

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)

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

Chamber Ref: FTS/HPC/RT/25/0746

Property at 54 High Street, Falkirk, FK1 1DD (Title Number STG26878) (the Property)

The Parties:-

Falkirk Council Private Sector Team, Suite 2, The Forum, Callendar Business Park, FK1 1XR (the Third Party Applicant)

Ms Carrie Ann Welsh and Mr Derek Thomson, 27 Greenvale Drive, Brightons, Falkirk (the Respondents)

Tribunal members

Ms. Susanne L. M. Tanner K.C., Legal Member and Chair

Mrs Sara Hesp, Ordinary Member

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 Respondent has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (the 2006 Act) in relation to the Property, and taking account of the written documentation included with the Application and the parties' written and oral representations:

- (1) determined that the Respondents have failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act; and

(2) made a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act.

The decision of the tribunal was unanimous.

Procedure

1. On 19 February 2025, the Third Party Applicant, a private sector housing team in Falkirk local authority, made a third party application to the tribunal in terms of Section 22(1A) of the Housing (Scotland) Act 2006, alleging that the Property does not meet the repairing standard (the Application).
2. The Third Party Applicant alleges that the element of the Repairing Standard with which the Respondents have not complied is:
‘(c) the installations in the house for the supply of water, gas, electricity (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 property working order.’
3. The Third Party Applicant provided further explanation of its allegations in a paper apart to the Application, headed *‘Summary of Events by Third Party Applicant’*. In summary, the Third Party Applicant has, as part of its processes in relation to landlord re-registration for the Property, requested safety certificates and confirmations from the Respondents which have not been provided by the Respondents despite repeated requests. In particular, the Respondents have been requested and failed to provide to the Third Party Applicant:
 - 3.1. An electrical installation condition report (EICR);
 - 3.2. A gas safety certificate (if applicable); and
 - 3.3. Confirmation of an interlinked smoke and heat detection system and carbon monoxide alarm.
4. Copies of correspondence from the Third Party Applicant to the Respondents in relation to the requests, with proof of delivery, were included as supporting documents with the Application.
5. The Third Party Applicant included details of the liable person as per Council Tax records for the Property, as Miss Caitlin Jamieson (since 13 October 2021). Following receipt of the Application, the tribunal’s administration wrote to Miss Jamieson at the Property to ask whether she wished to be treated as a participating party to the Application. No response was received from Miss Jamieson and she has not become a participating party.

6. An inspection and a teleconference hearing were arranged for 1 September 2025 at 1000h and 1215h respectively. On 23 July 2025, the Third Party Applicant and the Respondents were notified of the arrangements and provided with joining details for the conference call. Parties were asked to confirm whether they wished to submit written representations and/or to attend the hearing.
7. Both Mr Beatt from the Third Party Applicant and the Respondents confirmed to the tribunal's administration that they intended to attend the hearing.
8. Mr Beatt from the Third Party Applicant notified the tribunal that the Respondents had advised that Miss Jamieson no longer lived in the Property. Her address was marked as present whereabouts unknown.
9. The tribunal issued a Direction to request the Respondent to confirm by 1 September 2025 the date on which Miss Jamieson moved out of the Property.
10. Mr Beatt from the Third Party Applicant contacted the tribunal's administration in response to the Direction to state that he had no information other than that provided to him by the Respondents.

Inspection of the Property – 1 September 2025 at 1000h

11. The tribunal inspected the Property on 1 September 2025, as a fact finding exercise and carried out a visual inspection of the alleged issues, in addition to testing of the smoke alarm and heat alarm which were present in the Property.
12. The property is a two-bedroomed flat on the top floor of a pre-1900 stone-built block located above shops on the main street of Falkirk.
13. Mr Beatt did not attend from the Third Party Applicant or make any contact with the tribunal.
14. Ms Welsh, the first Respondent was present for access and during the inspection.
15. The Property was unoccupied and unfurnished at the time of inspection. To the front of the Property, there was an open plan kitchen / living room and a bedroom which Ms Welsh said that the former tenant had used as a child's bedroom. To the rear of the Property was an empty room which Ms Welsh informed the tribunal had been used by the former tenant as the principal bedroom; and a bathroom.
16. Ms Hesp, the surveyor/ordinary member of the tribunal took photographs during the inspection and testing which are contained in a Schedule of Photographs which form part of this Statement of Reasons for the tribunal's Decision.

