

Housing and Property Chamber First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006

Property: 31 Campbell Crescent, Falkirk FK2 9JE (“the Property”/ “the house”)

Title No: STG65154

Chamber Reference: FTS/HPC/RT/19/3136

Parties:

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

Ms Lisa Fullerton, 31 Campbell Crescent, Falkirk FK2 9JE (“the Tenant”)

Mr Alastair Scott, 26 Charles Sneddon Avenue, Bo’ness EH51 9TJ (“the Landlord”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Andrew Taylor (Ordinary Member/Surveyor)

Whereas in terms of their decision dated 6 January 2020, 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 Act”), the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard. In particular, the Tribunal requires the Landlord to:

1. Carry out such works as are necessary to the mortar pointing at ridge and the cracked mortar pointing to the tifting at the roof verge to ensure that the roof is wind and watertight.
2. Engage a suitably qualified and Gas Safe registered heating engineer to repair the water leak at the gas fired central heating boiler, which is highlighted on the Gas Safety Certificate.
3. Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to rectify the C2 bonding fault highlighted on the current certificated electrical condition check (EICR). On completion of that work carry out a further EICR, which should include comments on the suitability/safety of the electrical circuitry, wiring and connections for the oven and hob. Provide copies of that Report to the Tenant, Third party and Tribunal

4. Replace the blown double-glazing unit to the Front bedroom and the broken double-glazing unit in the Kitchen.
5. Repair or replace the handle/lock/latch to the front door so that it latches and locks effectively and is secure.
6. Repair or replace the mirror doors and tracks in the front bedroom so that the wardrobe functions effectively.
7. Remove mould from the walls and ceilings in the front and back bedroom, apply a mould inhibitor and redecorate the affected areas.
8. Reposition the Carbon Monoxide detector in the front bedroom to ensure compliance with legislation.
9. Carry out all making good and decoration associated with the completion of the foregoing works.

The Tribunal order that the works required by this Order must be carried out within the period of six weeks from the date of service of this Order.

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.

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 George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 6 January 2020, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

V Clark

G Clark

..... Legal Member/Chair Witness

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Property: 31 Campbell Crescent, Falkirk FK2 9JE (“the Property”/ “the house”)

Chamber Reference: FTS/HPC/RT/19/3136

Parties:

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

Ms Lisa Fullerton, 31 Campbell Crescent, Falkirk FK2 9JE (“the Tenant”)

Mr Alastair Scott, 26 Charles Sneddon Avenue, Bo’ness EH51 9TJ (“the Landlord”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Andrew Taylor (Ordinary Member/Surveyor)

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 duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

1. By application, received by the Tribunal on 4 October 2019, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Landlord had failed to ensure that the house is

wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. The application was accompanied by a Notification of Repair Letter sent by the Third Party Applicant to the Landlord on 3 September 2019. The letter listed the following work which needed to be carried out and which formed the basis of the application:

- “Is there a Gas Safety Certificate?
- Is there an Electrical Installation Condition Report (EICR)?
- Is there an Energy Performance Certificate (EPC)?
- Carbon monoxide detector requires to be sited properly.
- Tenant reported that Light bulbs regularly “blow” within the property.
- Kitchen – leak at radiator, leak under sink, double socket on counter wall is scorched, behind coffee machine is a 4 way extension socket with the following appliances plugged into it: 2x ovens, microwave oven and coffee machine – please assess this as the extension block may be overloaded. Outer pane of double-glazed unit cracked – tenant stated it was accidentally damaged by her child.
- Hall – Front door lock mechanism appears to be faulty – when handle pushed up to lock the door, the bolt(s) does not always locate into the keep and often requires several attempts for the bolt(s) to locate.
- Bedroom front (tenant’s bedroom) - damp patch in the top right-hand corner of window wall. 2 x sliding doors of wardrobe require re-fitting. Double-glazed window unit seal appears “blown”. Glass has a frosted appearance
- Bedroom 2 rear – child’s room - White marks have appeared on ceiling, possible water ingress (issue may be related to external issue, see below)
- External – cement mortar missing from edge of roofline (on gable end of building) running from rear window to apex of roof. Possible case of water ingress to rear bedroom”

4. On 7 November 2019, the President of the Housing and Property Chamber intimated a decision to refer the Tenant’s application under Section 22 (1) of the Act to a Tribunal, gave Notice of Referral and of the date set for an inspection and Hearing.

