

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RT/19/2570

Title no: STG65532

Property address: 91b Main Street, Falkirk FK2 7NT (“The Property”)

The Parties:- Falkirk Council (“the Third Party Applicant”)

Mr John McLaughlan (“the Tenant”)

Mr Sardar Ijaz and Mrs Shehnaz Ijaz (“the Landlord”)

Tribunal Members:

Mark Thorley (Legal Member)

Sara Hesp (Ordinary Member)

Whereas in terms of their decision dated 18 November 2019. 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”) and in particular that the landlord has failed to ensure that the property is:-

- (a) Wind and watertight and in all other respects reasonably fit for human habitation;
- (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
- (c) Any furnishings provided by the landlord and used under the tenancy are capable of being used safely for the purposes for which they are designed;
- (d) The house has satisfactory alarms 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 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:-

- (a) To install a heat detector in the kitchen.
- (b) To install a smoke detector in the hall.
- (c) To provide window keys to allow all windows in the property to be opened.

- (d) To instruct a suitably qualified tradesman to investigate the water penetration in the kitchen ceiling and to provide a report to the Tribunal as to the extent of any works that require to be undertaken to ensure that the property is wind and watertight and in all other respects reasonably fit for human habitation.
- (e) To supply a working heater.
- (f) To replace the cooker in the kitchen.
- (g) To secure the bath panel to the bath.
- (h) To carry out such works as are required to ensure that the provision of smoke detectors and heat detectors in the property comply with the Fire Detection in Rented Properties Guidance published by the Scottish Government on 7 February 2019 and available on the Scottish Government website.

The tribunal order that the works specified in this Order must be carried out and completed within the period of two months from the date of service of this Notice.

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.

M Thorley

Signed _____

Dated _____

6.10.2019

Housing and Property Chamber First-tier Tribunal for Scotland



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

Decision: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RT/19/2570

Title no: STG65532

Property address: 91b Main Street, Falkirk FK2 7NT (“The Property”)

The Parties:- Falkirk Council (“the Third Party Applicant”)

Mr John McLaughlan (“the Tenant”)

Mr Sardar Ijaz and Mrs Shehnaz Ijaz (“the Landlord”)

Tribunal Members:

Mark Thorley (Legal Member)

Sara Hesp (Ordinary Member)

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 duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, determined that the landlord has failed to comply with the duties imposed by Section 14(1) of the Act.

Background

1. By application dated 16 August 2019, the third party applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether the landlord had failed to comply with the landlord with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The application stated that the third party applicant considered that the landlord had failed to comply with the duty to ensure that the property meets the repairing standard and in particular that the landlord had failed to ensure that –
 - (i) Heat detector to be installed in kitchen.
 - (ii) Smoke detector to be installed in hall behind front door.
 - (iii) Window keys to be supplied to allow for windows to open.
 - (iv) Kitchen ceiling to be investigated and repaired following leak.

- (v) Heating supply not working to be repaired or replaced as no heating source within property.
 - (vi) Cooker to be repaired or replaced as not working.
 - (vii) Bath panel to be repaired or replaced.
 - (viii) Provide an Electrical Installation Safety Report (EICR).
 - (ix) Provide Energy Performance Certificate (EPC).
3. By minute dated 9 September 2019 a convenor of the Tribunal with dedicated powers under Section 23A of the Act, intimated a decision to refer the application under Section 23(1) to the Tribunal for determination.
 4. The Tribunal served a notice of referral under and in terms of Section 2, paragraph 1 of the Act upon the landlord, the tenant and the third party applicant on 25 September 2019. An inspection of the property and the hearing were fixed for 7 November 2019.
 5. A Direction was made by the Tribunal in advance of the hearing and served upon the landlord. An Energy Performance Certificate was provided together with Tenancy Agreement.

The Inspection

1. The Tribunal inspected the property in the morning of 7 November 2019. The weather conditions were wet and overcast.
2. The property is a ground floor flat in a block entered through an alleyway. The property comprises of one bedroom, bathroom, livingroom and kitchen.
3. The tenant Mr John McLaughlan was present at the inspection along with Miss Kate Smith from Falkirk Council as a representative of the third party applicant. The landlords were present outside the property but did not enter. Photographs were taken and are attached as a schedule to this decision.