Hearing – 1 September 2025, teleconference, 1215h

17. A hearing took place on 1 September 2025, after the Property inspection.
18. Mr Beatt from the Third Party Applicant did not attend the hearing or make any contact with the tribunal to request a postponement or adjournment. The tribunal clerk attempted to contact Mr Beatt on the mobile telephone number he had provided on the Application but it played a recorded message which provided a group email address for contact. The tribunal clerk sent an email to that address but there was no response and no one from the Third Party Applicant attended the hearing.
19. Mr Thomson, the second Respondent attended the hearing.
20. The tribunal adjourned to decide whether to proceed in the absence of the Third Party Applicant. The tribunal had regard to the Application and the findings on inspection, as well correspondence from Mr Beatt , including the response to the tribunal's Direction sent within a week of the hearing date, from which it can be inferred that the Third Party Applicant is insisting on the Application despite Mr Beatt's non attendance at the inspection and hearing. The tribunal decided to proceed in the absence of the Third Party Applicant, in terms of Rule 29 of the 2017 Rules, on the basis of the information before it and the oral submissions of Mr Thomson, the Second Respondent.
21. Ms Tanner KC, the tribunal chair explained the procedure for the hearing to Mr Thomson.
22. Ms Hesp, surveyor, the ordinary member, summarised the tribunal's findings on inspection and testing, in respect of each of three allegations. In summary, she said:
 - 22.1. No Electrical Installation Condition Report (EICR) has been exhibited by the Respondents. The consumer unit was checked during the inspection and it is a relatively new unit with RCD protection. The consumer unit will need to be checked as part of an EICR, carried out by a suitably competent electrician, who is a member of NICEIC / SELECT / NAPIT;
 - 22.2. There is one heat detector in the kitchen / living room and one smoke detector in the hall, which were interlinked on testing. The smoke detector in the hall was beeping intermittently and needs attention, possibly the provision of a battery. There is a base unit for a detector in the room to the rear (said by Ms Welsh to have been used as a bedroom by the former tenant, as above) but there is no smoke detector attached to the base. Ms Hesp said that having

regard to current Scottish Government Guidance in relation to this element of the repairing standard there should be a smoke detector in the area used as the main daily living space; and

22.3. There is no gas supply at the property so there is no requirement for a Gas Safety Certificate to be obtained or a carbon monoxide detector to be fitted.

23. The tribunal heard oral representations from Mr Thomson, Respondent in which he said that:

23.1. the former tenant, Miss Jamieson, moved out of the Property in April 2024 and it has been vacant since then;

23.2. He will instruct an EICR to be carried out;

23.3. there was a smoke detector in the rear bedroom but he believes it was damaged / removed by the former tenant and it has not been replaced since she moved out;

23.4. he will instruct repair / replacement of the smoke detectors in the installed system, so that it complies with current requirements and guidance;

23.5. the Property is not currently on the market for rent; and

23.6. he expects to be able to attend to the outstanding matters within 30 days.

24. Ms Tanner KC explained the post-hearing process to Mr Thomson and the hearing concluded.

25. The tribunal adjourned to deliberate on the issue before it.

Summary of the Issue to be determined by the tribunal

26. The issue to be determined is whether the Property meets the repairing standard as specified in section 13 of the 2006 Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the 2006 Act.

The tribunal made the following findings-in-fact:

27. The Respondents have been the joint registered proprietors of the Property since 13 July 2020.

28. The Respondents sought re-registration as landlords with the Third Party Applicant.
29. The Third Party Applicant requested that the Respondents provide an Electrical Installation Condition Report, a Gas Safety Certificate (if applicable) and confirmation that there are sufficient interlinked smoke and heat detectors in the Property.
30. The Respondents did not provide the requested certification or confirmation to the Third Party Applicant.
31. There is no current Electrical Installation Condition Report for the Property.
32. There is a heat detector in the open plan kitchen / living area in the Property.
33. There is an interlinked smoke detector in the hall of the Property, but it beeps intermittently and requires to be repaired or replaced so that it is fully operational.
34. There is no smoke detector in the open plan kitchen / living room.
35. There is a base unit without any smoke detector attached to it in the rear bedroom in the Property.
36. There is no gas supply in the Property.