5. The Landlord made written representations to the Tribunal. He pointed out that the damage to the outer pane of the kitchen window had been caused by the tenant. He provided a Report dated 6 December 2019 from Home Protection Services Ltd, Falkirk, which recommended repairs to the cracked/missing cement infill to the roof tiles, replacement of the double glazed unit in the front left-hand bedroom and an increase in the heat and ventilation and possible provision of a dehumidifier to help control the relative humidity within the bedrooms. He stated that the contractor had verbally acknowledged that the high atmospheric content to the bedrooms could be due to lack of heating and ventilation. The leak at the radiator and the leak under the sink, both in the kitchen, had been repaired and an Invoice for this work was produced. A verbal report from an electrician had suggested the faults relating to the scorched socket and the access extension block had resulted from overloading the sockets. The Landlord provided an e-mail from Jock's Locks stating that, although old and worn, the door and lock are serviceable and realignment work they had carried out had allowed the door to operate correctly. The Landlord stated that the Tenant had re-fitted the sliding wardrobe doors and that a replacement for the window where the double-glazing seal had "blown" had been ordered and was awaited. The carbon monoxide monitor had been sited correctly on 23 December 2019. The Landlord had met with Mr Beatt of Falkirk Council on 21 November 2019 to discuss repairs "and it was advised to wait until inspection on 6 January 2020 to complete repairs: however repairs have been carried out/investigated".
6. The Tribunal inspected the Property on the morning of 6 January 2020 2019 and was admitted by the Tenant. The Third Party Applicant was represented by Craig Beatt, Private Sector Officer, Falkirk Council. The Landlord was not present or represented at the inspection.
7. The Tribunal comprised George Clark (Legal Member/Chairperson) and Andrew Taylor (Ordinary Member/surveyor).
8. A Schedule of Photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

9. Following the inspection, the Tribunal held a Hearing at Wallace House, Stirling. The Tenant and Mr Beatt attended the Hearing. The Landlord was also present.
10. Mr Beatt, on behalf of the Third Party Applicant told the Tribunal that there was little to add to the written representations and the evidence the Tribunal had seen for itself at the Inspection.
11. The Landlord referred the Tribunal to his written representations regarding the door lock and the report of the dampness expert. He had, he said, had no dampness issues during the time he had lived in the Property and he

was not proposing to provide the Tenant with a dehumidifier. He also advised that a new window unit had been ordered for the front bedroom and that he was waiting for the contractor to call him to arrange repairs to the eaves and ridges of the roof.

12. The Parties then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

Findings of fact

13. The Tribunal makes the following findings of fact:

- The Property comprises an end-terraced former local authority house of traditional construction laid out over two floors, erected post-War. The accommodation comprises living room with kitchen off, three bedrooms and bathroom. The roof is tiled. There is garden ground to the rear.
- The Landlord has provided the Tribunal with a Gas Safety Certificate dated 27 March 2019. It rated the installation as a Pass, but indicated that there was a water leak under the boiler
- The Landlord has provided the Tribunal with an Electrical Installation Condition Report, which identifies a C2 item of disrepair, namely a bonding fault.
- The Tribunal has seen an Energy Performance Certificate in respect of the Property.
- The leak below the kitchen sink and the radiator leak in the kitchen have been repaired.
- The cover of the double socket which the Third Party Applicant stated was scorched has been replaced.
- The front door lock does not always “catch”.
- The Tribunal took readings using a moisture meter and found no evidence of dampness in the bedroom walls.
- The seal of the double-glazed window unit in the front bedroom is “blown”.
- The sliding doors of the wardrobes in the front bedroom are not functioning properly. They are not securely fixed into the tracking.
- The outer pane of the kitchen window is cracked.
- The position of the carbon monoxide monitor does not appear to comply with legislative requirements.
- There is cracked mortar pointing to the ridge of the roof and the tifting at the roof verge.

