

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

**Statement of Decision of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 24(1) of the
Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RT/24/1590

**Re: 42 Comely Place, Falkirk, FK1 1QG ("the
Property")**

The Parties:-

Mr Martin Rutherford ("the Tenant")

**Falkirk Council Private Sector Team ("the Third Party
Applicant")**

**Mr Ryszard Wegrzyn, Mr James MacIntosh, Mr Josef
MacIntosh ("the Landlord")**

The Tribunal

**Ms Yvonne McKenna (Legal Member and Chair)
Ms Sara Hesp (Ordinary Member and 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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, 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 and therefore that a Repairing Standard Enforcement Order requires to be made.

Background

1. By application dated 8 April 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 Act.
2. The application stated that the Third Party Applicant considered that the Landlord had failed to comply with their 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.

(e) There was provision for detection of Carbon Monoxide in the Property.

3. On 9 July 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 4 March 2024.
4. A Direction dated 18 April 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 updated addresses for the landlord/ owners of the Property, Mr James McIntosh and Mr Josef MacIntosh along with confirmation that they are joint landlords along with Mr Ryszard Wegrzyn. The deadline for compliance was set for 14 May 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 Applicant, the Landlord and the Tenant, together with a set of papers as set out in the Notice of Referral, on 23 April 2024 by recorded delivery mail. The Third Party Applicant confirmed receipt and the Landlord signed for acceptance of the said recorded delivery communication on 24 April 2024.
6. An inspection of the Property was arranged for 6 September 2024. The Tribunal inspected the Property at 10am on that day in the presence of the Tenant who provided entry. The Landlord and the Third Party Applicant did not attend the inspection.
7. Following the inspection of the Property, the Tribunal held a telephone hearing

at 11.45 am on the same day. The Third Party Applicant attended the hearing. The Landlord and the Tenant 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 24 April 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 23 January 2024.
 - 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.
 - Neither the Tenant nor Landlord has provided a copy of the lease agreement over the Property. However, investigations carried out by the Third Party of their Council Tax records indicate that the Tenant has have been in occupation of the Property since 1 May 2012.
 - Mhairi Ferrie, on behalf of the Third Party Applicant informed the Landlord of the defects in relation to the necessary certifications in respect of the Property by letter dated 4 March 2024.
 - 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 first floor/upper apartment three bedroom dwelling house built at the turn of the nineteenth/twentieth century, located in a residential area of Falkirk.
 - On entry through the main door there is a staircase directly ahead which leads to the upper apartment. At the top of the stairs there is access to the bedrooms, living room and bathroom. The kitchen is accessed from the living room.
 - There are functional smoke detectors in the living room and each of the three bedrooms which are attached to or just above the door frames in each of these rooms.
 - There is some interlinkage.
 - There is no functioning smoke detector in the hallway.
 - There is no functioning heat detector located in the kitchen.
 - The gas boiler is located within a small room/walk-in cupboard in the kitchen.
 - There are two portable Carbon Monoxide detectors. One is located on the

fireplace in the living room where there is no requirement for this.

- There is a Carbon Monoxide detector located on the windowsill of the small room where the gas boiler is housed. The detector is not properly located in that room.
- It was established at the hearing that there is no requirement for a PAT test certificate. The Tenant indicated that he was in the process of moving out.
- The Tenant produced a pack beside the gas boiler of documents which he thought included the up to date gas safety inspection certificate. The last inspection certificate he could locate was from February 2020. There was no EICR.
- The Landlord has failed to provide a valid current Gas Safety Certificate and a valid EICR.

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 there are outstanding issues remaining for determination. Firstly, the requirement for a Gas Safety Certificate (GSC) and an EICR.
12. In respect of these documents, the Landlord has failed to produce them despite being requested to do so by the Third Party Applicant and having been directed to do so by the Tribunal.
13. Therefore, a breach of the Repairing Standard has been established in relation to this requirement.
14. Secondly there is the issue of the interlinked smoke and heat detectors. The detectors are not properly all interlinked. There is no detector in the kitchen as required. The detectors are incorrectly fixed to the door frames and have not been properly mounted.
15. Therefore, a breach of the Repairing Standard has been established in relation to this requirement.
16. Finally there is the issue of the Carbon monoxide detector which is not properly located in the small room where the boiler is housed.
17. Therefore, a breach of the Repairing Standard has been established in relation to this requirement.

Decision Outcome

18. Having found there to have been 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

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.

Y McKenna

Signed Yvonne McKenna.

Legal Member of the Tribunal

Date: 6 September 2024

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Schedule of photographs taken on 6 September 2024



Photograph 1: Front elevation

Photograph 2: Gas boiler – in room off kitchen



Photograph 3: Carbon monoxide detector on boiler room windowsill



Photograph 4: General view of kitchen – no heat detector to ceiling



Photograph 5: Living room - carbon monoxide detector on fireplace



Photograph 6: Living room – smoke detector to door frame



Photograph 7: Bedroom 1 – smoke detector just above door frame



Photograph 8: Bedroom 2 – smoke detector just above door frame



Photograph 9: Bedroom 3 – smoke detector just above door frame

