

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/RP/RT/24/0043

**Re: 13 Blackmount Terrace, Falkirk, FK2 0NX
("the Property")**

The Parties: -

Mr C McDade and Ms A Morrison, residing at the Property ("the Tenants")

Falkirk Council, Private Sector Team, Callendar Business Park, Falkirk, FK1 1XR ("the Third Party Applicant")

and

Mr Mark Cassidy, 99 Thomson Drive, Redding, Falkirk, FK2 9GN ("the Landlord")

The Tribunal

**Mr Maurice O'Carroll (Legal Member and Chair)
Ms Nick Allan (Ordinary Member) (Surveyor)**

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 Property concerned, and taking account of the evidence available to it following inspection determined that the Landlord has failed to comply/complied with the duty imposed by section 14 (1)(b) of the Act.

Background

1. By application dated 5 January 2024, the Third Party Applicant (through Mhairi Ferrie, Private Sector Officer (Enforcement and Liaison)) applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 as amended ("the Act").

2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the Property meets the Repairing Standard and in particular that the Landlord had failed to ensure that:-
 - (a) there was an up to date valid Gas Safety Certificate (“GSC”) and valid Electrical Installation Condition Report (EICR) in force in respect of the Property
 - (b) There was an up to date Portable Appliance Test (PAT) Certificate in respect of the Property
 - (c) there was provision for the detection of smoke in the Property, via interlinked smoke alarms conform to Scottish Government Guidance
 - (d) there was provision for heat detection in the kitchen and
 - (e) there was provision for detection of Carbon Monoxide in the Property.
3. On or about 10 January 2024, a Legal Member on behalf of the President of the Housing and Property Chamber intimated a Notice of Acceptance being a decision to refer the application under Section 22 (1A) of the Act to a Tribunal to address the Third Party applicant’s concerns in terms of section 13(1)(c) and (7)(d) and (g) of the Act outlined by the third party in its letter of intimation on the Landlord dated 22 November 2023.
4. A Direction dated 10 January 2024 was served on the Landlord by the Tribunal requiring the Landlord to produce a valid Gas Safety Certificate, EICR and PAT test certificate in respect of the Property, evidence of interlinked fire detection systems and heat alarms and a carbon monoxide detector. The Landlord was also directed to supply a copy of the Tenancy agreement over the Property. The deadline for compliance was set for 31 January 2024. The Landlord failed to comply with the Direction.
5. The Tribunal served the Notice of Referral, notice of inspection and hearing on the Third Party, the Landlord and the Tenant, together with a set of papers as set out in the Notice of Referral, on 11 June 2024. The Landlord contacted the Tribunal by telephone shortly after that date with a query in relation to the papers. This indicates that he had received them, along with notice of the inspection and hearing
6. An inspection of the Property was arranged for 6 August 2024. The Tribunal inspected the Property at 11am on that day in the presence of the Tenants who provided entry. The Landlord and the Third Party did not attend the inspection.
7. Following the inspection of the Property, the Tribunal held a telephone hearing at 3.30pm on the same day. The Third Party Applicant attended the hearing. The Landlord and the Tenants did not attend the hearing. As noted above, the Landlord had received notice of the inspection and hearing along with the relevant case papers on or shortly after 11 June

2024. The Tribunal therefore decided to proceed with the hearing in the absence of the Landlord and Tenant.

Summary of the issues

8. The issue to be determined was whether the Property met the Repairing Standard in terms of section 14(1)(b) of the 2006 Act by reference to the alleged defects set out above at paragraph 2 of this decision.

Findings of fact

9. The Tribunal found the following facts to be established after inspection and hearing:-
 - The present Third Party application was prompted by an application by the Landlord for registration or renewal as Landlord on the register held by the Local Authority on 17 October 2023.
 - As part of that application, the Landlord certified that he complied with the requirements of the Repairing Standard as listed above.
 - A spot check was initiated by the Third Party in order to obtain the relevant certifications further to those requirements. Requests to the Landlord to provide them have remained unanswered with the exception of an EICR referred to further below.
 - Neither the Tenant nor Landlord have provided a copy of the lease agreement over the Property despite a Direction and request to do so. However, investigations carried out by the Third Party of their Council Tax records indicate that the Tenants have been in occupation of the Property since 1 May 2016.
 - Mhairi Ferrie, on behalf of the Third Party informed the Landlord of the defects in relation to the necessary certifications in respect of the Property by letter dated 22 November 2023.
 - The Landlord has failed to comply with the requirements of the Direction referred to above, contrary to the provisions of Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016.
 - The Property is a two bedroom dwelling house over two floors located in a residential area of Falkirk.
 - On entry through the main door there is a staircase directly ahead and access the living and kitchen area to the right. The two bedrooms and bathroom are located upstairs.
 - There are interlinked and functional smoke detectors in the living room, kitchen and main hallway. There is a functioning heat detector located in the kitchen.
 - The gas boiler is located with the main bedroom on the first floor. It has an appropriately located and functional Carbon Monoxide detector adjacent to the boiler.
 - It was established at the hearing that there is no requirement for a PAT test certificate.

- The Landlord produced what bears to be an EICR to Mrs Ferrie. It is dated 23 January 2024. It lists a single C3 issue and no C2 issues.
- The EICR produced by the Landlord to the Third Party was completed by Robert Orr of Gordon Frew Electrical Services. The Tribunal has established that neither Robert Orr nor Gordon Frew Electrical Services is included in any of the Scottish Government databases for certified electrical contractors being NICEIC, NAPIT and SELECT.
- The Landlord has failed to provide a valid current Gas Safety Certificate.

A schedule of photographs is appended to the present decision

The Tribunal decision

10. The Tribunal found that the Property failed to meet the Repairing Standard as set out in section 13(1) (c) and (7)(d) and (g) of the 2006 Act contrary to the Landlord's obligation in terms of section 14(1) thereof.

Reasons for the decision

11. Following the inspection carried out by the Tribunal, it was established that the only issues remaining for determination were the requirement for a Gas Safety Certificate (GSC) and an EICR.
12. In respect of the former, the Landlord has failed to produce a GSC despite being requested to do so by the Third Party and having been directed to do so by the Tribunal. Therefore, a breach of the Repairing Standard has been established in relation to this requirement.
13. With respect to the EICR, despite a Direction requiring one to be produced in conformity with Scottish Government guidance to be produced ahead of the inspection and hearing, none has been produced by the Landlord.
14. The EICR produced to the Third Party is not valid as neither the electrician nor the firm mentioned on the Report is registered with NICEIC, SELECT or NAPIT. No evidence has been produced to the Tribunal that the electrician who signed off the EICR is otherwise certificated as required by Scottish Government Guidance. Therefore, a breach of the Repairing Standard has been established in relation to this requirement.

Decision outcome

15. Having found there to have been two breaches of the Repairing Standard, the Tribunal is therefore obliged to issue a Repairing Standard Enforcement Order as required by section 24(1) of the 2006 Act.

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.

M O'Carroll

Signed

Date 8 August 2024
Chairman M O'Carroll, Advocate