

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/RT/24/3038

Re: Property at 13 Manse Place, Falkirk FK1 1JN (“the Property”)

Parties:

Falkirk Council Private Sector Team, Suite 1, the Forum Callendar Business Park, Falkirk FK1 5XR (“the Applicant”)

Mr Derek Turner, Ms Pauline Turner (“the Landlord” and “the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Nick Allan Surveyor (Ordinary Member) (The Tribunal)

DECISION

The First Tier Tribunal for Scotland (Housing and Property Chamber) (the Tribunal) having made such enquiries as it saw fit for the purpose of determining whether the Landlords have complied with the duty imposed by Section 14(1) (b) in relation to the house concerned, and taking account of the evidence led by the Applicant at the hearing determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

Background

1. By application dated 2nd July 2023 the Third Party Applicant applied to the 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 (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 landlords had failed to ensure that:-

- a. The house is wind and watertight and in all other respects reasonably fit for human habitation.
- b. The installations in the house for the supply of water gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
- c. The house met the tolerable standard.

Specifically the Applicant complained that:-

- The Landlord had failed to provide a current Electrical Installation Condition Report from a SELECT, NICEIC or NAPIT accredited electrician that contained no Category C1 or C2 items of disrepair and that the report must include specific reference to the provision for heat and smoke detection in accordance with Scottish Government statutory guidelines.
- That the landlord had failed to provide a current Gas Safety Certificate from a registered Gas Safe Engineer which refers to the provision for carbon monoxide detection.
- The landlord has failed to repair water ingress issues to the property which appear to come from the roof area
- The landlord has not repaired windows which are not watertight
- The landlord has not unblocked drainage issues with the bathroom sink.

3. By notice of acceptance dated 23rd July 2024 a legal member of the Tribunal accepted the application and the Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the landlord on 9th September 2024.

4. The Tribunal also issued a Direction to the landlord on 23rd July 2024 requiring the landlord to provide:-

“1. An up to date electrical inspection condition report on the house by a competent electrician on the working order and condition of the installation in the house for the supply of electricity and the report should also address the state of repair and working order of the electrical fittings and appliances provided by the Respondent in the house (PAT test certificate). The provisions relating to competent electricians are contained in the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property. This information is available on the Chamber website at

https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%20REVISED%20NOV%202016_0.pdf

2. The Respondent is required to provide any up to date Gas Safety Certificate he has in his possession for the House from a Gas Safe Registered Engineer addressing the working order, condition and safety of any gas installation and gas appliances in the House; and the certificate

should also address whether there is a carbon monoxide alarm which complies with the statutory guidance within the House.

The Respondent is required to lodge the report, certificate and/or information with the First-tier Tribunal Housing and Property Chamber, 20 York Street, Glasgow G2 8GT no later than 23 August 2024, with a copy of that information sent to the Applicant”.

5. The Landlord has failed to respond to the Tribunal’s direction and has not provided a copy of either safety report.
6. An inspection and hearing was arranged for 16th October 2024. The inspection took place at 10am and the hearing was arranged and held at 2pm by teleconference.
7. On 14th October 2024 the landlord wrote by email to the Tribunal administration and advised that the tenant was moving out of the property and he was going to sell the Property and would not let it out again and so the inspection and hearing was not necessary.
8. The Applicant responded to this on 14th October 2024 advising that they expected the tenant to be present to allow access and the tenant Ms Gwen Paterson advised that she would be present at 10am to allow access.

The Inspection

9. The Tribunal attended the property and carried out the inspection at 10am on 16th October the landlord was not present or represented but the tenant was present and allowed access. The Third Party Applicant was represented by Mr Beatt an employee of Falkirk Council.
10. The weather was dry and cloudy. The ordinary member took photographs of the Property which are attached as an Inspection Schedule to this decision which is referred to for it’s terms.

Findings on Inspection

11. The flat is a rear upper floor flat comprising an open plan kitchen/dining area leading through an arch way to a bedroom area and bathroom.
12. There was evidence of old staining on the ceiling above a table in the dining area of the kitchen.
13. There was no sign of dampness from readings taken at the window and wall in the flat.
14. There was evidence of old staining in the ceiling in the cupboard housing the boiler and of some leak underneath the boiler.
15. There was no evidence of ongoing or recent water ingress.
16. There was no evidence of ponding or water ingress at or on the window sills.
17. The windows appeared to open and close appropriately although the double glazing seal is blown and both windows to the rear of the property were suffering from condensation.
18. The extractor fan in the bathroom did not work.
19. There was evidence of water lying in the bathroom sink which is not draining away.

