

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/24/1712

**Re: 27 Dunvegan Place, Polmont, FK2 0NX
("the Property")**

The Parties: -

Mr Colin Jackson, residing at the Property ("the Tenant")

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

and

**Mr Alan Ripplingdale, 51 Forest Glade, East Calder, EH53 0FQ ("the
Landlord")**

The Tribunal

**Mr Maurice O'Carroll (Legal Member and Chair)
Mr 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 with the duty imposed by section 14 (1)(b) of the Act.

Background

1. By application dated 16 April 2024, the Third Party Applicant (through Mr Craig Beatt, 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 house 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 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 Statutory Guidelines
 - (d) there was provision for heat detection in the kitchen and
 - (e) there was provision for detection of Carbon Monoxide in the Property, if applicable.
3. On or about 30 April 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 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 28 November 2023.
4. A Direction dated 30 April 2024 was served on the Landlord requiring the Landlord to produce a valid EICR and PAT test certificate in respect of the Property. The Landlord was also directed to supply a copy of the Tenancy agreement over the Property. The deadline for compliance was set for 31 May 2024. The Landlord failed to comply with the Direction.
5. The Tribunal served the Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, together with notice of inspection and hearing on the Third Party, the Landlord and the Tenant on 27 June 2024.
6. An inspection of the Property was arranged for 6 August 2024. The Tribunal inspected the Property at 10am on that day in the presence of the Landlord who provided entry. The Tenant and the Third Party did not attend the inspection.
7. Following the inspection of the Property, the Tribunal held a telephone hearing at 2pm on the same day. The Third Party Applicant attended the hearing as did the Landlord who gave evidence at the hearing. The Tenant did not attend the hearing.

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 Property is owned by the Landlord under Title STG3789 registered in his name on 18 December 2020.
- It was not disputed that the Tenant occupies the Property further to a Tenancy agreement (not produced by the Landlord further to the Direction dated 30 April 2024).
- Mr Beatt, on behalf of the Third Party informed the Landlord of the defects in the Property by letter dated 28 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 one bedroom first floor flat located in a residential area of Polmont.
- On entry through the main door there is a cupboard to the right-hand side housing the electrical meter.
- The accommodation is located up a staircase immediately upon entry. The accommodation consists of a single bedroom, living room, kitchen and bathroom.
- There is no gas supply to the Property. Accordingly, there is no requirement for a GSC or a CO detector.
- The flat is let unfurnished without white goods or other electrical appliances. Accordingly, there is no requirement for a PAT test certificate.
- The Property has interlinked mains operated smoke and heat detectors installed which were found to be fully functional after testing. However, the locations of these are not in accordance with Scottish Government statutory guidance: the smoke detector is in the kitchen area and the heat sensor is in the lounge area. The appropriate location for these sensors requires to be reversed.
- There is an EICR in respect of the Property dated 3 July 2021. The EICR indicates a number of C2 and C3 issues which require to be resolved.
- The EICR was completed by J Gray of Flex Electrical Services. The Landlord indicated that Flex Electrical Services is no longer in business having been liquidated. The Tribunal has established that J Gray of Flex Electrical Services is not included in the Scottish Government database for certified electrical contractors.
- The Landlord indicated that a new EICR would be produced in order to address the C2 and C3 issues and to relocate the heat sensor and smoke detector as identified by the Tribunal.
- Following the hearing, on 22 August 2024, the Landlord provided the Tribunal with an EICR of the same date produced by RML Electrical Holdings Ltd and confirmed that the works indicated by the Tribunal at the hearing had been carried out.

- The Tribunal office has confirmed that RML Electrical Holdings Ltd are SELECT registered and that accordingly the EICR is valid.

The Tribunal decision

10. The Tribunal found that the Property failed to meet the Repairing Standard as set out in section 13(1) (c) of the 2006 Act contrary to the Landlord's obligation in terms of section 14(1) thereof.
11. However, the Landlord was permitted time prior to the issuing of the present decision in order to produce a conform EICR which addressed the C2 and C3 issues identified above and to arrange for the relocation of the heat sensor and smoke detector as outlined above.
12. On 22 August 2024, the Landlord produced the EICR indicated as being necessary in order to avoid the issuing of a RSEO for the Property.

Reasons for the decision

13. There was no EICR in respect of the Property despite a Direction requiring one in produced in conformity with Scottish Government statutory guidance to be produced ahead of the inspection and hearing.
14. The heat sensor and smoke detectors are incorrectly located contrary to Scottish Government statutory guidance.
15. However, following the hearing, the Landlord produced a conform EICR dated 22 August 2024 showing no C2 or C3 within the additional deadline set at the hearing and indicated that the necessary works had been carried out.

Decision outcome

16. The Tribunal therefore found it unnecessary to issue a Repairing Standard Enforcement Order in terms of section 24(1) of the 2006 Act.
17. No further action on the part of the Landlord is required.

Right of Appeal

- 18. 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

19. 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.

Date 3 September 2024

Chairperson Maurice O'Carroll, Advocate