

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RT/22/1223

Re: 37 Hawthorn Street, Grangemouth FK3 8NB (“ the house”)

Land Register Title No: STG38054

The Parties:

Falkirk Council – Private Sector Team, Suite 2, The Forum, Callendar Business Park, Falkirk FK1 5XR (“the third-party applicant”)

Mr Edward Craig and Ms Margaret Martin, residing at the house (“the tenants”) (non-participating parties)

Mr Stephen Melvin, 5 Marshall Street, Grangemouth FK3 8LB (“the landlord”)

Tribunal Members – Sarah O’Neill (Legal Member) and Kingsley Bruce (Ordinary (Surveyor) Member)

Decision

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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of all the available evidence, determines that the landlord has not failed to comply with the said duty. The tribunal’s decision is unanimous.

Background

1. By application received on 28 April 2022, the third-party applicant applied to the tribunal for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.

2. In its application, the third-party applicant stated that it believed the landlord had failed to comply with his duty to ensure that the house met the repairing standard as set out in sections 13(1) (c), (d), (f) and (g) of the Act. The application stated that the landlord had failed to ensure that:
 - the installations in the house 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
 - any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
 - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
 - the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health
3. The third-party applicant complained that the landlord had failed to provide:
 - 1) a copy of the Electrical Installation Condition Report (EICR) and PAT test certificate for the house
 - 2) a copy of the gas safety certificate for the house
 - 3) confirmation of the correct fire, smoke and heat detection
 - 4) proof of any carbon monoxide detection
4. An email was received from Mrs Mhairi Ferrie, Private Sector Officer with Falkirk Council, on behalf of the third-party applicant on 29 April 2022 in response to a letter from the tribunal administration requesting a copy of the tenancy agreement (or if this was not available, as much detail about the history of the tenancy as possible). The email stated that, as the application had stemmed from the landlord's failure to provide evidence of his landlord registration obligations, it had not been necessary to involve the tenant, and no copy of their tenancy agreement was therefore available. The email confirmed, however, that the current tenants had been in the property since 12 September 2001.
5. On 10 May 2022, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President.
6. On 25 May 2022, the tribunal administration wrote to the parties notifying them that an inspection and hearing had been arranged for 14 July 2022. The parties were invited to submit written representations by 15 June 2022. A response was received from Mrs Ferrie on 1 June 2022, confirming that she wished to attend the hearing. On the same date, Mrs Ferrie forwarded to the tribunal two emails which it had received from the

landlord. Attached to the first email were an EICR and a gas safety certificate relating to the house. Attached to the second email were photographs of two smoke detectors and a heat detector.

7. On 17 June 2022, the tribunal issued a direction to the landlord, requiring him to produce either:
 - a) A further up to date EICR for the house by a suitably qualified and registered contractor, or
 - b) Evidence that the contractor who produced the EICR is either a member of NAPIT, or is a 'competent person' in terms of the current guidance issued by Scottish Ministers on electrical safety standardsand either:
 - a) an up to date PAT test certificate for the house from a suitably qualified and registered contractor, showing that all electrical installations, appliances and fixtures and fittings provided by the landlord under the tenancy had been checked and were working safely, or:
 - b) if there are no electrical installations, appliances and fixtures and fittings provided by the landlord under the tenancy, written confirmation of this.
8. A response to the direction was received from the landlord on 20 June 2022. In his response, the landlord confirmed that the house was an unfurnished property and that there was therefore no requirement for a PAT test to be carried out. He also enclosed a copy of an Electrotechnical Certification Scheme (ECS) card belonging to the electrician who produced the EICR for the house.

The inspection

9. The tribunal inspected the house on the morning of 14 July 2022. The weather conditions at the time of the tribunal's inspection were dry and sunny. Neither the third-party applicant nor the landlord was present at the inspection. The tenants were present at the inspection.
10. Photographs were taken during the inspection. A schedule of photographs is attached to this decision.

The hearing

11. A hearing was held by teleconference on 14 July 2022. Mrs Ferrie was present and represented the third-party applicant. The landlord was present and gave evidence on his own behalf.

