

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

Chamber Ref: FTS/HPC/RT/22/1189

Re: Property at 103 Claret Road, Falkirk, FK3 9LS registered in the Registers of Scotland under Title Number STG38069 (“the Property”)

The Parties:

1. Falkirk Council per its employee, Ms. Kate Smith, Private Sector Officer, Private Sector, The Forum, Callendar Business Park, Falkirk, FK1 1XR as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);
2. Mr. Emil Owczarek residing at the Property (“the Tenant”) and
3. Mrs. Sadia Ahmed residing at 17 Herries Road, Glasgow, G41 4DE (“the Landlord”) per her agent, Mr. Iqbal Ahmed residing at 26, Inch Wood, Bathgate, EH48 2EF (“the Landlord’s Representative”)

Tribunal Members:

Karen Moore (Chairman) and Sara Hesp (Surveyor and Ordinary Member)

Decision of the Tribunal

The Tribunal determined that the Landlord has failed to comply with the duty imposed on her by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c) and Section 13(1)(h) of the Act and has not failed to comply with that duty in respect of Section 13(1)(f) and Section 13(1)(g) of the Act

Background

1. By application received on 27 April 2022 (“the Application”), the Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Act in respect that the Property does not

meet the Repairing Standard in respect of Section 13(1)(c), Section 13(1)(f), Section 13(1)(g) and Section 13(1)(h) of the Act.

2. The Application comprised an application form and copy correspondence from the Third -party Applicant to the Landlord requesting sight of the Electrical Installation Condition Report (“EICR”) for the Property and, if applicable, the Gas Safety Certificate for the Property. An Energy Performance Certificate (“EPC”) was also requested. The Application noted that there did not appear to be smoke, heat or carbon monoxide detectors in the Property.
3. The Application was referred to the Tribunal. An Inspection of the Property was fixed for 13 July 2022 at 10.00 with a Hearing by telephone conference fixed for 14.30 on the same day. Prior to the Inspection and Hearing, the Landlord submitted an EICR for the Property which did not comply with the Scottish Government Guidance as the signatory is not a member of NICEIC, SELECT or NAPIT. The Landlord also submitted photographs purporting to show smoke and heat detectors in the Property. The Landlord submitted an EPC.

Inspection and Hearing

4. The Inspection of the matters complained of in the Application took place at the Property on 13 July 2022 at 10.00. The Tenant was present. The Third-party Applicant, the Landlord and the Landlord’s Representative were not present.
5. The Tribunal inspected the Property in respect of the matters complained of in the Application and made a photographic record at the Inspection which is annexed hereto and referred to for its terms.
6. The Hearing took place on 13 July 2022 at 14.30 by telephone conference call. Neither the Tenant nor the Landlord was present. The Third-party Applicant was represented by Mr. Craig Beatt. The Landlord’s Representative joined the Hearing at 14.40, stating that he thought that the Hearing had been scheduled to start at 14.45.
7. The Inspection was discussed with the Parties. The Tribunal advised that it was satisfied that there is no gas at the Property and that there is satisfactory provision for the detection of fires and for giving warning in the event of fire or suspected fire.
8. The Tribunal advised the Landlord’s Representative that the EICR was not acceptable as there was insufficient information in respect of the continuing accreditation of the party who had prepared and signed it and so it did not meet the Scottish Government guidelines. The Landlord’s Representative disputed that this accreditation is necessary.

Findings of Fact

9. The Tribunal’s findings in fact were made from the Application, the Inspection, the documents lodged and the Hearing.

10. The Tribunal found the following matters established: -
 - a. There is a tenancy of the Property between the Parties;
 - b. There is no gas supply at the Property and so there is no need for a gas Safety Certificate or for a carbon monoxide detector;
 - c. There is satisfactory provision for the detection of fires and for giving warning in the event of fire or suspected fire and
 - d. There is no acceptable current EICR for the Property.

Issues for the Tribunal

11. In these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Accordingly, the issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Section 13(1)(c), Section 13(1)(f), Section 13(1)(g) and Section 13(1)(h) of the Act at the date of the Inspection.

Decision of the Tribunal and reasons for the decision.

12. In respect of the complaint in terms of Section 13 (1) (c) that the Landlord has failed to ensure that the installations 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, as there is no current EICR for the Property, the Tribunal cannot be satisfied that Property is in a reasonable condition and so found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
13. In respect of the complaint in terms of Section 13 (1) (f) that the Landlord has failed to ensure that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, the Tribunal, having found that there is satisfactory provision, found that the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
14. In respect of the complaint in terms of Section 13 (1) (g) that the Landlord has failed to ensure that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration hazardous to health, as there is no gas supply at the Property, there is no requirement for this provision and so the Tribunal found that the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
15. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the Tolerable Standard as there is no current EICR for the Property, the Tribunal cannot be satisfied that Property meets the Tolerable Standard and so found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
16. The decision is unanimous.

Repairing Standard Enforcement Order

17. Having determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Signed

Karen Moore, Chairperson

4 August 2022