

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 26(1)

Chamber Reference: FTS/HPC/RT/23/1301

2 Balfour Crescent, Larbert FK5 4BA (“the property”)

Diamond Administration Ltd, 2 Carronvale Road, Larbert, FK5 3LZ (“The Landlord”),

Falkirk Council - Private Sector Team, Suite 2, The Forum, Callendar Business Park, Falkirk, FK1 5XR (“the Third-Party Applicant”)

Tribunal Members

Josephine Bonnar (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 Repairing Standard Enforcement Order (“RSEO”) dated 22 August 2023 determined that the Landlord has failed to comply with the RSEO.

Background

- 1. The Third Party applied to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The Third Party stated that the Landlord had failed to meet the repairing standard in relation to the property. In particular, the Landlord had failed to provide an electrical installation condition report and a gas safety certificate for the property and evidence that the property has the correct smoke and heat detectors. The Third Party advised that the tenant did not wish to be a party to the application.**
- 2. On 26 June 2023, the parties were notified that the Tribunal would inspect the property on 9 August 2023 at 10am and that a hearing would take place on the 9 August 2023 at 2pm, by telephone conference call.**

The Third Party was notified that they should arrange for access to the property and a letter was issued to the Tenant advising her about the inspection.

3. On 28 June 2023, the Tribunal issued a direction to the Landlord. The Landlord was directed to provide :- (i) A current Electrical Installation Condition Report (EICR) for the property from a SELECT, NICEIC or NAPIT accredited electrician containing no category C1 or C2 items of disrepair, which also confirms that smoke and heat detectors have been installed at the property in accordance with Scottish Government guidance, and (ii) If there is a gas supply to the property, a copy of the current gas safety certificate from a Gas Safe registered engineer which refers to the provision of carbon monoxide detection and details the condition of the boiler. The Landlord was notified that if he failed to provide the said documents and evidence, the Tribunal might draw an inference from that failure that the property does not comply with the repairing standard. The documents were to be provided by 21 July 2023. The Landlord did not respond to the direction.
4. The Tribunal attended the property on 9 August at 10am. Neither the Landlord nor the Third Party were represented. The Tribunal were not provided with access to the property by the tenant and could not carry out the inspection. The hearing took place by telephone conference call at 2pm on the same date. The only participant was Mrs McFarlane on behalf of the Third Party.
5. Following the hearing, the Tribunal issued an RSEO. This required the Landlord (i) To install interlinked heat and smoke detectors at the property which comply with current regulations and guidance or provide evidence that they had already done so; (ii) To provide a current Electrical Installation Condition Report (EICR) for the property from a SELECT, NICEIC or NAPIT accredited electrician containing no category C1 or C2 items of disrepair, which also confirmed that smoke and heat detectors have been installed at the property in accordance with Scottish Government guidance; and (iii) If there is a gas supply to the property, to provide a copy of the current gas safety certificate from a Gas Safe registered engineer which refers to the provision of carbon monoxide detection and details the condition of the boiler. The RSEO stipulated that the work was to be completed within 4 weeks of service of the Order.
6. A copy of the order was sent to the Landlord. The Landlord did not respond or submit the documents or evidence specified in the RSEO. The Landlord was notified that an inspection of the property would take place on 10 January 2024. The Tribunal attended but did not get access to the property. It was then established that the tenant had not been notified of the inspection. A further inspection was arranged for 8 July

2024 at 10.30am and a hearing by telephone conference call scheduled for 2pm. The notification letter was served on the Landlord by advertisement as mail issued to him on 1 February 2024 had been returned by Royal Mail marked “addressee gone away”.

7. The Tribunal attended at the property a 10.30am on 8 July 2024. Mr Beatt attended on behalf of the Third Party. The Landlord did not attend, and the tenant did not provide access, although a letter had been issued to her notifying her of the date and time. Thereafter a hearing took place by telephone conference call at 2pm. Only Mr Beatt participated.

The Hearing

8. Mr Beatt told the Tribunal that the Third Party has had no contact from the Landlord. He said that the landlord owns several rental properties in the area, but some are in the name of the company director Mr MacMorran. Both the Landlord and Mr MacMorran are currently registered landlords. Mr Beatt said that he believes that Mr MacMorran may have had some health issues. This information was provided in connection with another property, but he could not recall the details. He said that he had no objection to the Landlord being given additional time, if this is the case. However, he also confirmed that the Landlord does not appear to have complied with the Order.

Findings in Fact

9. The Landlord has not provided evidence that they have installed smoke and heat detectors at the property which comply with current regulations and guidance.
10. The Landlord has not provided a gas safety certificate for the property or evidence that a Carbon Monoxide detector has been installed at the property.
11. The Landlord has not provided an EICR for the property.

Reasons for decision

12. The Tribunal notes that the Landlord previously failed to provide a response to the direction issued by the Tribunal and has failed to provide the documents and evidence required by the RSEO. Although a letter dated 1 February 2024 was returned by Royal Mail, previous correspondence from the Tribunal (including the notification of both the

direction and the RSEO) were successfully delivered. The Landlord has failed to respond to any correspondence and has not sought an extension of time for compliance with the order for any reason. In the circumstances, the Tribunal is satisfied that the Landlord has failed to comply with the RSEO.

13. The Tribunal notes that the breaches of the Repairing Standard which have been established raise serious health and safety concerns. The absence of evidence that the electrical installation is safe, that the boiler and gas appliances are safe, and that the property has been provided with smoke, heat and carbon monoxide detectors is a serious matter. The Tribunal also notes that the Landlord has had a considerable period to address these failures, with the issues being first raised by the Third Party in March 2023. The Tribunal is therefore satisfied that a Rent Relief Order (“RRO”) should be issued and that this should be for the maximum amount, 90% of the rent, to reflect the gravity of the Landlord’s failures to comply with the legislation.

Decision

14. The Tribunal determined that the Landlord has failed to comply with the RSEO issued by the Tribunal.
15. The Tribunal proceeded to make a Rent Relief Order.
16. 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.

J Bonnar

J

Bonnar, Legal Member

19 July 2024