The Hearing

1. Following inspection of the property the Tribunal held a hearing at Westfield Community Centre, Westfield Street, Falkirk FK2 9DX. The tenant was present along with a supporter namely his mother. The third party applicant was represented by Miss Kate Smith. Mr and Mrs Ijaz attended.
2. The Tribunal considered the issues in the following order:-
 - (i) Heat detector to be installed in kitchen.

There was no heat detector in the kitchen.

- (ii) Smoke detector to be installed in hall behind front door.

There was no smoke detector in the hall.

(iii) Window keys to be supplied to allow for windows to open.

The windows within the property were all locked. There was no visible access to keys.

(iv) Kitchen ceiling to be investigated and repaired following leak.

Clearly there has been a leak from the property above. The extent of that leak was unknown without further investigation.

(v) Heating supply not working to be repaired or replaced as no heating source within property.

The property does not benefit from central heating. The heater was not working.

(vi) Cooker to be repaired or replaced as not working.

The landlord's position was that the property was let on an unfurnished basis. However it was accepted that at the time of the commencement of the tenancy that there was a cooker within the property. The cooker should be repaired or replaced if not working.

(vii) Bath panel to be repaired or replaced.

The bath panel was clearly visibly not attached to the bath.

(viii) Provide an Electrical Installation Safety Report (EICR).

That had been provided and was dated 15 May 2014. It was noted that the overall assessments of the installation was "unsatisfactory".

(ix) Provide Energy Performance Certificate (EPC).

An Energy Performance Certificate (EPC) had been provided.

3. The landlord's position at the hearing was that the tenant had seen the property at the time of the commencement of the tenancy and it was a matter for him whether he accepted the tenancy or otherwise. The landlord's position was that any "defects" within the property had been created by the tenant. The tenant had removed the heat detector from the kitchen, the smoke detector from the front door, the tenant had window keys, that no cooker was required to be provided and that the tenant had damaged the bath panel.
4. The tenant disputed all of this. In any event it was noted that there were these continuing defects. The landlord further indicated that the tenant had failed to allow access to the property for works to be undertaken.

Summary of Issues

The issue to determine whether the house meets the repairing standard is laid down in Section 13 and whether the landlord has complied with the duty imposed by Section 14(1)(b).

Findings in Fact

The Tribunal finds the following facts to be established –

1. The tenant entered into a Private Residential Tenancy Agreement with the landlord with a commencement date of 1 May 2019.
2. The landlord is the registered owner of the property.
3. The third party applicant notified the landlord by letter dated 1 July 2019 of all the repair issues detailed in the application.
4. The Tribunal inspection on 7 November 2019 identified the following matters:
 - (i) There was no heat detector in the kitchen.
 - (ii) There was no smoke detector in the hall.
 - (iii) There were no window keys for the windows.
 - (iv) The kitchen ceiling had suffered from water penetration.
 - (v) The stand alone heater did not work.
 - (vi) There was no cooker in the kitchen.
 - (vii) The bath panel was off the bath.
 - (viii) There was an Energy Performance Certificate.

Reasons for Decision

The Tribunal having examined the property were able to establish the following. None of this appeared to be disputed by the landlords –

1. There was no heat detector in the kitchen.
2. There was no smoke detector in the hall.
3. There were no window keys to allow the windows to be opened.
4. The kitchen ceiling had suffered from water penetration and needed to be repaired following upon investigation.
5. There was no working heater in the property.
6. There was no cooker in the kitchen.
7. There was an Electrical Installation Safety Report but it was assessed as being unsatisfactory with a variety of works that needed to be undertaken.
8. There was an Energy Performance Certificate.

Decision

1. The Tribunal determined there was a failure to comply with the repairing standard.
2. The Tribunal determined that the landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
3. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1).
4. The decision of the Tribunal was unanimous.

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.

M Thorley

Signed.

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Legal Member

Dated..... *6th March 2019*

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



91B Main Street, Falkirk, FK2 7NT

FTS/HPC/RT/19/2570

Schedule of photographs taken on 7 November 2019



Photograph 1: Front elevation

Photograph 2: Kitchen: general view



Photograph 3: Kitchen: ceiling - staining



Photograph 4: Kitchen: ceiling



Photograph 5: Kitchen: cooker space



Photograph 6: Living room: general view



Photograph 7: Living room: ceiling



Photograph 8: Bathroom: general view showing bath panel



Photograph 9: hall ceiling



Photograph 10: Bedroom: general view

