



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

Chamber Reference number: FTS/HPC/RT/24/4125

Re: Property at 11 Manse Place, Falkirk FK1 1JN (“the Property”)

Title No: STG61167

The Parties:

Falkirk Council, Private Sector Team, The Forum, Suite 2, Callander Business Park, Falkirk FK1 1XR (“the Third-Party Applicants”)

Mr Derek Turner and Mrs Pauline Turner, both residing at 63 Old Redding Road, Laurieston, Falkirk FK2 9JU (“the Landlord”)

Mr Callum Paterson, 11 Manse Place, Falkirk FK1 1JN (“the Tenant”)

**Tribunal Members: George Clark, Legal Member
Robert Buchan, Ordinary (Surveyor) Member**

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber, 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 determined that the Landlord has failed to comply with that duty. The Tribunal made a Repairing Standard Enforcement Order in respect of the Property.

Background

1. By application, dated 4 September 2024, the Third-Party Applicants applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (“the Tribunal”) for a determination of whether the Landlords 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 Tenants have not been provided with copies of the current Electrical Installation Condition Report (“EICR”) or Gas Safety Certificate and that there are no interlinked smoke and heat detectors and no working carbon monoxide detector, or PAT tests for any appliances provided by the Landlord. Repairing Standard issues related to the electricity consumer unit, windows, the boiler, internal coving and two plug sockets in the kitchen, as well as water ingress within the Property and in the common stair. A Notice of Direction dated 17 September 2024 was served on the Landlord, requiring him to provide, by 18 October 2024, the EICR report, PAT test certificate, Gas Safety Certificate and evidence of interlinked fire detection devices and heat alarm. The required report, certificates and evidence were not provided.

The Inspection

3. The Tribunal inspected the Property on the morning of 8 January 2025 and were admitted by the Tenant’s mother. The Third-Party Applicants were represented by Mr Craig Beatt. The Landlord, Mr Turner, was also present. A Schedule of Photographs, taken at the inspection, is appended to and forms part of this Statement of Decision.

The Hearing

4. Following the Inspection, a Hearing was held by way of a telephone conference call on the afternoon of 8 January 2025. The Third-Party Applicants were again represented by Mr Craig Beatt and the Tenant was present. The Landlord was not present or represented. The Tribunal Members advised the Parties of the findings of their Inspection. The Tenant advised that he had removed the batteries from a carbon monoxide monitor adjacent to the hob, as it started beeping when the batteries ran down. He had reported this to the Landlord, but the Landlord had not replaced the batteries. The evidence of water penetration to the common stair had been there when he moved in, in January 2019, but had worsened over time.

Findings of Fact

- The Property is a top floor flat entering from the common passage and stair of a traditional stone-built tenement erected in 1895. The accommodation comprises a single room (originally two rooms) with a living area, a sleeping area, and a kitchen area. There is also a separate shower room. The central heating boiler is located in the shower room.
- The frame and windowsill of the window in the sleeping area are rotten. There is evidence of minor rot in some of the other windows, but they appear to be wind and watertight and open and close properly.
- There is a damp stain on the ceiling of the sleeping area, adjacent to the battery-operated smoke alarm.
- The coving/cornicing on the ceiling of the living area is in typical condition for a property of this age and character and appears to be secure.
- The Tribunal has not seen a current Electrical Installation Condition Report (“EICR”) in respect for the Property.

- The Landlord provided the Tribunal with a Gas Safety Record dated 13 August 2024 in relation to the gas hob. It does not cover the gas central heating boiler.
- There are two battery-operated smoke detectors, one in the living area and the other in the sleeping area. The batteries have been removed, but they are not in any event interlinked and there is no carbon monoxide monitor in the shower room.
- There is no cover on the electricity consumer unit and exposed wires are visible in and adjacent to the unit, which is located high up on the wall of the entrance vestibule.
- There is evidence of previous water ingress to the ceiling and wall of the common stair. Where testing with a moisture meter could be carried out, the moisture on the surface of the wall was found to be within acceptable limits, although the plaster is badly flaked and in need of repair.

Reasons for Decision

5. The Tribunal was of the view that the window in the sleeping area is not in a reasonable state of repair.
6. The Tribunal requires to see a satisfactory up to date EICR. This will cover the safety of the consumer unit.
7. The Tribunal requires to see an up-to-date Gas Safety Certificate, covering the hob, gas central heating boiler and the gas installation addressing the working order of the gas installation.
8. The Property does not have interlinked smoke and heat detectors, or a carbon monoxide monitor adjacent to the central heating boiler.
9. The Tribunal considers that an inspection by a roofing contractor is necessary, to determine the cause of the water ingress which has resulted in the staining on the ceiling of the living area.
10. The Property fails to meet the repairing standard in relation to the matters described in the five preceding paragraphs.
11. The Tribunal's view is that repairs are required to the ceiling and walls of the common stair, but this does not impact on the Tenant's use of the Property, so does not require to be included in a RSEO. They are common repairs and the Tribunal understands that there is a factor for the tenement of which the Property forms part and that repairs cannot be instructed by them until they are put in funds by the owners of the various flats in the tenement.

Decision

12. Having considered carefully all the evidence before it, the Tribunal made a finding that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act and decided to make a Repairing Standard Enforcement Order.

13. The Tribunal's Decision was unanimous.

14. Although not notified to the Landlord and so outwith the jurisdiction of the Tribunal, it was noted that there is no Energy Performance Certificate for the Property, as is required.

Right of Appeal

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.

G Clark

Legal Member

9 January 2025
Date

Photographs taken during the inspection of 11 Manse Place, Falkirk, FK1 1JN
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Front – top floor



Rear of the building

Photographs taken during the inspection of 11 Manse Place, Falkirk, FK1 1JN
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Historic damp penetration on the common stair



Missing cover on the electricity consumer unit

Photographs taken during the inspection of 11 Manse Place, Falkirk, FK1 1JN
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Cracked cornice



Stain marks on the ceiling and battery powered smoke detector

Photographs taken during the inspection of 11 Manse Place, Falkirk, FK1 1JN
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Rotten window frame



Rotten window sill

Photographs taken during the inspection of 11 Manse Place, Falkirk, FK1 1JN
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Draughtproofing strip evident



Gas fired boiler in the bathroom