



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 60(5) of the
Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RT/24/0873

2, Ivybank Court, Polmont, Falkirk, FK2 0GH registered in the Land Register of Scotland under title number STG24725("the Property")

The Parties:-

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

Brendan McKeever ("The Tenant")

June Meikle residing at 8 Drumside terrace, Bo'ness, EH51 9QX ("The Landlord")

Stuart Meikle, 62 Grange Terrace, Boness, EH519DU ('The Landlord's Representative')

Tribunal Members:

Jacqui Taylor (Chairman) and Sara Hesp (Ordinary Member)

1. Background

1.1 The Tenant leases the Property from the Landlord.

1.2 The Third Party applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act').

2. Application

The application by the Third Party stated that they considered that the Landlord has failed to comply with her duty to ensure that the Property meets the repairing standard. They advised that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order.

In particular the application referred to a letter from Kate McFarlane, a Private Sector Officer with Falkirk Council to the Landlord dated 5th October 2023 which stated that he believed the Property did not comply with the repairing standard and it listed the work that was required :-

- 2.1 The EICR report is required.
- 2.2 The Portable Appliance Test is required.
- 2.3 A Gas Safety Certificate is required.
- 2.4 A carbon monoxide detector is required.
- 2.5 Interlinked smoke and heat detectors are required.

3. Direction

- 3.1 The Tribunal issued a direction dated 6th March 2024 requiring the Landlord to provide the Gas Safety Certificate and EICR by 28th March 2024.
- 3.2 The Landlord's grandson sent the Tribunal an email dated 26th April 2024 with the following certificates attached:
 - 3.2.1 Gas Safety Certificate prepared by JSK Construction which confirmed that the gas installation in the Property was satisfactory.
 - 3.2.2 EICR report by Nicolas Bleteau of NB Connect Ltd which confirmed that the electrical installation was satisfactory.

4. Notice of Acceptance

On 12th June 2024, James Bauld, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received between 21st February 2024 and 2nd May 2024 and he referred the application under Section 22 (1) of the Act to a Tribunal.

5. Correspondence.

The Tribunal administration sent the Landlord's Representative an email dated 24th September 2024 which stated that an inspection was required to enable the Tribunal to determine if the smoke alarms and heat detectors in the Property comply with the regulations. They also advised that the EICR and PAT certificates do not appear to have been prepared by engineers registered with either SELECT, NICEIC or NAPIT.

The Landlord's Representative sent the Tribunal an email dated 4th November 2024 and provided a copy of the SJIB card for Brian Paton of NB Connect which confirmed his SELECT accreditation.

The Landlord's Representative also sent the Tribunal an email dated 5th November 2024 and provided a copy of the statutory guidance and the completed statutory checklist by Nicolas Bleteau, Director of NB Connect Limited dated 4th November 2024.

6. Inspection

The Tribunal attended at the Property at 10.00 am on 11th November 2024. The Landlord's Representative was present at the inspection.

The Property, 2 Ivybank Court, Polmont, Falkirk, FK2 0GH is a modern ground floor flat. The accommodation comprises 2 bedrooms, lounge, kitchen and bathroom.

The Tribunal inspected the Property in relation to the alleged defects and found as follows:-

6.1 The electrical appliances provided by the Landlord are the fridge freezer, washing machine, oven and hood, the latter two being integrated into the kitchen..

6.2 The mobile carbon monoxide alarm was in working order and it was situated on top of the boiler.

6.3 The smoke alarm in the living room did not work at the inspection. The smoke alarm in the hall was in working order. The heat detector in the kitchen was in working order. The alarms in the hall and kitchen were interlinked.

Photographs were taken during the inspection and are attached as a Schedule to this Decision.

7. The Hearing

7.1 The conference call hearing was held following the inspection at 12.30pm on 11th November 2024. Mr Stuart Meikle, the landlord's Representative, and Craig Beatt, the Third Party's Representative attended the hearing.

7.2 In connection with the matters detailed in the application the parties advised as follows:

7.2.1 The EICR report is required.

Mr Meikle confirmed that the EICR report dated 26th April 2024 had been provided. He acknowledged that the electrician who had completed the report was not a member of either SELECT, NICEIC or NAPIT but referred the Tribunal to the statutory guidance that had been provided and the ECS Work card for Brian Paton (electrician) and invited the Tribunal to accept that the documentation was sufficient.

He also acknowledged that the checklist by Nicolas Bleteau had been provided but that two of the sections had not been completed. The requirement for the electrician to be a member of a professional body and the section being declaration that the electrician can provide a copy of the written health and safety policy statement for the business body had not been checked. He referred to his email dated 5th November 2024 which stated that the health and safety policy statement declaration was not required due to the small size of the business (less than five employees).

