

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/24/0107

Title No: STG57731

72 High Station Road, Falkirk FK1 5QX ("The Property")

The Parties:-

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

Li Huang, 1 Polwarth Avenue, Brightons, Falkirk FK2 0HQ ("the Landlord")

Jia Hui Wang, 72 High Station Road, Falkirk FK1 5QX ("the Tenant")

Tribunal Members: Richard Mill (Legal Member) and Sara Hesp (Ordinary Member)

Decision

The property does not meet the repairing standard. The landlord has not complied with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

Background

1. The third party applicant local authority applied to the tribunal for a determination of whether the landlord has failed to comply with the duties imposed by section 14(1) of the Act in respect of the property.
2. In the written application the third party applicant stated that the landlord had failed to comply with their duty to ensure that the property meets the repairing standard according to section 13(1)(c) which sets out the following obligations:-

- whether the installations in the house for the supply of water, gas and electricity and for sanitation, space heating or heating water are in a reasonable state of repair and in proper working order.
3. The tribunal issued a direction requiring the landlord to produce:-
- Evidence that there is a current Gas Safety Certificate from a registered Gas Safe engineer for the property which also refers to the provision for carbon monoxide detection.
 - A current satisfactory Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair.
 - Evidence of the provision for smoke and heat detection in accordance with existing Scottish Government statutory guidelines.
4. Notices of Referral were issued to parties on 18 April 2024.

Inspection

5. The tribunal attempted to inspect the property on 7 June 2024 at 10.00 am. Parties had been advised of the tribunal's arrangement to attend then. The tribunal was not permitted entry. It was noted that more than one window in the flat was open. The tribunal members knocked loudly on several occasions but ultimately left at 10.10 am due to no entry being permitted. The landlord was not present despite having been invited.

Hearing

6. Following the inspection of the property, the tribunal convened a teleconference hearing at 12 noon on 7 June 2024. The third party applicant was represented by Mhairi Ferrie. The landlord was invited to attend the hearing but failed to do so.

Summary of Issues

7. The issues to be determined by the tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
8. The application before the Tribunal relates to the necessary compliance documentation for both landlord registration purposes and for the purpose of the repairing standard under the 2006 Act. The third party applicant could not obtain a Gas Safety Certificate, an Electrical Installation Condition Report (EICR) and there was no evidence of the ability to detect heat, smoke and carbon monoxide.

Relevant History

9. The Private Sector Housing Team of Falkirk Council made a request to the landlord on 31 October 2023 for the necessary documentation as part of the statutory requirement to meet the repairing standard. Some communication has taken place with the named landlord and some documents have been produced but these do not demonstrate sufficient compliance.

Documentation produced by the landlord

10. A Gas Safety Certificate has been produced dated 24 January 2024. A number of faults are noted. It was further noted that the gas supply has been cut and capped. There are no operative gas appliances within the property. The Certificate specifies that there is no bonding on pipework and no stability (unsupplied meter). It is further noted that there is no interlinked smoke and heat alarms at the time of the gas inspection.
11. Two EICRs have been produced by the landlord. They are dated 19 March 2024 and 15 April 2024. These were prepared by Roy Hans of King-Hans Electrical Services Ltd. However, it has been identified that this electrician is not registered with any of the required Certification Bodies.

Findings in Fact

12. The tribunal makes the following findings in fact (as at 7 June 2024):
 - a. The title to the subjects known as 72 High Station Road, Falkirk FK1 5QX is held by the landlord in the Land Register for Stirlingshire under Title number STG57731.
 - b. The property which is the subject of this application is a first floor flat which is above a Chinese Takeaway. The property is accessed by its own door on the ground floor and accessed via an internal flight of stairs which allows entry to the accommodation.
 - c. There is no evidence of interlinked smoke and heat alarms in the property.
 - d. There is no satisfactory Gas Safety Certificate for the property.
 - e. No satisfactory EICR exists for the property.

Reasons for Decision

13. The tribunal determined the application having regard to the documentary evidence. Reference is made to the tribunal's findings in fact.
14. The tribunal is only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the inspection and hearing on 7 June 2024.
15. Whilst a Gas Safety Certificate has been produced which confirms that there are no operative gas appliances and that the gas supply has been cut and capped, there are outstanding matters of concern/faults noted on the Gas Safety Certificate produced. As such, the Certificate is not sufficient to enable the tribunal to conclude that the gas supply is safe.
16. Whilst an EICR has been produced for the property, this has not been prepared and certified by a suitably qualified and accredited electrician. As such, the Certificate is not sufficient to enable the tribunal to conclude that the electrical supply is safe. Additionally, the third party applicant has made requests for evidence of relevant PAT testing which has not been forthcoming. This is required for any electrical appliances provided as part of the tenancy.
17. The tribunal was satisfied that it was able to reach a fair and final determination of the application on the basis of the documentary evidence available. Whilst permission was not given to the tribunal for inspection, this was not a barrier to the tribunal's identification of the relevant issues nor a barrier to make relevant findings in fact. Given the nature of the application, entry to the premises would not have made a significant difference.
18. The tribunal determined to make a Repairing Standard Enforcement Order (RSEO). The Tribunal determined that the landlord be provided with a period of 4 weeks to carry out these works which is reasonable given the nature and extent of the works.

Decision

19. The tribunal, having made enquiries for the purposes of determining whether the landlords have complied with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the landlords have failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does not meet the repairing standard.

Right of Appeal

20. 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.
21. 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.

In witness whereof these presents type written on this and the preceding pages are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 13 June 2024 before this witness:-

R Mill

Legal Member

C McNaught

Witness

Name

69-71 Dalry Road Address.

Edinburgh

EH11 2AA

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RT/24/0107

Title No: STG57731

72 High Station Road, Falkirk FK1 5QX ("The Property")

The Parties:-

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

Li Huang, 1 Polwarth Avenue, Brightons, Falkirk FK2 0HQ ("the Landlord")

Tribunal Members: Richard Mill (Legal Member) and Sara Hesp (Ordinary Member)

NOTICE to LI HUANG ("the Landlord")

Whereas in terms of its decision of even date the tribunal determined that the landlord has failed to comply with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006 ("The Act"), and in particular that the landlord has failed to ensure that:-

- the installations in the house for the supply of water, gas and electricity and for sanitation, space heating or heating water are in a reasonable state of repair and in proper working order.

The tribunal now requires the landlord to carry out such works as are necessary for the purposes of ensuring that the property concerned meets the Repairing Standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal now requires the landlord to produce:-

1. A current Gas Safety Certificate from a registered Gas Safe engineer which is satisfactory, contains no faults and also refers to the provision for carbon monoxide detection, if applicable.
2. A current satisfactory Electrical Installation Condition Report (EICR)

from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair. In the event that the landlord has supplied any portable appliances as part of the tenancy then evidence of satisfactory PAT testing must also be supplied.

3. Evidence of the provision for smoke and heat detection in accordance with existing Scottish Government statutory guidelines.

The tribunal orders that the works specified in this Order must be carried out and completed within a period of 6 weeks, with the specified reports to be produced to the tribunal for consideration, and that any redecoration required, as a consequence of the works being undertaken are also completed, from the date of service of this Notice and evidenced to the tribunal.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house.

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.

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