Discussion regarding the issues and the repairing standard, paragraphs (1)(c)

37. The Third Party Applicant complained that the Property fails to meet the repairing standard, section 13(1)(c). The Respondents have admitted the alleged breaches. There are no issues in dispute.
38. Section 13(1) of the Housing (Scotland) Act 2006 provides:

*“(1) A house meets the repairing standard if—
‘(c) the installations in the house for the supply of water, gas, electricity (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 property working order.’*

39. The tribunal was satisfied that there is no current Electrical Installation Condition Report to show that the installations in the house for the supply of electricity (including residual current devices) are in a reasonable state of repair and proper

working order. A residual current device is intended to reduce the risk of electrocution and fire by breaking the circuit in the event of a fault.

40. The requirements in relation to smoke and heat alarms as part of the repairing standard is part of the 'Tolerable Standard' which the Property must meet. That engages Section 13(1)(h) of the 2006 Act, which is a different and additional subsection of the repairing standard from the one alleged by the Third Party Applicant in the Application. Part of the Tolerable Standard is that the Property has an interlinked system of fire and smoke alarms and adequate carbon monoxide alarms. Section 86(1A) of the Housing Scotland Act 1987 sets out that regard must be had to Scottish Government Guidance in construing this element of the Tolerable Standard. The Scottish Government guidance defines what is 'satisfactory' by setting out the requirement for:

- *'one smoke alarm installed in the room most frequently used for general daytime living purposes (normally the living room/lounge);*
- *one smoke alarm in every circulation space on each storey, such as hallways and landings;*
- *one heat alarm installed in every kitchen;*
- *all smoke and heat alarms to be ceiling mounted; and*
- *all smoke and heat alarms to be interlinked.*

Mains-operated alarms (with battery backup) are permitted, and tamper proof long-life lithium battery alarms (i.e. not PP3 type or user-replaceable) are also permitted. ...'. (Scottish Government 'Guidance relating to the Tolerable Standard on satisfactory fire detection and satisfactory carbon monoxide detection', Published 20 June 2023, Local Government and Housing Directorate, ISBN, 9781805259893, paras. 16.5 to 16.6).

41. The tribunal was satisfied, having regard to the guidance and the present state of the Property (which was unoccupied and unfurnished at the time of inspection) that it does not presently meet the standard specified in the current Scottish Government guidance for interlinked smoke and heat alarms for the Tolerable Standard. Because the Property was empty at the time of inspection, it could not be established whether the open plan kitchen / living room, or the room to the rear described by Ms Welsh as previously being used as the principal bedroom might be most frequently used by another tenant for general daytime living purposes. In either case, there was no operational and interlinked smoke alarm in either of these rooms at the time of the tribunal's inspection.

42. Had Mr Beatt or another employee of the Third Party Applicant attended the hearing, the tribunal would have raised the issue of the subsections of the Repairing Standard being relied upon. Despite the fact that the Third Party Applicant did not tick the relevant box on the Application, the paper apart clearly outlined that the Third Party Applicant required confirmation from the Respondents that there was satisfactory provision of smoke and heat alarms. The Respondents have therefore had fair notice of that element of the repairing standard. The Respondents have participated in proceedings and admit the failure. Given that the tribunal must determine overall whether the Property meets the repairing standard, and the provision of interlinked smoke and heat alarms is one element of that, which relates to a health and safety issue, the tribunal determined that subsection 13(1)(h) of the 2006 Act has not been complied with.
43. In relation to the third aspect of the Third Party Applicant's complaint, the tribunal is satisfied that there is no gas supply in the Property, so the provision of a Gas Safety Certificate is not required; nor is a carbon monoxide alarm.

Repairing Standard Enforcement Order (RSEO)

44. Because the tribunal determined that the Respondents have failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act in respect of the items listed, it must require the Respondents to carry out the works necessary for meeting the repairing standard and has therefore made a Repairing Standard Enforcement Order ("RSEO") in terms of Section 24(2) of the 2006 Act.
45. Having decided to make a RSEO, the tribunal considered the length of time which should be provided for compliance. The tribunal elected to impose a period of 30 days, having regard to the length of time for which repairs have been outstanding, the nature of the repairs and the likely length of time to instruct and carry out the required works and to provide supporting evidence of the same.

Right of Appeal

- 46. 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

47. 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.

Ms. Susanne L M Tanner K.C.
Legal Member / Chair of the tribunal

Date 1 September 2025

**Schedule of Photographs taken at Inspection on 1 September 2025
(attached)**