

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)

Chamber Ref: FTS/HPC/RT/23/3752

Property: 80 Lime Street, Grangemouth, FK3 8LX (‘The House’)

Title reference: STG41980

The Parties: -

Morag Nielson, 20 Dumyat Rise, Larbert, Falkirk, FK5 4FL (‘the landlord’)

Suzanne Armitage, 80 Lime Street, Grangemouth, FK3 8LX (‘the tenant’)

Falkirk Council, Private Sector Team, The Forum, Suite 2, Callendar Business Park, Falkirk FK1 1XR (‘the third party’)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) having made such enquiries as are fit for the purposes of determining whether the landlord complied with the Repairing Standard Enforcement Order dated 30 January 2024 determined that the landlord has complied with the said Repairing Standard Enforcement Order and that a Certificate of Completion should be issued in accordance with section 60(5) of the Housing (Scotland) Act 2006.

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

Background

1. Reference is made to the decision of the Tribunal dated 30 January 2024 which determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 as the property did not meet the Repairing Standard. The Tribunal therefore made a Repairing Standard Enforcement Order (RSEO). The works required by the RSEO were:-

- i. Provide certification that any portable electrical appliances in the house have been tested and are in a reasonable state of repair and proper working order.*
- ii. Provide a current gas safety certificate for the house from a suitably qualified and Gas Safe registered engineer.*

The Tribunal ordered that the works specified in the Order must be carried out and completed within the period of six weeks from the date of service of RSEO.

2. Following expiry of the period of notice a reinspection was scheduled for 12 August 2024. It was determined that a physical reinspection was not required as the RSEO specified production of documentary evidence of compliance. The physical reinspection was cancelled and a teleconference hearing was scheduled for 19 November 2024.
3. On 1 October 2024 the landlord submitted a gas safety certificate dated 15 July 2024. The landlord also resubmitted an electrical condition installation report dated 11 January 2024 and a photograph of the carbon monoxide detector in the property.
4. The Tribunal wrote to the landlord by email on 11 October 2024 advising her that as the gas safety certificate was satisfactory there was one outstanding item on the RSEO, namely evidence of portable appliance testing. The Tribunal requested that the landlord provide evidence of compliance with this item. The landlord emailed the Tribunal on 11 October 2024 in response

querying whether portable appliance testing was required as she stated that the flat had been rented out unfurnished and all appliances belonged to the tenant.

5. The Tribunal emailed the landlord requesting that they submit evidence that the appliances are owned by the tenant. Suggested examples of evidence were a copy of the rental advertisement, the inventory provided at the commencement of the tenancy or a signed statement from the tenant. No further evidence was provided from the landlord.
6. A teleconference hearing took place on 19 November 2024. Ms Mhairi Ferrie represented the third party. Neither the landlord nor the tenant was in attendance. The Tribunal was satisfied that both parties had been given proper notice of the hearing and proceeded in their absence.
7. Ms Ferrie advised that she had no information in relation to the portable appliance testing within the property. She explained that the tenant may have provided a copy of the tenancy agreement to the local authority in connection with an application for benefits or council tax deduction. She undertook to check with colleagues and provide a copy of a tenancy agreement if possible as this may contain information as to whether the property had been rented in an unfurnished state.⁸
8. Following the hearing Ms Ferrie emailed the Tribunal to a copy of an email from the Revenues and Benefits department at Falkirk Council. The email confirmed that their records showed that the property had been let unfurnished.

Reasons for the decision

6. The Tribunal determined the application having regard to the terms of the application, the written representations and the findings of the Tribunal at the inspection and the teleconference hearings. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.
7. In terms of section 26 of the Housing (Scotland) Act 2006
The First-tier Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—

(a) unless the period within which the order requires the work to be completed has ended, or

(b) if the First-tier Tribunal is satisfied, on the submission of the landlord or otherwise—

(i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or

(ii) that the work required by the order is likely to endanger any person.

8. The Tribunal noted that the landlord had provided evidence of compliance with the RSEO in relation to the gas safety certificate. This left only the issue of portable appliance testing outstanding. The Tribunal took into account that the landlord had emailed the Tribunal on 11 October 2024 stating that the appliances were owned by the tenant and not therefore the responsibility of the landlord. It was unfortunate that the landlord had not attended the teleconference hearing to provide further information. The Tribunal took into account the email from Falkirk Council that also stated that the property had been let unfurnished. Taking these two pieces of information together the Tribunal accepted that the property had been let unfurnished.
9. The Tribunal noted that according to Scottish Government statutory guidance for landlords on the repairing standard the duty to carry out electrical safety inspections does not apply to appliances that belong to tenants, only to appliances provided by the landlord.
10. The Tribunal was satisfied that paragraph 1 of the RSEO had been complied with. The Tribunal was satisfied that the duty of carry out portable appliance testing referred to in paragraph 2 of the RSEO did not apply as the property was unfurnished.

Decision

The tribunal determined that the landlord had complied with the RSEO and proceeded to issue a Certificate of completion.

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.

Chairperson:

M C Kelly

Date: 19 November 2024