

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**First-tier tribunal for Scotland (Housing and Property Chamber)**

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006  
Section 24**

**Reference number: FTS/HPC/RT/24/2210**

**Title No: STG15700**

**Re: Property at 41 Comely Place, Falkirk, FK1 1QG (“the Property”)**

**The Parties:**

**Falkirk Council, Private Sector Team, Suite 2, The Forum, Callendar Business Park, Falkirk, FK1 1XR (“The applicant”)**

**Mr Rysard Wegrzyn, residing at Flat 7 Margret Allen House, 32 Broomy Hill, Hereford, HR4 0LH (“the Landlord”)**

**Jozef MacIntosh, residing at 41 Comely Place, Falkirk, FK1 1QG (“The Tenant”)**

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Sara Hesp (Ordinary Surveyor Member)**

Whereas in terms of their decision dated 20 February 2025, The First-tier tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’) determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“The Act”) and in particular that the landlord has failed to ensure that:-

- (a) The installations in the property 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, in terms of Section 13(1)(c) of the 2006 Act; and
- (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the 2006 Act; and

- (c) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,; and
- (d) The property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and
- (e) The house meets the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

The tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the landlord to

(a) Install interlinked smoke and heat detectors, and carbon monoxide detectors within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(b) Instruct a suitably qualified SELECT, NICEIC or NAPIT registered electrician to carry out a certified Electrical Installation Condition Report (EICR) of the entire electrical installation in the property (and any electrical appliances and equipment supplied by the landlord) and carry out all necessary remedial works to rectify any identified C1 and C2 categorised areas, and certify that the smoke heat and CO detectors installed in the property comply with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(c) Thereafter to provide the First-tier Tribunal for Scotland (HPC) with a satisfactory EICR and up to date PAT certificate prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

(d) Instruct a suitably qualified Gas Safe registered engineer to inspect and carry out all works necessary to leave the gas central heating boiler and gas hob in good working order. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with an up-to-date and satisfactory Gas Safety Record from a suitably qualified and Gas Safe registered heating engineer on the safety of the gas central heating system and all other gas appliances in the property.

The tribunal order that the works specified in this Order must be carried out and completed within the period of 35 days from the date of service of this Notice.

**A landlord, tenant or third-party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this and the preceding page are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, legal member of the tribunal at Edinburgh on 20 February 2025 before Emma Doyle, 20 York Street, Glasgow

**P Doyle**

# Housing and Property Chamber First-tier Tribunal for Scotland

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**First-tier tribunal for Scotland (Housing and Property Chamber)**

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)**

**Reference number: FTS/HPC/RT/24/2210**

**Re: Property at 41 Comely Place, Falkirk, FK1 1QG (“the Property”)**

## **The Parties:**

**Falkirk Council, Private Sector Team, Suite 2, The Forum, Callendar Business Park, Falkirk, FK1 1XR (“The applicant”)**

**Mr Rysard Wegrzyn, residing at Flat 7 Margret Allen House, 32 Broomy Hill, Hereford, HR4 0LH (“the Landlord”)**

**Jozef MacIntosh, residing at 41 Comely Place, Falkirk, FK1 1QG (“The Tenant”)**

## **Tribunal Members:**

**Paul Doyle (Legal Member)**

**Sara Hesp (Ordinary Surveyor Member)**

## **Decision**

**The First-tier tribunal for Scotland (Housing and Property Chamber) (“the tribunal”), 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) in relation to the house concerned, and taking account of the evidence provided, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

## **Background**

1. On 14 May 2024 the third party submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the Repairing Standard and the Tolerable Standard.

2. The applicant maintains that there is a failure to meet the repairing standard, and in particular that:

- (a) The installations in the property 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 in proper working order, in terms of Section 13(1)(c) of the 2006 Act; and
- (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the 2006 Act; and
- (c) The property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (d) The property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and
- (e) The house does not meet the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

3. On 30 May 2024 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

5. None of the parties made any further representations.

6. A property inspection had been scheduled to take place at 10.00am on 15 October 2024. That inspection had to be abandoned because no one was available to let tribunal members into the property. A hearing took place by telephone conference at 12.30pm on 15 October 2024. The applicant was represented by Ms M Ferrie. Neither the landlord nor the tenant attended nor were they represented.

