and the next gas safety check is due in November 2024.

(k) Tribunal members observations tell the tribunal that the property fails to meet the repairing standard and also fails to meet the tolerable standard. We therefore make a Repairing Standard Enforcement Order requiring the landlord to

(a) Install interlinked smoke and heat detectors, and carbon monoxide detectors within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(b) Instruct a suitably qualified SELECT, NICEIC or NAPIT registered electrician to carry out a certified Electrical Installation Condition Report (EICR) of the entire electrical installation in the property (and any electrical appliances and equipment supplied by the landlord) and carry out all necessary remedial works to rectify any identified C1 and C2 categorised areas, and certify that the smoke heat and CO detectors installed in the property comply with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(c) Thereafter to provide the First-tier Tribunal for Scotland (HPC) with a satisfactory EICR prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

All within 35 days.

## **Decision**

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

14. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

15. The decision of the tribunal was unanimous.

## **Right of Appeal**

**16. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

## **Effect of section 63**

17. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

P Doyle

Signed

Legal Member

11 April 2024

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

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**4 Canal Street, Camelon, Falkirk FK1 4QU**

**FTS/HPC/RT/23/4345**

**Schedule of photographs taken on 9 April 2024**



*Photograph 1: Front elevation*

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*Photograph 2: Kitchen: heat detector*



*Photograph 3: Kitchen: general view: no landlord's portable appliances*





*Photograph 4: Living room: smoke detector*



*Photograph 5: Kitchen gas boiler*



*Photograph 6: Hallway: smoke detector*

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