7.2.2 The Portable Appliance Test is required.

Mr Meikle acknowledged that the PAT test had been prepared by Nicolas Bleteau who was the same engineer that had prepared the EICR.

7.2.3 A Gas Safety Certificate is required.

Mr Meikle acknowledged that the gas safety certificate had been incorrectly dated.

7.2.4 A carbon monoxide detector is required.

Mr Meikle acknowledged that the carbon monoxide detector was correctly situated above the boiler at the inspection.

7.2.5 Interlinked smoke and heat detectors are required.

Mr Meikle acknowledged that the smoke alarm in the living room did not work at the inspection.

8. Decision

The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

8.1 and 8.2 The EICR report and The Portable Appliance Test are required.

The Tribunal acknowledged that the Housing (Scotland) Act 2014 introduced the requirement for landlords to have an Electrical Installation Condition Report (EICR) carried out on all electrical installations, fixtures and fittings within their rental properties. All tenancies must have a valid EICR, a copy of which must be provided to the tenant. The EICR lasts for 5 years and must include Portable Appliance Tests (PAT) for all electrical appliances within the tenancy supplied by the landlords.

The statutory guidance requires the EICR and PAT to be completed by a skilled suitably competent person and it defines a skilled person as being a person:

- Employed by a company that is a member of an accredited registration scheme operated by a recognised body,
- A sole trader or self-employed individual who is a member of an accredited registration scheme operated by a recognised body, or
- An individual who is able to satisfactorily complete the checklist provided as part of the guidance.

The statutory guidance also states that an accredited registration scheme is a scheme operated by the SELECT (Electrical Contractors' Association of Scotland), NICEIC, or NAPIT (the National Association of Professional Inspectors and Testers). The guidance also provides that alternatively, a skilled person (other than a member of NICEIC, SELECT or NAPIT) should be able to confirm all of the points listed in the checklist form provided as part of the statutory guidance.

The Tribunal determine that the EICR report dated 26th April 2024 and PAT had not been prepared by an electrician who was a member of SELECT, NICEIC or NAPIT. The Tribunal also determine that the checklist completed by Nicolas Bleteau was not sufficient as two of the sections had not been completed. The requirement for the electrician to be a member of a professional body and the section being the declaration that the electrician

can provide a copy of the written health and safety policy statement. They did not accept the suggestion by the Landlord's Representative that there is no requirement for small businesses to confirm that a copy of the written health and safety policy statement for the business can be provided.

8.3 A Gas Safety Certificate is required.

Regulation 36 of the Gas Safety (Installation and Use) Regulations 1988, as amended, requires landlords to have a Gas Safety Certificate carried out for all gas installations within their rental properties annually.

The Tribunal determine that the Gas Safety Certificate exhibited is invalid as the date of the certificate is incorrect.

8.4 A carbon monoxide detector is required.

The Tribunal acknowledged that the statutory guidance provides that if the combustion appliance (primarily boilers) is located within a small space, usually a cupboard, the detector should be sited outside the space / cupboard with the appropriate distance between appliance and detector of between 1 and 3 metres.

The Tribunal determine that the carbon monoxide detector in the Property does not meet the requirements of the Regulations. The statutory guidance confirms that the detector should be placed the appropriate distance from the space containing the boiler but should be ceiling mounted and at least 300 mm for any wall or wall mounted and positioned at least 150 mm below the ceiling and higher than any door or window in the room (unless otherwise indicated by the manufacturer).

8.5 Interlinked smoke and heat detectors are required.

The Tribunal acknowledged that the statutory guidance requires:

- One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
- One functioning smoke alarm in every circulation space, such as hallways and landings.
- One heat alarm in every kitchen.
- All smoke and heat alarms to be ceiling mounted and
- All alarms should be interlinked.

The Tribunal determine that the fact that the smoke detector in the lounge and the heat and smoke detectors are not fully interlinked is a breach of the statutory guidance.

8.6 The Tribunal accordingly determine that the Landlord has failed to comply with the duties imposed by Sections 13 (1)(c) of the Act, as stated.

8.7. The decision of the Tribunal was unanimous.

9. 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.

J Taylor

Signed

Chairperson

Date: 12th November 2024

Housing and Property Chamber
First-tier Tribunal for Scotland



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Schedule of photographs taken on 11 November 2024



Photograph 1: Communal access door to property

Photograph 2: Gas boiler – kitchen cupboard with carbon monoxide detector



Photograph 3: Kitchen: landlord provided washing machine





Photograph 4: Kitchen: landlord provided fridge freezer



Photograph 5: Kitchen – heat detector



Photograph 6: Living room – smoke detector



Photograph 7: Hallway – smoke detector