

# 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:** 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/22/1198

**Re: Property at 34 Firs Street, Falkirk, FK2 7AY registered in the Registers of Scotland under Title Number STG64348 (“the Property”)**

## **The Parties:**

1. Mr. Lukasz Saldat residing at the Property (“the Tenant”) and
2. 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), Section 13(1)(f), Section 13(1)(g) and Section 13(1)(h) of the Act .

## **Background**

1. By application received on 27 April 2022 (“the Application”), Falkirk Council as a 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 11.45 with a Hearing by telephone conference fixed for 14.30 on the same day.
4. Prior to the Inspection and Hearing, the Third-party Applicant withdrew from the Application and the Tribunal continued with the Application of its own accord. Also, prior to the Inspection and Hearing, the Landlord submitted an EPC, 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 and submitted photographs purporting to show that there are smoke detectors in the Property.

### **Inspection and Hearing**

5. The Inspection of the matters complained of in the Application did not take place at the Property on 13 July 2022 at 11.45 as the Tribunal could not gain access. The Tenant, the Third-party Applicant, the Landlord and the Landlord’s Representative were not present.
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 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 Tribunal advised the Landlord’s Representative that, as it could not gain access to the Property it could not be satisfied that there is no gas at the Property, or that the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration hazardous to health. As the Tribunal could not inspect any smoke and heat detectors which might be in the Property, the Tribunal advised the Landlord’s Representative that it could not be satisfied 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 and stated that there is no gas in the Property.

### **Findings of Fact**

9. The Tribunal’s findings in fact were made from the Application, the documents lodged and the Hearing.
10. The Tribunal found the following matters established: -

- a. There is a tenancy of the Property between the Landlord and the Tenant;
- b. There is no current Gas Safety Certificate for the Property, if this is applicable;
- c. There is no satisfactory evidence that there is provision for the detection of fires and for giving warning in the event of fire or suspected fire;
- d. There is no satisfactory evidence that there is provision for giving warning if carbon monoxide is present in a concentration hazardous to health, if this is applicable and
- e. 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. With regard to gas safety and the condition of any gas installation in the Property, although the Landlord's Representative stated that there is no gas supply to the Property, without the benefit of an Inspection or other documentary evidence, the Tribunal cannot be certain that this is the case. Accordingly, the Tribunal 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 no evidence of satisfactory provision, found that the Landlord has 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, the Tribunal, having found that there is no evidence of satisfactory provision, found that the Landlord has 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 and, in the event that a Gas Safety certificate is

required for the Property, as none was exhibited, 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

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

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**34 Firs Street, Falkirk FK2 7AY**

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**Schedule of photographs taken on 13 July 2022**



*Photograph 1: Front elevation*

