

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 27

Chamber Ref: FTS/HPC/RT/21/2965

32 Barclay Avenue, Elderslie, PA5 9HF (“the Property”)

The Parties:-

Renfrewshire Council, Cotton House, Paisley, PA1 1BR (“the Third Party Applicant”)

Mrs Nicola Donald, 32 Barclay Avenue, Elderslie, PA5 9HF (“the Tenant”)

Mr Ian Tennie, 63 Victoria Road, Paisley, PA2 9PT (“the Landlord”)

Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Mr Donald Wooley, Chartered Surveyor (Ordinary Member)

Decision

The tribunal made a repairing standard enforcement order in terms of Section 24(2) of The Housing (Scotland) Act 2006.

Background

1. By application dated 30th November 2021, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act (“the 2006 Act.”)
2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and that the Property does not have satisfactory provision for detecting fires

and for giving warning in the event of suspected fire. Specifically, the application states that the Landlord has failed to provide a gas safety certificate or an electrical installation inspection report (EICR) and that there were insufficient smoke/ heat detectors installed in the Property.

3. On 20th December 2021, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.
4. On 14th February 2022, the Tribunal issued a Direction under Regulation 16 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations") requiring the Landlord to produce a gas safety certificate and an EICR (including PAT testing).
5. Neither a gas safety certificate or EICR has been submitted in response to the said Direction.

Property Inspection

6. The members of the tribunal inspected the Property on 15th March 2022 and a copy of the ordinary member's Pre-hearing inspection summary and schedule of photographs is attached to this Decision

The Hearing

7. A Hearing was held by audioconference on 22nd March 2022. The Applicant was not represented and the Landlord was neither in attendance nor represented. The Tenant was present and was accompanied by her partner, Mr Stuart Rankin.
8. The Tenant said that she has not been provided with a current gas safety certificate or EICR. She said that she has a memory of being provided with one of them around six years previously when the tenancy commenced but she could not remember which one.
9. The Tenant said that she is unaware of any electrician or gas engineer having carried out an inspection during the tenancy. She said that she has not had hot water or heating for over a week because she is wary about using the gas boiler because it was making a buzzing noise and she had switched it off because of safety concerns. She said that the issue had been reported to the Landlord but that he had done nothing about it.
10. In an email sent to the Third Party Applicant on 10th November 2021, the Tenant stated that she did not have a copy of the tenancy agreement.

11. Findings in Fact

- 11.1 The Tenant and Landlord are parties to a tenancy for the Property.
- 11.2 The Landlord has not provided the Tenant with a Gas Safety Certificate.

- 11.3 The Landlord has not been provided the Tenant with an electrical installation condition report or any Portable Appliance Test Certification (PAT) in relation to any electrical appliances originally provided by the landlord, or the oven should it not covered by an EICR.
- 11.4 The Property contains satisfactory provision for detecting fires and for giving warning in the event of suspected fire.

Reasons

12. The tribunal relied on the evidence of the Tenant which it found to be credible.
13. The tribunal had directed the Landlord to provide the appropriate gas safety certificate, electrical installation condition report and PAT testing documentation for any portable appliances supplied by the Landlord. The documents were to be provided by 8th March 2022 and the Landlord has not done so.
14. The tribunal had inspected the Property and had seen no evidence of the required gas and electrical certification. It relied on what it had found at the Property as detailed in the attached report.
15. It is a requirement of landlords to comply with the regulations in relation to gas and electrical systems because of the clear health and safety implications. In the case of the Property, the members of the tribunal were concerned not only at the apparent lack of certification for some years but also because of the issues of the boiler which the Tenant was concerned about and mentioned at the inspection as well as in evidence at the Hearing. The tribunal found it concerning that the Landlord has not responded to this issue and that this underlines the need for gas safety certificates and EICRs to be in place.

Disposal

16. The tribunal determined that a repairing standard enforcement order (RSEO) be made in the following terms;

The Landlord is required to:

- 1. produce a current Electrical Installation Condition Report for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT, or other suitable accredited registered scheme, who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category. PAT testing documentation for any portable appliances supplied by the Landlord should also be produced which has been prepared by a similarly qualified and accredited electrician.**
- 2. produce a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.**

The Landlord is required to submit to the Tribunal the documents required by the RSEO before 2ND May 2022.

17. The tribunal considered that, if the certificates required by the RSEO were produced, it may not be necessary for the Property to be re-inspected. It considered that it would be appropriate to fix a date for a further Hearing to enable the members of the Tribunal to determine whether or not the RSEO has been complied with and, if not, whether a rent relief order the 2006 Act should be made. Parties will be advised of the date and time of the Hearing in due course.

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.

M McAllister

23rd March 2022

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Repairing Standard Enforcement Order

Housing (Scotland) Act 2006: Section 24 (2)

Chamber Ref: FTS/HPC/RT/21/2965

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The Parties:-

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NOTICE TO

Mr Ian Tennie

Whereas in terms of their decision dated 23rd March 2022, the First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal) determined that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006, the tribunal now makes a repairing standard enforcement order (RSEO) in the following terms and requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of Section 13 of the said Act and that any damage caused by the carrying out of any work in terms of this Order is made good.

The tribunal determined to make a repairing standard enforcement order in the following terms:

1. The Landlord is required to produce a current Electrical Installation Condition Report for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT, or other suitable accredited registered scheme, who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to have no recommendations in the C1 or C2 category. PAT testing documentation for any portable appliances supplied by the Landlord should also be produced which has been prepared by a similarly qualified and accredited electrician.
2. The Landlord is required to produce a current Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.

The Landlord requires to comply with the repairing standard order by 2nd May 2022

A landlord, tenant or third party applicant 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents typewritten on this and the preceding page are executed by Martin Joseph McAllister, legal member of the First-tier Tribunal for Scotland at Saltcoats on 23rd March 2022 before Majella Ashby, 21 Montgomerie Crescent, Saltcoats

M McAllister