

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Reference: FTS/HPC/RT/20/2558

Property: 41 East Bridge Street, Falkirk FK1 1YB (“the Property/house”)

Land Register No: STG23413

Parties:

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

Mr Stephen Dick, 25 Waters End, Carron, Falkirk FK2 8PY (“the Landlord”)

M/s Alison McCue, 41 East Bridge Street, Falkirk FK2 1YB (“Interested Person/Tenant”)

Tribunal Members: George Clark (Legal Member/Chair) and Sara Hesp (Ordinary/surveyor Member)

Whereas in terms of their decision dated 7 October 2021, 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 and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Tribunal requires the Landlord:

1. to carry out such works as are required to ensure that the provision of smoke detectors and heat detectors within the Property complies with the Fire Protection in Rented Properties Guidance published by the Scottish Government on 7 February 2019, effective 1 March 2019 and available on the Scottish Government website.
2. to exhibit to the Tribunal a satisfactory current Electrical Installation Condition Report, containing no C1 or C2 items of disrepair and covering the entire electrical installation, the Report to be issued by an electrical contractor who is registered either with NICEIC, SELECT or NAPIT.
3. to instruct a suitably qualified Gas Safe engineer to carry out such work as is necessary to ensure the central and water heating boiler is safe and in proper working order, or to replace the boiler, and thereafter to exhibit to the Tribunal a Gas Safety Certificate, dated after the date of completion of that work, and

- to carry out such repairs to the radiators as are required to ensure they are in a reasonable state of repair and in proper working order.
4. to carry out such repairs as are necessary to the front door to ensure that the door handle (and door locking mechanism) are in proper working order.
 5. to carry out such work as is necessary to ensure the front doorbell is functioning properly.
 6. to carry out such work as is necessary to establish the cause(s) of mould growth in the entrance hallway and elsewhere in the Property and undertake the necessary remedial work, including plasterwork and redecoration.
 7. to carry out such repairs/replacements as may be necessary to ensure the windows throughout the Property are in proper working order and are secure, wind and watertight.
 8. to carry out such repairs to the roof as are necessary to ensure the Property is wind and watertight.
 9. to upgrade the loft insulation to ensure it complies with current recommended specifications.
 10. to repair the leak from the sewage downpipe to the rear of the Property.
 11. to carry out such works as are necessary to restore the kitchen units, cupboards and drawers to proper working order.
 12. to carry out such repairs as are necessary to remedy the leaks from the plumbing in the kitchen sink, the shower and the bathroom wash hand basin.
 13. to replace, fully or partially, the laminate flooring in the kitchen.
 14. to secure/replace the toilet seat.
 15. to replace the flooring in the entrance hall.

The Tribunal order that the works required by this Order must be carried out within the period of three months 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 two preceding pages, are executed by George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 25 October 2021, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark Legal Member/Chair . **V Clark** Witness



**Statement of Decision of the Housing and Property Chamber
of the First-tier Tribunal for Scotland under Section 24 of the
Housing (Scotland) Act 2006**

Chamber Reference: FTS/HPC/RT/20/2558

Property: 41 East Bridge Street, Falkirk FK1 1YB (“the Property/house”)

Parties:

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

**Mr Stephen Dick, 25 Waters End, Carron, Falkirk FK2 8PY (“the
Landlord”)**

**M/s Alison McCue, 41 East Bridge Street, Falkirk FK2 1YB (“Interested
Person/Tenant”)**

**Tribunal Members: George Clark (Legal Member/Chair) and Sara Hesp
(Ordinary/surveyor 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 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 9 December 2020, 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”) to ensure the house meets the repairing standard set out in Section 13 of the Act, as amended.

2. The Third Party Applicant stated that the Landlord has failed to action numerous repairs and other issues intimated to him by letter on 1 December 2020. In particular, he has failed to (i) provide a copy of the current Gas Safety Certificate (ii) provide a copy of the current Electrical Installation Condition Report (“EICR”) (iii) install correct smoke and heat detection (iv) repair/replace the central heating boiler (v) repair/replace the leaking central heating radiators and (vi) repair the shower. These were detailed in a Notification of Repair letter sent by the Third-Party Applicant to the Landlord on 1 December 2020.
3. Under normal circumstances, the Tribunal would have arranged to carry out an inspection, followed by a Hearing, to determine whether the Landlord had failed to comply with the Section 14(1)(b) duty. Unfortunately, this had not been possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a Case Management Discussion was arranged, in order to discuss further procedure in the case and to ascertain if an inspection is required or if other evidence is available or can be agreed.
4. On 11 January 2021, the Landlord submitted written representations to the Tribunal in which he stated that he was not currently in a position to do any of the work, partly due to the financial consequences on him and his business of the COVID-19 lockdown restrictions and partly due to arrears of rent, which he said were over £3,000. He had managed to arrange for a contractor to check the safety of the central heating boiler and it had been disconnected. Notwithstanding his personal financial position, he had indicated that he would be willing to waive the rent arrears if that assisted the Tenant in an application to be rehoused by the local authority.
5. On 14 January 2021, the Third Party Applicant asked the Tribunal to allow the Interested Party to become a participating Party in the case and to allow her to submit additional written representations. Ms McCue provided written representations on 22 January 2021. These comprised a copy of a report from Falkirk Council Environmental Team and a list of items that she wished to be added to the application. Miss McCue is hereinafter referred to as “the Tenant”.
6. On 26 January 2021, the Landlord emailed the Tribunal to express concern that written representations appeared to have been accepted by the Tribunal after the last date for submission intimated by the Tribunal, and that he would not have a reasonable period within which to consider them and to make any further representations of his own.

7. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 27 January 2021. The Tribunal decided that it was clear that the case could not be decided without the Tribunal being able to carry out an inspection of the Property, so consideration of the application was continued to a later date, but in the meantime, the Tribunal issued Directions to the Parties. The Landlord was required to provide, no later than 23 February 2021, a current Gas Safety Certificate issued by a registered Gas Safe contractor, in respect of the Property and a current Electrical Installation Condition Report in respect of the Property. The Certificate must be issued by a contractor registered with SELECT, NAPIT or NICEIC as authorised to issue such Certificates, and must contain no C1 or C2 categorised items of disrepair. It must cover the whole installation, including smoke and heat detectors and carbon monoxide monitors, as required by Scottish Government Guidance. The Tenant was required to provide, no later than 12 February 2021 a final list of items of disrepair that she wished to be added to the application.
8. The Landlord did not provide the documentation required by the Tribunal.
9. On 12 February 2021, the Tenant provided a list of items of disrepair that she wished the Tribunal to consider, namely:
 - “Window fixtures: stairway, hallway, living-room, kitchen, toilet
 - Plumbing: kitchen, toilet
 - Dampness and/or water penetration, walls and ceiling: stairway, hallway, bedroom, living-room, kitchen.
 - Flooring: front door entrance, carpet throughout property, laminate floor in bedroom, vinyl flooring in kitchen, toilet flooring needs repaired and sealed.
 - Plasterwork, wall and ceiling: stairway, stairway cupboard, hallway, bedroom, living-room, kitchen.
 - Fixtures and Fittings: stairway banister, mirrored doors and fixtures in bedroom, toilet sink unit, kitchen sink unit.
 - Kitchen unit doors, kitchen unit and drawer fronts.
 - Unit worktops in kitchen need sealed, toilet unit needs sealed.
 - Loft insulation.
 - Front door lock is defective, doorbell doesn’t work.
 - Outside: sewage pipe is defective, all and path need cleaned, wall to side/front of property is falling down, roof tiles are missing.”
10. The Tenant also listed items of furniture and furnishings that she had become obsolete through wear and tear.
11. On 5 July 2021, the Landlord stated in an email to the Tribunal that he saw no point in the proposed inspection, as the Tenant had not paid a month’s

rent in over 18 months, had persistently ignored his phone calls and correspondence, and had sworn at him and accused him of harassment on the last occasion that he had visited the Property. He had made an application to the Tribunal for an Eviction Order for non-payment of rent and had agreed the sale of the Property to a local property developer, who would take possession whenever the Tenant moved out with a view to completing a full refurbishment.

12. The Tribunal inspected the Property on the morning of 16 September 2021 and was admitted by the Tenant. The Third-Party Applicant was not present or represented. The Landlord was not present or represented at the inspection.
13. The Tribunal comprised George Clark (Legal Member/Chairperson) and Sara Hesp (Ordinary Member/surveyor).
14. A Pre-Hearing inspection summary and a Schedule of photographs taken at the inspection, was subsequently sent to the Parties.

The Hearing

15. The Tribunal held a Hearing by means of a telephone conference call on the morning of 24 September 2021. The Parties all attended the Hearing, the Third Part Applicant being represented by Miss Kate Smith.
16. The Landlord confirmed that he had seen the photographs taken at the Inspection. He had last been in the Property about July 2020 regarding a water leak at the shower and the Property was not nearly so badly damaged at that time as it now appeared to be. The defects that he noted from the photographs but had not been aware of when he last visited the Property were in relation to the kitchen floor and the kitchen units, together with the widespread mould. He had previously been aware of one patch of mould in the stairway. He told the Tribunal, however, that his visit was not a formal inspection. He was not contesting the fact that the Property is in a state of disrepair, but he was not in a position financially to carry out the necessary work. He had paid his share (£155.85) to the Council of a repair to the external soil stack.
17. 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

