

# 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: in terms of Section 60 of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act**

**Chamber Ref: FTS/HPC/RT/23/3600**

**Re: Property at 15, Paris Street, Falkirk, FK39BN registered in the Registers of Scotland under Title Number STG11469 (“the Property”)**

## **The Parties:**

1. Falkirk Council per its employee, Mr. Craig Beatt, Private Sector Officer (Enforcement and Liaison), Housing and Communities, The Forum, Callendar Business Park, Falkirk, FK1 1XR as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);
2. Mr. Stuart Spence residing at the Property (“the Tenant”) and
3. Mr. Christopher Johnston residing care of 11, Canalside Drive, Reddingmuirhead, FK2 0FA (“the Landlord”)

## **Tribunal Members:**

Karen Moore (Chairman) and Andrew McFarlane (Surveyor and Ordinary Member)

## **Decision of the Tribunal**

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether a certificate of completion in respect of the Repairing Standard Enforcement Order (RSEO) can be granted, determined that, as it is satisfied that the work required by the RSEO has been carried out, a certificate in terms of Section 60 of the Act is granted.

This Decision should be read in conjunction with Decision dated 4 April 2024 and RSEO dated 5 April 2024.

## **Background**

1. By application received between 11 October 2023 and 19 December 2023 (“the Application”), Falkirk Council as a Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c) of the Act.
2. The Application comprised an application form and copy correspondence from the Third -party Applicant to the Landlord requesting sight of the Electrical Installation Condition Report (“EICR”) for the Property and, if applicable, the Gas Safety Certificate for the Property.
3. The Application was referred to the Tribunal. An Inspection of the Property was fixed for 4 April 2024 at 10.00 with a Hearing by telephone conference fixed for 14.00 on the same day.
4. Prior to the Inspection and Hearing, the Landlord submitted a Gas Safety Certificate, an EICR for the Property, which did not comply with the Scottish Government Guidance as the signatory is not a member of NICEIC, SELECT or NAPIT and no certificate of competence was submitted, and photographs purporting to show that there is a smoke detector and a carbon monoxide detector in the Property.

## **Inspection and Hearing**

5. The Inspection of the matters complained of in the Application took place at the Property on 4 April 2024 at 10.00. The Tenant and Mr. Beatt of the Third-party Applicant were present. The Landlord was not present and was not represented. The Hearing took place on 4 April 2024 at 14.00 by telephone conference call. Mr. Beatt of the Third-party Applicant was present. Neither the Tenant nor the Landlord was present.
6. At the Hearing, the Tribunal advised Mr. Beatt that the EICR was not acceptable as there was insufficient information in respect of the accreditation of the party who had prepared and signed it and so it did not meet Scottish Government Statutory Guidance. The Tribunal further advised Mr. Beatt that although the heat and smoke detectors in the Property were compliant with Scottish Government Statutory Guidance, the carbon monoxide detector required to be repositioned.
7. The outcome of the Inspection and Hearing was that the Tribunal found that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act and imposed the following RSEO:

*“The Landlord must on or before 16 May 2024 carry out all of the following:-*

*1. Either:*

*i) With reference to the electrical installation condition report (“EICR”) prepared by Aaron Mcmillan of Mcmillan Electrical Solutions Limited dated 26 October 2023, submit a certificate as set out in the checklist on Page 41 of the current Scottish Government Repairing Standard Statutory Guidance completed and signed by Aaron Mcmillan*

*Or*

*ii) Instruct a SELECT, NAPIT or NICEIC electrician (i) to carry out a full inspection of the electrical installation throughout the Property, the purpose of which inspection is to ensure that the electrical installation in the Property and the Landlord’s appliances therein are safe and fit for purpose (ii) to repair, replace or renew any parts which require to be renewed, replaced or repaired to ensure the installation is fully functioning and meets current regulatory standards and (iii) thereafter to issue a complete and compliant electrical installation condition report (“EICR”) and/or an Electrical Installation Certificate in accordance with Paragraph D82 of the Scottish Government statutory guidance on electrical installations and appliances in private rented property and exhibit the EICR to the Tribunal. The Report requires to have no recommendations in the C1 or C2 category, to report on the installation of smoke and heat detectors and to include testing of any portable appliances provided by the landlord present in the Property.*

*2. Reposition the carbon monoxide detector in the Property to ensure that it is in a position which is compliant with the current Scottish Government Repairing Standard Statutory Guidance. That is:*

- i) If ceiling mounted, it must be at least 300 mm from any wall (unless otherwise indicated by the manufacturer);*
- ii) if wall mounted, it must be positioned at least 150 mm below the ceiling and higher than any door or window in the room (unless otherwise indicated by the manufacturer)*
- iii) if positioned in a space containing the combustion appliance, it should be sited between 1m and 3m from the appliance and*
- iv) A carbon monoxide detector should not be placed in a cupboard or other small enclosed space. If this is where the appliance is, the detector should be located at the appropriate distance outwith that space. Additional guidance on the siting of carbon*

*monoxide detectors, including enhanced coverage, can be found in BSEN 50292.*

3. *Submit to the Tribunal and the Third-party Applicant proof that the carbon monoxide detector is properly positioned.”*

### **Compliance with RSEO**

8. Following issue of the RSEO, the Landlord submitted an EICR which was acceptable to the Tribunal and submitted photographs showing that the carbon monoxide detector had been repositioned and was now compliant with the regulations. The Tribunal enquired of the Mr. Beatt if he was satisfied with Landlord’s submission without the need for a further inspection. Mr. Beatt confirmed that he was so satisfied.

### **Findings of Fact**

9. The Tribunal’s findings in fact were made from all of the information before it being the Application, the Inspection and Hearing on 4 April 2024 and the EICR and photographs submitted by the Landlord.
10. The Tribunal found that there is a satisfactory EICR for the Property and that the carbon monoxide detector is positioned correctly.

### **Decision of the Tribunal and Reasons for the Decision of the Tribunal**

11. Having found that the works required by the RSEO have been carried out, the Tribunal issued a certificate of completion in terms of Section 60 of the Act.
12. The decision of the Tribunal is unanimous.

### **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.

**K Moore**

Signed

K Moore, Chairperson

25 July 2024