The evidence

12. The evidence before the tribunal consisted of:

- The application form completed by the third-party applicant, together with accompanying documents, including a document headed 'Summary of Actions by Third Party Applicant - Falkirk Council', and a copy application for landlord registration renewal by the landlord.
- Repairs notification letter from the third-party applicant to the landlord dated 15 March 2022.
- Emails from the third-party applicant to the landlord dated 14 and 26 April 2022, regarding the repairs notification letter.
- Registers Direct copy of Land Register title STG38054.
- Email from the third-party applicant dated 29 April 2022.
- Gas Safety Certificate relating to the house produced by N. Menzies of Lomond Plumbing and Heating, Denny dated 16 September 2021.
- EICR relating to the house produced by Mr Davie Anderson of A and D Electrical Services, Bo'ness, dated 14 March 2022.
- Response to the tribunal's direction received from the landlord on 20 June 2022.
- Copy Electrotechnical Certification Scheme (ECS) card belonging to the electrician who produced the EICR for the house, showing him to have appropriate SELECT qualifications.
- The tribunal's inspection of the house.
- The oral representations of the parties at the hearing.

Summary of the issues

13. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord has complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

14. The tribunal made the following findings in fact:

- The house is owned by the landlord
- There is a tenancy in place between the landlord and the tenants which began on or around 12 September 2001
- The landlord had provided a valid gas safety certificate dated 16 September 2021 in respect of the house which had been produced by a Gas Safe registered engineer

- The landlord had provided an EICR relating to the house produced by a suitably qualified and registered electrical contractor
- At its inspection, the tribunal carefully checked the other items which were the subject of the complaint. The tribunal observed the following:
 - i. Smoke alarms were installed on the ceilings in the living room and the hallway.
 - ii. There was a heat alarm installed in the kitchen.
 - iii. When tested by the tribunal, the smoke and heat alarms were found to be interlinked and to be operating correctly.
 - iv. There was a carbon monoxide alarm located on top of the refrigerator in the kitchen.

Reasons for decision

15. Mrs Ferrie explained that the application had resulted from a spot check carried out by the third-party applicant following a telephone call from a family member of the tenants raising concerns about various issues. The application had been submitted after the third-party applicant had sent the repairs notification letter of 15 March 2022 and two subsequent emails of 14 and 26 April 2022, asking for the required certificates. No response had been received to any of these emails from the landlord.
16. The landlord told the tribunal that he had not received the repairs notification letter and subsequent emails, as these had gone into his junk folder. When he became aware of these, he had contacted the third-party applicant with the required information. He said that he had always complied with his obligations as a landlord. He pointed out that the EICR had been obtained in March 2022, as the previous one had been due to expire in April.
17. Mrs Ferrie confirmed that she was content with the certificates which had been submitted by the landlord. She had some concerns, however, about the smoke and heat detectors on the basis of the photographs submitted by the landlord. She therefore sought a decision from the tribunal as to whether these detectors met the repairing standard.
18. The tribunal considered each of the complaints made in the application in turn, as set out below.
 1. **Electrical Installation Condition Report (EICR) and PAT test certificate**
19. The tribunal noted that the EICR which had been produced by the landlord showed that the electrical installation was satisfactory. Mrs Ferrie confirmed that she was happy with the EICR. The tribunal also noted that, having had sight of the ECS card belonging to the electrician

who produced the EICR, it was satisfied that the EICR had been produced by a suitably qualified electrical contractor.

20. The tribunal also noted that the landlord had confirmed that the house was an unfurnished property and that there was therefore no requirement for a PAT test to be carried out. Mrs Ferrie confirmed that she was content that this was the case.

2. Gas safety certificate

21. The tribunal noted that the gas safety certificate which had been produced by the landlord had been provided by a Gas Safe registered engineer and showed that the gas installation was satisfactory. Mrs Ferrie confirmed that she was satisfied with the gas safety certificate.
22. The tribunal therefore determined that the installations in the house for the supply of water, gas and electricity and for sanitation, space and heating water are in a reasonable state of repair and in proper working order.

3. Smoke and heat detectors

23. During its inspection, the tribunal observed that smoke alarms were installed on the ceilings in the living room and the hallway. There was also a heat alarm installed in the kitchen. When tested by the tribunal, the smoke and heat alarms were found to be interlinked and to be operating correctly.
24. Mrs Ferrie confirmed that she was satisfied on the basis of what the tribunal had observed at its inspection that the smoke and heat alarms were satisfactory.
25. The tribunal determined that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

4. Carbon monoxide detector

26. The tribunal observed during its inspection that there was a carbon monoxide alarm located on top of the refrigerator in the kitchen. The gas boiler was also located in the kitchen.
27. Mrs Ferrie confirmed that she was satisfied on the basis of what the tribunal had observed at its inspection that the carbon monoxide detector was satisfactory.

28. The tribunal determined that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Summary of decision

29. On the basis of all the evidence before it, the tribunal determined that the landlord had not failed to comply with the duty under section 14(1) (b) of the Act. The decision of the tribunal was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the application.

Rights of Appeal

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.

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.

Signed.....

Date... 28 July 2022

Sarah O'Neill, Chairperson