

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

Housing and Property Chamber First-tier Tribunal for Scotland



Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 Section 24 (2)

Chamber Ref: FTS/HPC/RT/17/0222

Title no/Sasines Description:

**96 Abbotsford Street, Falkirk, FK2 7PW being the subjects registered in the Land Register under title number STG5899
("The House")**

The Parties:-

**Falkirk Council, Corporate and Housing Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk, FK1 1XR
("the Third Party Applicant")**

**Arturs Babenko and Monika Babenko, 96 Abbotsford Street, Falkirk, FK2 7PW
("the Tenants")**

**Janice Leary, 28 Castle Road, Bathgate, EH48 2UB
(represented by her agent, Steven Rollo of Let Link)
("the Landlord")**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Joan Devine (Legal Member) and Carol Jones (Ordinary Member)

NOTICE TO: Janice Leary ("the Landlord")

Whereas in terms of its decision dated 18 January 2018, the Tribunal determined that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Housing (Scotland) Act 2006, and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that the House does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purpose of ensuring that the House meets the repairing standard and

that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

In particular the Tribunal requires the Landlord to install a ceiling mounted hard wired and interlinked smoke detector on the landing at the top of the stairway.

The Tribunal orders that the works specified in this order must be carried out and completed within the period of six weeks from the date of service of this notice.

A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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 type written on this and the preceding page are executed by Joan Devine, Solicitor, Cornerstone, 107 West Regent Street, Glasgow G2 2BA Chairing Member of the Tribunal at Glasgow on 18 January 2018 before this witness:-

L Smith

J Devine

____ Witness

Chàirperson

L Smith

Name in full

107 WEST REGENT ST Address

GLASGOW

G2 2BA

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RT/17/0222

Title no/Sasines Description:

**96 Abbotsford Street, Falkirk, FK2 7PW being the subjects registered in the Land Register under title number STG5899
("The House")**

The Parties:-

**Falkirk Council, Corporate and Housing Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk, FK1 1XR
("the Third Party Applicant")**

**Arturs Babenko and Monika Babenko, 96 Abbotsford Street, Falkirk, FK2 7PW
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**Janice Leary, 28 Castle Road, Bathgate, EH48 2UB
(represented by her agent, Steven Rollo of Let Link)
("the Landlord")**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Joan Devine (Legal Member) and Carol Jones (Ordinary Member)

DECISION – 96 Abbotsford Street, Falkirk, FK2 7PW

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") in relation to the House and taking account of all the available evidence determines that the Landlord has failed to comply with the duty imposed on her by Section 14(1)(b) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 12 June 2017, the Third Party Applicant applied to the Tribunal for a determination that the Landlord had failed to comply with her duties under Section 14(1) of the Act.

2. In the application, the Third Party Applicant stated that they believed that the Landlord had failed to comply with her duty to ensure that the House met the repairing standard as set out in Sections 13(1)(f) of the Act. The application stated that the House lacked one smoke detector in a circulation space which was an enclosed staircase.
3. On 23 June 2017, the Convenor of the Tribunal issued a Minute of Decision stating that he considered that in terms of Section 23(3) of the Act, there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that he had considered the application paperwork submitted by the Third Party Applicant comprising documents received between 12 and 21 June 2017; and intimating his decision to refer the application to the Tribunal for determination.

The Inspection

4. The Tribunal inspected the House on the morning of 17 August 2017. The weather conditions at the time of the inspection were cold and dry. Mr Babenko, one of the Tenants, was present at the House during the inspection. Kate Smith of the Third Party Applicant was in attendance as was Steven Rollo, the Landlord's agent and Alex Walker, the Landlord's partner. Photographs were taken during the inspection and are attached as a Schedule to this decision.

The House

5. The House is an upper floor flat situated within a former local authority "*four in a block*" located in a predominantly residential area around one mile north of Falkirk town centre. The entrance to the property is to the side. Access to the flat is from a small ground floor entrance hall and up a stairway to a small landing. There are a further 3 stairs and then a door into a hallway. Off the hallway, there is a bathroom, kitchen, two bedrooms and living room. There is a ceiling mounted smoke alarm in the living room and in the hallway. There is a ceiling mounted CO alarm and a ceiling mounted heat alarm in the kitchen. All smoke alarms are hardwired and interlinked.

The Hearing

6. Following the inspection, the Tribunal held a hearing at Westfield Community Centre, Westfield Street, Falkirk FK2 9DX. The Third Party Applicant was represented at the hearing by Kate Smith. The Landlord was represented by her agent, Steven Rollo and by her partner, Alex Walker. Wendy Laird and Shirley Sisman of the Third Party Applicant were in attendance as observers.
7. Kate Smith of the Third Party Applicant told the Tribunal that she agreed with advice received from Fire Scotland which was that there should be a smoke alarm at the top of the stairs. She queried whether it would be appropriate to

have a smoke alarm also at the bottom of the stairs if the entrance hall was a large area.