7. On 24 October 2024 the tribunal issued this direction to the parties

If the Landlord will

- (a) Send the Tribunal 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/SCT TISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20REVISED%20NOV%202016 0.pdf](https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCT%20TISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20REVISED%20NOV%202016%200.pdf))

(b) Send the Tribunal an 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.

And

(c) Ensure that interlinked smoke and heat detectors, and carbon monoxide detectors, are installed within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

Then the most serious parts of this application can be easily resolved.

15. For his own safety, the tenant should prioritise access to the landlord's tradesmen so that (if necessary) repairs can be carried out, smoke, heat and CO monitors can be installed and up to date EICR and gas safety certificates can be obtained and exhibited to the tribunal.

8. A property inspection had been scheduled to take place of new at 10.00am on 20 February 2025. That inspection also had to be abandoned because no one was available to let tribunal members into the property. A hearing took place by telephone conference at 12.30pm on 15 October 2024. The applicant was represented by Mr C Beat. Neither the landlord nor the tenant attended nor were they represented.

### **Summary of the issues**

9. The issues to be determined are

(i) Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

(ii) Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

### **Findings of fact**

10. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of 41 Comely Place, Falkirk, FK1 1QG ("the property"). The landlord let the property to the tenant.

(b) The landlord is a registered landlord. He should already have up to date gas safety certificates, PAT and EICR certificates.

(c) On 24 October 2024 the landlord was directed to send up to date gas safety certificates, PAT and EICR certificates to the tribunal. He has ignored that direction.

(d) Two attempts have been made to inspect the property but neither the Landlord nor the tenant have allowed access to the property.

(e) There is no evidence before the tribunal which would indicate that the property meets either the repairing standard or the tolerable standard. The denial of access to the property and refusal to respond to directions lead us to the conclusion that

- (i) The installations in the property 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 in proper working order, in terms of Section 13(1)(c) of the 2006 Act; and
- (ii) Any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the 2006 Act; and
- (iii) The property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (iv) The property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health; and
- (v) The house does not meet the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

## **Reasons for the decision**

11. (a) Tribunal members have made two unsuccessful attempts to inspect this property. There have been two hearings, neither of which were attended by either the landlord or the tenant.

(b) Most of this application could be easily resolved by the production of an up-to-date gas safety certificate and an up-to-date EICR. The remaining matters can be resolved by inspection of the property. It is because the landlord and tenant have not engaged with the tribunal process that this application has not been resolved.

(c) The landlord has already spurned the opportunity to produce an up-to-date gas safety certificate and an up-to-date EICR.

(d) We could apply for a warrant to enter, but this application raises issues about the safety of the property, and the welfare and safety of the tenant. Mindful of the overriding objective (set out in Rule 2 of the procedure rules) the most efficient and cost-effective way to deal with this case is to treat the Landlord's lack of cooperation as an admission that the property fails to meet either the repairing standard or the tolerable standard.

(e) The landlord offers no resistance to the application We therefore find that the application is proved, and we make a Repairing Standard Enforcement Order.

(f) We find that the landlord has not complied with the sections 13 & 14 of the 2006 Act. A repairing standard enforcement order is therefore necessary.

12. The tribunal makes a repairing standard enforcement order requiring the landlord to

(a) Install interlinked smoke and heat detectors, and carbon monoxide detectors within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(b) Instruct a suitably qualified SELECT, NICEIC or NAPIT registered electrician to carry out a certified Electrical Installation Condition Report (EICR) of the entire electrical installation in the property (and any electrical appliances and equipment supplied by the landlord) and carry out all necessary remedial works to rectify any identified C1 and C2 categorised areas, and certify that the smoke heat and CO detectors installed in the property comply with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(c) Thereafter to provide the First-tier Tribunal for Scotland (HPC) with a satisfactory EICR and up to date PAT certificate prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.



(d) Instruct a suitably qualified Gas Safe registered engineer to inspect and carry out all works necessary to leave the gas central heating boiler and gas hob in good working order. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with an up-to-date and satisfactory Gas Safety Record from a suitably qualified and Gas Safe registered heating engineer on the safety of the gas central heating system and all other gas appliances in the property.

All within 35 days of service of this order.

13. The decision of the tribunal was unanimous.

#### **Right of Appeal**

**14. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

#### **Effect of section 63**

15. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

# P Doyle

20 February 2025