

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/24/1178

Property at 82 College Bounds, Fraserburgh, AB43 9QS
("the Property")

The Parties:-

Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51 3WA
("the Third Party")

Mrs Gladys Stewart, 82 College Bounds, Fraserburgh, AB43 9QS
("the Former Tenant")

SJA Property Group, 7 Albert Street, Aberdeen AB25 1XX
("the Landlord")

Tribunal Members:

Gillian Buchanan (Chair) and Angus Anderson (Ordinary 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 Property determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. Reference is made to the Hearing Note of the Tribunal dated 18 September 2024 in terms of which, following a Hearing on the application that day, the Tribunal resolved to issue a Direction under Rule 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and adjourn the Hearing pending the Third Party and the Landlord producing the documentation and evidence required in terms of the Direction.
2. A Direction was subsequently issued by the Tribunal and intimated to the parties on 9 October 2024.

3. By email to the Tribunal dated 9 October 2024 Mr James Duguid representing the Landlord stated:-

"Attached is the tenancy agreement (this has been sent previously too).

I notice in the hearing notes that it states the landlord is no longer engaging - that is not the case at all. MK Property & Finance who managed the property on our behalf has tried several times to make contact with the tenant who simply does not answer the door. Rent has also not been paid for some time now (usually paid in cash but not answering the door), we seem to be at a bit of a stand still here and unsure on what exactly to do next?."

Mr Duguid attached to his email the Tenancy Agreement between the Landlord and the Tenant. The Tenancy Agreement is a Private Residential Tenancy Agreement under the Private Housing (Tenancies)(Scotland) Act 2016 which started on 1 March 2023 at a monthly rent of £400 payable in advance ("the PRT").

4. By email dated 11 October 2024 Ms Diane Coutts for the Third Party made the following additional representations to the Tribunal :-

"My comments are as follows: The landlord registration for SJA Property Group does not show MK Property and Finance Limited as the letting/managing agents for 82 College Bounds Fraserburgh AB43 9QS. SJA Property, Mr James Duguid has been previously advised that an application to the Housing and Property Chamber for Right of Entry could have been submitted with regard to inspection of the property and to enable access for repairs to be carried out. Discussions between all parties regarding access at 82 College Bounds, may have proved beneficial."

5. By further email dated 20 January 2025 Ms Coutts stated:-

"With regard to the hearing scheduled for Tuesday 21 January at 10am. I have been informed that Mrs Gladys Stewart is no longer a tenant at 82 College Bounds AB43 9QS."

Summary of Issues to be Determined

6. Having regard to the foregoing evidence provided by the Landlord and the Third Party and considering the scope of the application as submitted to the Tribunal as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") the outstanding issues for determination are:-

- (a) Whether the installations in the house for the supply of water, gas and, electricity and (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are in a reasonable state of repair and in proper working order; and
- (b) Whether the house meets the tolerable standard and, in particular, whether it complies with the relevant requirements in relation to the electrical installations for the purpose of that supply.

In particular in determining whether a house meets the standards of repair mentioned above regard is to be had to any guidance issued by the Scottish Ministers in relation to—

- electrical safety standards in relation to—

- (i) installations for the supply of electricity, and
- (ii) electrical fixtures, fittings and appliances,
- equipment for detecting fire and for giving warning of fire or suspected fire,
- equipment for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health.

Hearing

7. The Tribunal held a Hearing by telephone conference on 21 January 2025. At the Hearing the parties were not present. The Third Party was represented by Ms Diane Coutts. There was no attendance for or on behalf of the Tenant or the Landlord.
8. Ms Coutts for the Third Party made the following oral representations:-
 - i. The precise date upon which the Tenant removed from the Property is not known. Ms Coutts checked internal records within the Third Party Housing Team and was advised that the Tenant had been rehomed. Ms Coutts speculated that the Tenant probably removed relatively recently.
 - ii. Ms Coutts had not visited the Property.
 - iii. There had been no further dialogue with Mr Duguid in the intervening period. Ms Coutts was aware the Landlord's right of entry application to the Tribunal had been rejected due to the absence of evidence of the Tenant being written to for access.
 - iv. Ms Coutts had no knowledge of any appliances supplied by the Landlord to the Tenant in terms of the PRT.
 - v. Notwithstanding the terms of the application there are no issues arising relative to access to external doors and outbuildings.

Findings of Fact

9. The tribunal finds the following facts to be established:-
 - (a) The Landlord is the heritable proprietor of the Property.
 - (b) The Property was previously leased by the Landlord to the Tenant in terms of the PRT.
 - (c) The Tenant has removed from the Property.
 - (d) The PRT ended following the Tenant's removal.
 - (e) It is the Landlord's responsibility to ensure that the Property meets the Repairing Standard under the Housing (Scotland) Act 2006.
 - (f) The Electrical Installation Condition Report ("EICR") of R Ferguson Limited dated 24 July 2023 relative to the Property is not in satisfactory terms. The EICR describes the general condition of the installation as "Unsatisfactory" and lists numerous items that are dangerous (Code C1).
 - (g) In the absence of a satisfactory EICR prepared by a suitably qualified contractor or skilled electrician the Tribunal does not have evidence that the Property meets the Repairing Standard or the tolerable standard. The Tribunal also cannot be satisfied that the equipment installed within the Property for detecting fires and for giving warning in the event of fire or suspected fire and for giving warning if carbon monoxide is present in a concentration that is hazardous to health is satisfactory.

Reasons for the decision

10. The EICR provided by the Landlord relative to the Property is not in satisfactory terms. The Tribunal is not therefore satisfied that the installations for the supply of electricity are in a reasonable state of repair and in proper working order. In addition the Tribunal is not satisfied that equipment for detecting fire and for giving warning of fire or suspected fire and for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health is satisfactory and conforms to guidance issued by the Scottish Ministers.

Decision

11. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
12. The Tribunal proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
13. The decision of the tribunal was unanimous.

Right of Appeal

- 14. 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 tribunal. That party must seek permission to appeal 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 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 Buchanan

Signed

Date : 30 January 2024

Legal Member and Chairperson