

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Sections 26 and 27 of the Housing (Scotland) Act 2006, as amended

Chamber Ref: FTS/HPC/RT/21/0334

Title no: WLN33094

8 Farmstead Way, Bo'ness EH51 9RT ("The Property")

The Parties:-

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

Mr Andrew and Mrs Margaret Sneddon, 9 Stanmore Gardens, Lanark ML11 7RZ ("the landlords")

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

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having made enquiries for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the property concerned, and taking account of all representations received, determined that the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Act. The Tribunal also determined to make a Rent Relief Order.

Background

Reference is made to the determination of the Tribunal dated 21 May 2021 which decided that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and to the Repairing Standard Enforcement Order ("the RSEO") also dated 21 May 2021 confirming that the Landlords had failed to ensure that the property meets the repairing standard.

The RSEO required the Landlords to undertake works as is necessary for the purposes of ensuring that the property concerned does meet the repairing

standard and that any damage caused by the carrying out of work in terms of the said Order is made good.

In particular, the Tribunal required the Landlords to produce:-

- “1. An Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.
2. A copy of the current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection.

The Tribunal orders that the requirements specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice and evidenced to the Tribunal.”

Reasons for Decision

A hearing to determine the Landlords' compliance with the RSEO was held by teleconference at 11.30 am on 30 August 2021. The Landlords failed to join the hearing. This had been intimated to them. No explanation for their failure to participate has been provided. Miss Kate Smith of Falkirk Council joined the hearing to represent the third party applicant.

A gas safety certificate, issued by a Gas Safe registered engineer dated 12 February 2021, was produced from the Landlords in early June 2021. This confirms that the gas boiler and gas hob were functioning and safe. The certificate importantly reports however that no carbon monoxide detector was present in the property.

An EICR, issued by a SELECT accredited electrician dated 8 April 2021, was produced from the Landlords, again in early June 2021. An email from the electrician to the Landlords, sent on 12 May 2021 was also produced which raised 4 electrical issues which required remedied in the property. There is no evidence that such items have been resolved.

The Tribunal is very concerned that the Landlords have failed to demonstrate that the property is safe to live in. There is a continued lack of evidence that the electrics are safe and that there is adequate provision for the detection of fire or carbon monoxide.

No information was available which would justify affording the Landlord a further opportunity to carry out the works, and the outstanding issues originally identified remain outstanding. There has been no compliance. The

Landlord has failed to comply with the Repairing Standard Enforcement Order.

The Tribunal also decided to make a Rent Relief Order in terms of Section 27 of the Act. Having taken into account all the circumstances of which it is aware, the Tribunal decided that a Rent Relief Order for 90% of the rent was just, equitable and proportionate. The potential consequences of failing to have adequate provision for the detection of fire and carbon monoxide is death.

Section 29 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. Accordingly, the Tribunal determined that Police Scotland should be notified of the Landlord's failure to comply with the Order.

The decision of the Tribunal was unanimous.

Right 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 30 August 2021 before this witness:-

R. Mill

_____ Legal Member

_____ Witness

CATHERINE MCWAGHT Name

_____ Address