

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Sections 26 and 27 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RT/222/0593**

**Property: 107 Thornton Avenue, Bonnybridge FK4 1AP (“the property/house”)**

**The Parties:-**

**Falkirk Council, Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk FK1 5XR (“the Third Party Applicant”)**

**Ms Caitlin Don, sometime 107 Thornton Avenue, Falkirk FK4 1AP (“the Tenant”)**

**Mr Syed Abbas, 9 Holding, Kilsyth Road, Longcroft, Bonnybridge FK4 1HD (“the Landlord”)**

**Tribunal Members:**

**George Clark (Legal Member/Chairman) and Carol Jones (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order made by the Tribunal on 22 May 2022, determined that the Landlord has not complied with the Order and that the failure to comply should be notified to the local authority. The Tribunal was unable to make a Rent Relief Order.**

**Background**

By application, dated 1 March 2022, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1) of the Housing (Scotland) Act 2006 ("the Act").

The application stated that the Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard.

Following an unsuccessful attempt to inspect the Property, and a Hearing held by means of a telephone conference call on 19 May 2022, the Tribunal made a Repairing Standard Enforcement Order ("the Order"). The Order, dated 22 May 2022, required the Landlord, within a period of 31 days from the date of service of the Order:

1. To produce an up to date satisfactory gas safety record for the property from a suitably qualified gas safe engineer;
2. To produce an up to date satisfactory Electrical Installation Condition Report ("EICR") for the property from a suitably qualified and SELECT, NICEIC or NAPIT registered electrical contractor;
3. To produce an up to date satisfactory Portable Appliance Test Certificate ("PAT") of any electrical appliances provided by the landlord at the property;
4. To provide evidence that the property has satisfactory provision for detection and warning of carbon monoxide in compliance with all current statutory guidance;
5. To provide evidence that the property has satisfactory provision for detecting fires in compliance with all current statutory guidance.

The Tribunal Members inspected the Property on 7 November 2022 and were admitted by the Landlord's representative, his son Mr Sami Abbas, who told the Tribunal that he was in the process of renovating the Property for his own occupation. The Property is presently unoccupied.

The property is a former local authority end terrace two storey house with single storey extension. It is situated in a residential area in Bonnybridge and located around 4 miles west of Falkirk town centre. The accommodation comprises a hall, living room, kitchen, one bedroom and shower room on the ground floor and two bedrooms and a bathroom on the upper floor. The property has a gas central heating system and Upvc windows.

A Schedule of Photographs, taken at the Inspection, is attached to and forms part of this Statement of Decision.

The Landlord's representative provided the Tribunal with copies of a Gas Safety Record ("GSR"), dated 12 May 2022 and an EICR dated 9 May 2022. The GSR was signed by Callan Cairney and the EICR was issued by TM Quinn, 1 Hume Road, Cumbernauld.

## **The Hearing**

The Tribunal held a Hearing, by means of a telephone conference call, on the afternoon of 7 November 2022. The Third Party Applicant was represented by Mrs Mhairi Ferrie. The Landlord was not present or represented. The Tenant had vacated the Property, so was not a party to the proceedings. In the absence of the Landlord, no new evidence emerged at the Hearing.

## **Summary of the issues**

The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order made on 22 May 2022 and, if not, whether a Rent Relief Order in respect of the Property should be made.

## **Reasons for the Decision**

The Tribunal noted that the Landlord's son had said at the inspection that he was renovating the Property for his own occupation, but the Property is presently unoccupied, and the Tribunal could not assume that, going forward, it would not be tenanted.

The Tribunal was not satisfied with either the GSR or the EICR. Both were incomplete and neither contained information which indicated that they had been issued by a suitably qualified and registered engineer or a suitably qualified and registered electrician, as required by the RSEO.

The Tribunal noted that there are presently no portable appliances in the Property.

There is a carbon monoxide detector within the cupboard that houses the gas central heating boiler. Its location does not comply with current statutory guidance, and it should be relocated to a position outside the cupboard.

The Tribunal decided that the Property does not have satisfactory provision for detecting fire in compliance with all current statutory guidance. There is a functioning smoke detector in the ground floor hallway and a non-functioning smoke detector in the upstairs hallway, but they are not interlinked. There is a defective smoke detector hanging from the ceiling in the living room and no heat detector in the kitchen.

Having considered the evidence gained at the Inspection and the documentation provided by the Landlord's representative, the Tribunal decided that the Landlord has failed to comply with the RSEO made by the Tribunal on 22 May 2022.

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 failure to comply will be reported to the local authority and to Police Scotland, for possible prosecution.

The Tribunal was unable to make a Rent Relief Order under Section 27 of the Act, as the Tenant has vacated the Property.

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.**

G. Clark      Date: 7 November 2022