8. Mr Rollo told the Tribunal that that he had taken the lead from his electricians and from information obtained at meetings of the Scottish Association of Landlords. He said that in this property it was only about 7 metres from wall to wall and there are two smoke detectors and a heat detector within that area. Mr Rollo said that he had further pressed the electricians and they had now said that there should be a smoke alarm at the top of the stairway. Mr Rollo said that he now was unsure what advice to give to landlords. He queried whether one smoke alarm was required on each level. He said that he definitely did not think that there was a need for a smoke alarm on the ground floor in this property. Mr Rollo said that he did not know if there was a smoke entrapment area in this area. Mr Rollo said that he now accepted that a stairwell is a circulation space and that there should be a smoke alarm in that area. Mr Rollo expressed the view that the provision for detecting fires is adequate as the property currently is but he accepts that the electricians have now told him that a smoke alarm is required at the top of the stairway.
9. Mr Walker said that regulations are issued and landlords are expected to follow them but they are all a bit vague. He said that he thought that if any new rules are introduced they should only be effective from January 2018.
10. After hearing submissions on behalf of the Third Party Applicant and the Landlord, the hearing was adjourned to allow the Tribunal to consult with the Chief Fire Officer in terms of schedule 2 paragraph 4 of the Housing (Scotland) Act 2006.

Consultation with the Chief Fire Officer

11. The Tribunal consulted with the Chief Fire Officer. They did so by letter dated 7 September 2017 Nicky Barr of Fire Scotland responded to the Tribunal by email dated 10 October 2017. That email was circulated to the parties and they were asked whether they wished the Hearing to be reconvened or whether they were content for the Tribunal to issue a decision without a further Hearing. The Third Party Applicant and the Landlord both indicated that they did not wish a further Hearing and were content for a decision to be issued.

The Evidence

12. The evidence before the Tribunal consisted of:
 - the application form completed by the Third Party Applicant;

- Registers Direct Search Sheet for title number STG5899 relating to the House;
- letter of notification from the Third Party Applicant to the Landlord notifying her of the issue complained of in the application;
- email correspondence provided by the Third Party Applicant dated between 16 May and 7 August 2017;
- the Tribunal's inspection of the property;
- the oral representations of the parties;
- Email dated 10 October 2017 from Nicky Barr, Station Manager, Prevention & Protection, Fire Scotland in response to a letter from the Tribunal dated 7 September 2017. This email stated "with regard to the above domestic premise the Scottish Fire and Rescue Service would recommend that a smoke alarm is fitted at the top of the staircase"

Summary of the Issues

13. The issue to be determined was whether the House meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on it by Section 14(1)(b).

Findings in Fact

14. The Tribunal made the following findings in fact:

- The Tenants have lived in the House since January 2017. They entered into a Tenancy Agreement at that time with KJB Properties. The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply;
- The registered landlord for the House is the Landlord;
- The tenancy of the House is managed by the Landlord's agent, Let Link, 93 South Bridge Street, Bathgate EH48 1TJ;
- There is a smoke alarm in the living room and the hall of the House. There was no smoke alarm in the entrance hallway or on the landing at the top of the stairs.
- The tenant had installed a door between the landing at the top of the stair and the hall.

Reasons for Decision

15. Following its inspection, the Hearing and consultation with the Chief Fire Officer, the Tribunal determined that the House does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
16. The Tribunal observed that there was one smoke alarm in the hallway and one in the living room of the House. This provision does not comply with current statutory requirements for rented properties. The repairing standard includes a requirement under Section 13(1)(f) of the 2006 Act that the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires, and for giving warning in the event of fire or suspected fire, Section 13(5) of the Act states that regard is to be had to any building regulations or any guidance issued by the Scottish Ministers in these matters.
17. The current Scottish Government statutory guidance states that there should be at least:
 - one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes;
 - one functioning smoke alarm in every circulation space, such as hallways and landings;
 - one heat alarm in every kitchen; and
 - all alarms should be interlinked.
18. The Tribunal noted that there was no smoke alarm in the entrance hallway, the stairway or the landing at the top of the stairway. This was not in accordance with the Scottish Government guidance which requires a smoke alarm in every circulation space such as hallways or landings.
19. On the basis of its inspection and the other evidence before it, the Tribunal found that the provision in the House for detecting fires and for giving warning in the event of fire or suspected fire was not satisfactory in that there is no smoke alarm at the top of the stairway.

Summary of Decision

20. The Tribunal determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that the House does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

21. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

22. **A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

J Devine

Signed
Joan Devine, Chairing Member

18 January 2018
Date

In witness whereof these presents type written on this and the five preceding pages are executed by Joan Devine, Solicitor, Cornerstone, 107 West Regent Street, Glasgow G2 2BA, Chairing Member of the Tribunal at Glasgow on 18 January 2018 before this witness:-

L Smith

witness

L Smith _____ name in full

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