Reasons for Decision

14. The Tribunal was of the view that the water leak below the boiler, identified in the Gas Safety Certificate, was a matter of concern and must be attended to. The bonding fault highlighted in the Electrical Installation Condition Report (EICR) was categorised as a C2 item of disrepair, so the Certificate was not acceptable to the Tribunal. The electrical arrangement behind the oven and cooker is suspect, particularly as it appears that the oven is not connected into a cooker control unit. The view of the Tribunal was that a further EICR should be obtained, after the work to remedy the C2 category item of disrepair is carried out, the EICR to include comments on the suitability and safety of the electrical circuitry, wiring and connections for the oven and hob.
15. The Tribunal accepted that repairs to the eaves and ridge pointing have been instructed. The current defects may be contributing to the problem of high moisture content in the rear (child's) bedroom, but in any event, the Tribunal will have to be satisfied that the work has been carried out and that the mould evident on two of the bedrooms has been removed and the affected areas treated with a mould inhibitor and redecorated. Although the Tribunal was of the view that the high moisture levels were probably the result of condensation, it did not make a finding that they were attributable to any failure on the part of the Tenant to adequately heat or ventilate the bedrooms.
16. The mirror doors of the wardrobe in the front bedroom require to be repaired or replaced. At present, they do not fit securely into their tracking and there is a danger that they may fall out and cause harm.
17. The Landlord has confirmed that a replacement window unit is on order for the front bedroom, but the Tribunal needs to be satisfied from reinspection that it has been fitted.
18. It is the Landlord's responsibility to keep the Property wind and water tight. He may have a right of recovery from the Tenant in respect of the cost of replacing the double-glazing unit in the kitchen, but it does not meet the repairing standard, so is included in the RSEO that the Tribunal has decided to make.
19. The lock on the front door requires to be repaired or renewed, so that it latches and locks effectively and is secure.
20. The Tribunal must be satisfied that carbon monoxide monitor is suitably positioned so as to comply with all relevant legislation, regulations and guidelines.

Decision

21. The Tribunal, having considered all the evidence before it and the matters it had noted at the inspection, decided to make a Repairing Standard Enforcement Order in respect of the Property.

22. 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.

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G Clark

Signed..... Legal Member/Chairperson

Date: 6 January 2020

*This is the Schedule of Photographs
referred to in the foregoing
Statement of Decision of 6/1/20
G Clark*

Housing and Property Chamber
First-tier Tribunal for Scotland



31 Campbell Crescent, Laurieston, Falkirk, FK2 9JE
FTS/HPC/RT/19/3136
Schedule of Photographs - Inspection Date – 6th January 2020
Weather – Dry, windy, overcast



1. The property



2. Cracked tifting at verge



3. Cracked mortar at ridge



4. Broken glazing unit - kitchen



5. Kitchen radiator



6. Wiring arrangement behind oven



7. Replacement double socket at worktop



8. Pipework under sink



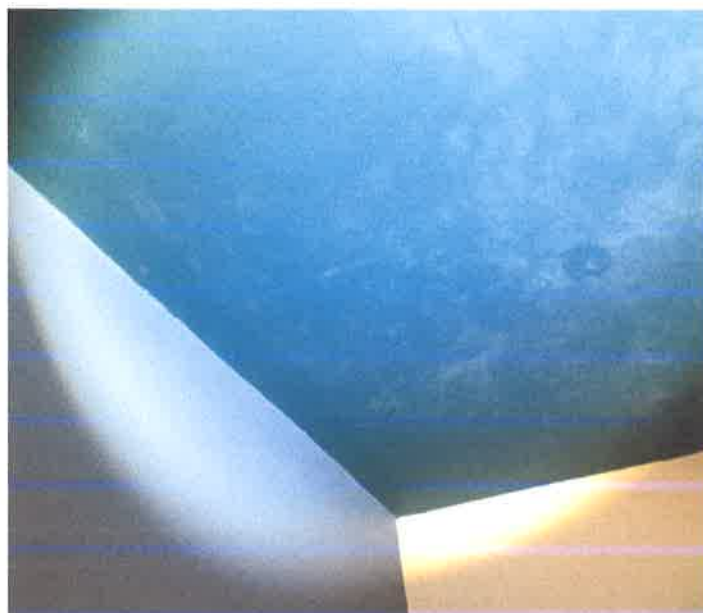
9. Front door lock/latch



10. Mould in Front Bedroom



11. Fitted wardrobe doors



12. Mould back bedroom ceiling



13. Carbon Monoxide detector front bedroom