18. The Tribunal makes the following findings of fact:

- 1) The Property comprises an upper floor flat in a block of four, comprising Numbers 39, 41, 43 and 45 East Bridge Street, Falkirk. It is a former Council house. The accommodation comprises entrance hallway with an internal staircase leading to the upper floor, where there is a living room, double bedroom, kitchen and shower room.
- 2) The front doorbell does not work, and the door handle is detached.
- 3) The tiled flooring at the foot of the entrance stairs has been damaged by water leaking from the radiator.
- 4) There is evidence of mould growth in the entrance hallway, including, but not confined to, on the wall adjacent to the shower room.
- 5) The window in the hallway does not close properly.
- 6) The banister to the stairway appears to be secure.
- 7) There is evidence of mould growth on the walls of the bedroom.
- 8) The window mechanism in the bedroom is broken.
- 9) The Tenant has removed, for safety, the mirrored door of the bedroom wardrobe.
- 10) The laminate flooring in the bedroom is peeling in places.
- 11) There is evidence of water staining on the ceiling of the bedroom, but the Tribunal found no evidence of current ingress of water.
- 12) The central heating boiler is not working, the radiators are not in proper working order and there is no hot water to the shower
- 13) The right-hand window (viewed from inside the Property) is off its hinges and is held on by duct tape and the left-hand window does not close properly.
- 14) Readings taken using a moisture meter did not indicate the presence of moisture in the walls of the living room.
- 15) The kitchen is in a very poor state of repair. A large section of the vinyl flooring is missing. Some of the drawer fronts are missing and others are detached, a base unit door is also detached. The u-bend beneath the sink is leaking.
- 16) The plasterwork in the kitchen is in poor condition. Readings taken using a moisture meter detected unusually high levels of moisture along the party wall with the shower room.
- 17) The wash hand basin/vanity unit in the shower room has suffered water damage and there is a leak in the u-bend underneath the wash hand basin.
- 18) The toilet seat is not properly secured.
- 19) There appears to have been at some time a smoke alarm in the hallway, but it is no longer there and there is no smoke alarm in the living room and no heat detector in the kitchen. There is no carbon monoxide monitor in the Property.
- 20) Several roof tiles are missing.
- 21) There is evidence of a leak from the sewage downpipe, indicated by staining on the wall behind it and water at surface level.
- 22) The insulation in the loft is inadequate.

- 23) The dwarf retaining wall which borders the driveway to the Property has partially collapsed.

Reasons for Decision

19. The Tribunal found a large number of defects in the Property, as listed above. It is clear that the Property does not meet the repairing standard as set out in Section 24 of the Housing (Scotland) Act 2006 ("the 2006 Act"), which provides that a house meets the repairing standard if:

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- (b) 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,
- (c) 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,
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, and
- (h) the house meets the tolerable standard.

20. The Tribunal's view was that the Property is in need of substantial renovation. It presently fails to comply with paragraphs (a), (b), (c), (d), (f) and (g) of the repairing standard definition. Findings of fact numbered 5, 8, 13 and 21 establish a failure to comply with paragraph (a). Findings of Fact numbered 2 and 22 establish a failure to comply with paragraph (b). Findings of fact numbers 3, 12, 15, and 17 establish a failure to comply with paragraph (c). Findings of Fact numbered 10, 15 and 18 establish a failure to comply with paragraph (d). Findings of Fact numbered 19 and 22 establish a failure to comply with paragraphs (f), (g) and (h).

21. The Tribunal noted the stated position of the Landlord, namely that with the Tenant being in arrears of rent to the extent of £3,000, he was not in a position financially to carry out the repair works that he recognised were necessary. The Tribunal made no finding as to whether there were any arrears of rent but was of the view that many of the items of disrepair would have been evident long before any significant alleged arrears had arisen. Landlords have a duty to ensure that properties they let to tenants comply with the repairing standard and, whilst inability to pay may be offered as a reason for not carrying out repair works to ensure such compliance, it does not in any way excuse a failure to comply. Section 24(2) of the 2006 Act compels the Tribunal to make a Repairing Standard

Enforcement Order where it decides that a landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act to ensure that the house meets the repairing standard at all times during the tenancy.

Decision

22. 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. Normally, such an Order would specify the works to be carried out, but in the present case they are so numerous that the Tribunal decided that the Order should simply require the Landlord to carry out such works as are necessary to ensure the Property complies fully with the repairing standard and also to provide the Tribunal with a satisfactory Electrical Installation Condition Report and Gas Safety Certificate.

23. 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

Signed..... Legal Member/Chairperson

Date: 7 October 2021