



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/24/1104

Property : 33 Newhouse Road, Grangemouth FK3 8LN (Registered under title number STG16848) (“Property”)

Parties:

Falkirk Council, Suite 2, The Forum, Callendar Business Park, Falkirk FK1 1XR (“Third Party”)

Erin Fergus, 33 Newhouse Road, Grangemouth FK3 8LN (“Tenant”)

Khan Homes Scotland Ltd, 33 Abercairney Crescent, Maddiston FK2 ONT (“Landlord”)

Tribunal Members :

Joan Devine (Legal Member); Sara Hesp (Ordinary Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 5 March 2024, the Third Party applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Third Party stated that they believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1)(c) of the Act. The Application stated that the work which required to be carried out was as set out in the notification sent to the Landlord dated 22 January 2023 which requested sight of the following :

- Provide a copy of a current Electrical Installation Condition Report (“EICR”) from a SELECT, NICEIC OR NAPIT accredited electrician in respect of the property containing no category C1, C2 or F1 items of disrepair.
 - If applicable – provide a copy of the current Portable Appliance Test (PAT – only if you provide any white goods / electrical appliances.
 - If applicable – provide a copy of the current gas safety certificate
 - If applicable – install a carbon monoxide detector
 - If you have not already done so install interlinked smoke and heat detection in accordance with Scottish Government statutory guidelines.
3. Before the Third Party lodged the Application the Landlord provided to them a copy gas safety certificate dated 23 January 2024 from a gas engineer with licence number 595430. The Tribunal issued a Direction dated 20 March 2024 in terms of which the Landlord was directed to lodge an up to date EICR, an up to date PAT test certificate and evidence of interlinked fire detection devices and a heat alarm in the Property. A response was sought by 11 April 2024. No response was received to the Direction. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 22 August 2024.

The Inspection

4. The Tribunal attended the Property on the morning of 22 August 2024 to carry out an inspection but was unable to gain access to the Property.

The Hearing

5. The Hearing took place on 22 August 2024 by conference call. Neither the Tenant or the Landlord were in attendance. The Third Party was represented by Craig Beatt. The Tribunal explained that they had been unable to gain access to the Property for the inspection. The Tribunal noted that the Landlord had not provided an EICR in response to the direction issued. The Tribunal expressed concern regarding the gas safety certificate provided to the Third Party Applicant before the application was lodged.

The Evidence

6. The evidence before the Tribunal consisted of:
- 6.1 The Application completed by the Third Party Applicant
 - 6.2 Land Register report relating to the Property
 - 6.3 Notification letter to the Landlord dated 22 January 2024

Summary of the Issues

7. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

Findings in Fact

8. Tribunal made the following findings in fact :
 - 8.1 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
 - 8.2 The Landlord had failed to provide to the Tribunal an up to date EICR, an up to date PAT test certificate and evidence of interlinked fire detection devices and a heat alarm in the Property.

Reasons for Decision

9. It was apparent that, following the issuing of the direction, the outstanding issue was the provision of a current EICR in acceptable terms and the provision of a PAT test certificate (if applicable).
10. There were however other matters of concern to the Tribunal. The Landlord had provided to the Third Party Applicant a gas safety certificate before the application was made. The gas safety certificate was issued by a gas engineer who held licence number 595430 and was dated 23 January 2024. The gas safety certificate noted that carbon monoxide alarms in the Property were correctly located; that the carbon monoxide alarms were in date; that the testing of the carbon monoxide alarms was satisfactory and that smoke and heat alarms were located and fitted correctly. The Third Party Applicant had made an application to the Tribunal regarding another property ("Property 2") where the Landlord was also the landlord and the gas safety certificate provided by the Landlord was from the same gas engineer and was in the same terms. The Tribunal inspected Property 2 and despite what was noted in the gas safety certificate found that there was no provision in Property 2 for the detection of smoke and heat and there was no carbon monoxide monitor although there was a gas boiler in Property 2. This caused the Tribunal to question whether the gas safety certificate provided to the Third Party Applicant by the Landlord for the Property was correct.

Decision

11. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that an appropriate EICR has not been provided evidencing that the installations in the Property for the supply of electricity and space heating are in a reasonable state of repair and in proper working order and no PAT test certificate has been provided

The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act. Although a gas safety certificate has already been provided to the Third Party Applicant, it was prepared by the gas engineer who prepared the gas safety certificate for Property 2 which contained patently incorrect information. The Tribunal is not therefore prepared to accept the certificate as being accurate.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Joan Devine

**Legal Member
29 August 2024**