20. The CO2 alarm was placed in the bedroom area and not near the kitchen or boiler.
21. There was no sign of a bug infestation.

The Hearing

22. The hearing took place at 2pm by teleconference and Mr Beatt attended as the representative for the Third Party. Neither the tenant or the landlord attended
23. The legal member made introductions and asked Mr Beatt to confirm how he was first contacted about issues with the Property. Mr Beatt explained that the tenant Ms Paterson had originally contacted environmental health about a bug infestation and they advised the tenant to contact him about repair issues. He confirmed that he relied on the report of repair issues from the tenant when he wrote to the landlord. He advised that the tenant had reported water coming in from the ceiling, and that the bathroom sink would not drain. He confirmed the tenant has been in the Property since 2018 and although she originally had a lease it has been misplaced and is not currently available. The application notes the rent paid was £400 a month. Mr Beatt also confirmed that the tenant was in the process of moving out and he believed that was happening after the inspection that morning.
24. Mr Beatt confirmed that despite asking for a copy of the electrical certificate and gas safety certificate the landlord has not replied to his letter and has not provided him with any comments on the alleged disrepair or request for certificates.
25. Mr Allan noted that from the inspection in the morning of 16th October there was no evidence of dampness or ongoing water ingress through the ceiling in the dining area or above the boiler. Mr Allan noted some old staining on the ceiling but no evidence of ongoing water ingress and with no substantial damage to the ceiling or walls from water leakage. There was evidence of some liquid leakage under the boiler but noted that this was more likely from the boiler and not the roof. The Tribunal put these points to Mr Beatt who confirmed he was satisfied with these comments. He was clear however there had been no safety certificates produced.
26. Mr Beatt advised he thought the water gathering in the sink and not draining may be part of a common repair issue and mentioned the factor had been doing work in the building. .
27. The Tribunal asked Mr Beatt if the landlord had other properties they let out and he confirmed there were. He advised he believed the landlord had 4 other properties in the local area that he let out.

Findings in Fact

1. The tenancy of the Property by the tenant Ms Gwen Paterson started in 2018 and she was still the tenant at the date of the inspection.

2. The landlord is the owner and landlord of the Property.
3. An EICR has not been provided by the landlord.
4. A gas safety certificate has not been provided.
5. There was no evidence of dampness in the Property.
6. There was no evidence of ongoing water ingress into the property although there was evidence of old staining.
7. The bathroom extractor fan does not work.
8. The bathroom sink is not draining water when the plug is open.

Reasons

1. The Tribunal was satisfied that the landlord has had proper intimation of the inspection and hearing and chose not to attend.
2. Despite having been asked by both the Third Party Applicant and the Tribunal the landlord has not provided any EICR or Gas Safety Certificate and this is a serious health and safety matter.
3. The Tribunal has inspected the Property and the schedule of photographs and comments thereon are referred to. The Tribunal has relied on what it found at the inspection and finds that the landlord has also failed to respond to the direction sent on

Disposal

The Tribunal determined to make a repairing standard enforcement order in the following terms:-

The Landlord is required to

1. Repair or replace the extractor fan in the bathroom to ensure it operates correctly when switched on.
2. To repair the bathroom sink to ensure it works fully by ensuring the water drains away when the plug is in the open position.
3. Provide an up to date electrical inspection condition report on the house by a competent electrician on the working order and condition of the installation in the house for the supply of electricity and the report should also address the state of repair and working order of the electrical fittings and appliances provided by the Respondent in the house (PAT test certificate). The provisions relating to competent electricians are contained in the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property.
4. The Respondent is required to provide an up to date Gas Safety Certificate for the House from a Gas Safe Registered Engineer addressing the working order, condition and safety of any gas installation and gas appliances in the House; and the certificate should also address whether there is a carbon monoxide alarm which complies with the statutory guidance within the House.

The Tribunal determined that the RSEO requires to be complied with within 6 weeks of the date of service of the RSEO.

In terms of section 46 of the Tribunals (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. 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.

J A Todd

Jan A Todd
Legal Member
31st October 2024