

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/23/1833

282 Stirling Street, Dunipace FK6 6QL (“the property”)

The Parties:-

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

Ms Emma Gallacher, 5 Marsden Court, Stirling FK9 5LU (“the landlord”)

Tribunal Members: Richard Mill (Legal Member) and Sara Hesp (Ordinary Member)

Decision

The property meets the repairing standard. The landlord has complied with the duties imposed by section 14(1) of the Housing (Scotland) Act 2006. No Repairing Standard Enforcement Order is necessary.

Background

1. The third party applicant local authority applied to the tribunal for a determination of whether the landlord has failed to comply with the duties imposed by section 14(1) of the Act in respect of the property.
2. In the written application the third party applicant stated that the landlord had failed to comply with its duty to ensure that the property meets the repairing standard according to section 13(1)(a), (b), (c), (d), (f) and (h), which set out the following obligations:-
 - whether the house is wind and watertight and in all other respects reasonably fit for human habitation.

- whether the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
- whether the installations in the house for the supply of water, gas and electricity and for sanitation, space heating or heating water are in a reasonable state of repair and in proper working order.
- whether any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- whether the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- whether the house does not meet the tolerable standard.

Inspection

3. The tribunal inspected the property on 8 September 2023 at 10.00 am. The landlord (and her father) permitted entry to the tribunal. The third party applicant did not attend.

Hearing

4. Following the inspection of the property, the tribunal convened a hearing on 8 September 2023 at 12 noon by teleconference. The third party applicant was represented by Mr Craig Beatt. The landlord was not present (and had advised the tribunal members at the inspection that she would not participate).

Summary of Issues

5. The issues to be determined by the tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
6. The written application raised a number of concerns. Falkirk Council issued had issued a letter to the landlord, copied to her managing agents, Urban Property, on 30 March 2023, which raised the following matters:
 1. Absence of interlinked smoke and heat detectors.
 2. No EICR had been produced.
 3. No Gas Safety Certificate has been produced.

4. Entrance porch: the door was sticking, the handle was loose, mould was present and there were concerns about dampness.
5. Front downstairs bedroom: mould was noted with possible damp.
6. Rear downstairs bedroom: also had signs of mould and there was no doorhandle.
7. Downstairs bathroom: the door did not close properly and the sealant around the bath and shower was possibly no longer watertight.
8. Living room: The ceiling was badly cracked and bowed in the centre to the extent that the tenant was unable use the room due to the fear of total collapse.
9. Rear porch: possible water ingress.
10. Third bedroom (upstairs): the radiator did not have a thermostatic radiator valve to regulate the heat.
11. Upstairs bathroom: a small leak was noted from the heated towel rail and the extractor fan was not working.
12. The guttering at the front, side and rear of the property, was leaking.

Documentation provided by landlord

- A Gas Landlord Gas Safety Record dated 4 May 2023. This confirms that the Worcester Bosch combi boiler situated in the garage is safe and compliant.
- An EICR dated 12 September 2022 confirms that the electrical condition is satisfactory and that there are no C1 or C2 repair issues.

Findings in Fact

7. The tribunal makes the following findings in fact (as at 8 September 2023):
 - a. The property is a three bedroomed detached villa with adjoining garage situated in a semi-rural area.
 - b. The property is comprised of front and rear porches, hallway and stair, kitchen, living room, three bedrooms and an upstairs and downstairs bathroom.

- c. The property is not currently tenanted. The former tenant left on 30 June 2023. The property has been the subject of extensive renovations since then and is currently being marketed for sale.
 - d. Interlinked smoke and heat detectors are present and operative.
 - e. There are no high damp readings indicative of rising or penetrating damp or active water ingress. Although there was a higher moisture meter reading in the hallway, adjacent to the bathroom, it seems that following recent refurbishment, previous leakage from the bathroom may have been drying out
 - f. The living room ceiling has been taken down and renewed, replastered and redecorated.
 - g. The upstairs (internal) bathroom has been completely refurbished. There is a functional extractor fan.
 - h. The gutterings and other rain fixtures are weathered in areas but there as no evidence of any active leaks.
 - i. The condition of the property is commensurate with other types of dwellings of similar type and age.
8. Reference is made to the schedule of photographs comprised within the inspection report prepared by the tribunal and attached to this decision.

Reasons for Decision

- 9. The tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection.
- 10. The tribunal was only able to consider the complaints which formed part of the intimated application and had an obligation to consider the complaints as at the date of the inspection and hearing on 8 September 2023.
- 11. The tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
- 12. Reference is made to the tribunal's findings in fact, together with the compliance documentation which the landlord otherwise provided. There are no concerns regarding the condition of the property which would prejudice any future tenant or member of the public. The statutory standards as set out in the 2006 Act are met.

13. The tribunal determined that the property meets the repairing standard.

Decision

14. The tribunal, having made enquiries for the purposes of determining whether the landlords have complied with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, determined that the landlord has failed to comply with his duty imposed by Section 14(1)(b) of the Act in respect that the property does meet the repairing standard.

Right of Appeal

15. 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.
16. 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.

R Mill

Legal Member

11 September 2023