

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Reasons: Housing (Scotland) Act 2006 Section 24

Re: Property at 1 Newtown Street, Bo'ness EH51 9HN (“the Property”)

Chamber Reference: FTS/HPC/RT/23/3741

Title Reference: WLN28676

The Parties:

Muhammad Safdar, 1 Curlew Brae, Livingston EH54 6UG (“the Landlord”)

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

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

Sara Hesp, Ordinary Member (surveyor)

Background

1. By application dated 24th October 2023, the third party applied to the First-tier Tribunal (Housing and Property Chamber) 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.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard. The application contained a letter from the third party to the landlord dated 20th September 2023. The letter specified that that the said failure was established as the landlord had failed to provide the following documents to the third party:
 - *A current Electrical Installation Condition Report from a SELECT, NICEIC or NAPIT accredited electrician*

- *A current Portable Appliance Test*
 - *A current Gas Safety Certificate*
 - *Confirmation of installation of a carbon monoxide detector*
 - *Confirmation of installation of interlinked smoke and heat detectors*
3. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 27th October 2023.
 4. The third party submitted with the application a copy of the landlord registration application form submitted by Muhammad Safdar on 1st August 2023 in respect of the property.
 5. The third party also submitted a copy of an Electrical Installation Condition Report (“EICR”) provided by the landlord dated 13th December 2023. The document stated that the electrics in the property were in a satisfactory condition however the document had not been signed,
 6. The third party also submitted a copy of a gas safety certificate dated 12th December 2023 which stated that the condition of the gas appliances was satisfactory. The certificate also stated that there was satisfactory provision of smoke and heat alarms and carbon monoxide detectors.
 5. The Tribunal attended at the property on the morning of 22nd January 2024. The landlord did not attend the inspection. The Tribunal was met by the husband of Elizabeth Snedden. He advised that Mrs. Snedden had sadly passed away the previous day. In the circumstances the Tribunal did not proceed with the inspection.
 6. The Tribunal held a hearing by teleconference at 2pm on 22nd January 2024. The landlord did not attend and was not represented. The third party was represented by Mhairi Ferrie from the Private Sector Team at Falkirk Council. She indicated that the third party wished to proceed with the application.
 7. The Tribunal noted that the land register showed that the owner of the property was Sadia Safdar. Her named address was the same as the previous address given by the landlord in his application for registration.
 8. Following the hearing a Direction was issued to the landlord requiring that he confirm the nature of his relationship to Sadia Safdar and state on what basis he entered in a lease agreement. The direction also required the landlord to produce a signed current EICR and Portable Appliance Test for the property.

9. A further hearing was assigned for 13th May 2024. Neither party attended the hearing. Ms. Ferrie, the third party representative subsequently contacted the Tribunal to advise that she had thought the hearing was taking place at a different time and indicated that the third party wished to proceed with the application. A further hearing was scheduled.

Hearing – teleconference- 25 September 2024

10. The landlord and Ms. Ferrie the third party's representative were both in attendance.
11. Prior to the hearing Ms. Ferrie had contacted the Tribunal to advise that a new tenant had moved into the property
12. Mr. Safdar explained that the property had been owned by his wife, Sadia Safdar. She had passed away in August 2013. He referred to a document which had been submitted showing that he had been appointed as the executor of his late wife's estate on 6 February 2019. It was on this basis that he acted as landlord in respect of the property.
13. Mr. Safdar stated that he had submitted documents to the local authority in December 2023 in response to their request. He stated that he had not attended the previous hearing as he had been unaware of it and had not received the paperwork.
14. The Tribunal observed that the gas safety certificate submitted was satisfactory however the EICR which had been submitted had not been signed. Mr. Safdar confirmed that he was prepared to obtain whatever documents were necessary.
15. Mr. Safdar confirm the current tenant will be moving out of the property within the next few weeks and it will be his intention that the property be re-let.
16. The Tribunal discussed that as no physical inspection had been carried out further evidence was required to confirm that the fire and smoke detectors in the property were interlinked. Further evidence would also be required in relation to the carbon monoxide monitor. It was discussed that this may be in the form of photographs of the detectors/monitors together with an invoice relating to their purchase. If this information was not supplied, then it may be necessary to carry out a physical inspection.

Summary of the issues

17. The issue to be determined is whether the house meets the repairing standard as laid down in section 14 of the Act and whether the landlord has complied with the duty imposed by sections 13(1)(c) and (d) of the Act.

Findings in fact: -

18. The tribunal find the following facts to be established: -
 - a. The landlord is the spouse of the late Sadia Safdar who is the registered owner of the property.
 - b. The landlord was confirmed as executor-nominate of the late Sadia Safdar's estate on 6 December 2019.
 - c. The property is currently occupied by a tenant.
 - d. The landlord has failed to produce a signed EICR for the house.
 - e. The landlord has failed to produce satisfactory evidence that the smoke and fire detectors are interlinked and compliant with Scottish Government regulation.
 - f. The landlord has failed to provide satisfactory evidence that the carbon monoxide detectors in the property are compliant with Scottish Government regulations.

Reasons for the Decision

19. The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing which included written representations from the third party and email correspondence between parties.
20. The Tribunal noted that no signed EICR had been submitted.
21. The Tribunal considered that whilst the gas safety certificate provided certification in relation to the gas installations the fire/smoke detectors and carbon monoxide alarms could not be considered gas installations. The Tribunal therefore considered that photographic evidence together with proof of payment for the installation of interlinked smoke/fire detectors and a carbon

monoxide detector was required. The evidence should demonstrate which rooms the detectors have been installed within.

22. The Tribunal considered six weeks to be a reasonable period to provide the requested documentation.

Decision

The Tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

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.

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.

Mary-Claire Kelly

Chairperson:

Date: 2 October 2024