

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RT/21/1345

RE: Property at 8 Abbotsford Drive, Laurieston, Falkirk FK2 9LN

(“The Property”)

The Parties:-

Falkirk Council, Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk FK1 1XR

(“the Third-Party”)

Christopher Malone, 4 Abbotsford Drive, Laurieston, Falkirk FK2 9LN

(“the Landlord”)

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) in relation to the house concerned, and taking account of the application and written representations, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:

Rory A.B. Cowan – Legal Member

Sara Hesp – Surveyor/Ordinary Member

Background

- 1) By application dated 3 June 2021 the Third-Party applied to the First-tier tribunal: Housing and Property Chamber for a determination of whether the Landlord had

failed to comply with the duties imposed by Section 14 (1)(b) and Section 19B(4) of the Housing (Scotland) Act 2006 (“the Act”).

- 2) The Application by the Third-Party stated that they considered the Landlord, had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - a) The Property did not have a valid and current Electrical Installation Condition Report.
- 4) By letter dated 15 June 2021 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.
- 5) The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Third-Party. A Direction was also issued to the Landlord dated 15 June 2021 ordering that the Landlord provide his landlord registration number and an “updated compliant EICR certificate” no later than close of business on 16 July 2021.
- 6) Following service of the Notice of Referral, additional written representations were received from the Third-Party but nothing was received from the Landlord.
- 7) Due to the restrictions of the COVID-19 pandemic a Case Management Discussion (CMD) to be heard by way of conference call was fixed for 4 August 2021. The Landlord did not take part in that CMD, nor did the Third-Party.

The Hearing

- 8) As the Landlord and Third-Party did not attend the Hearing and there were no representatives, there were no oral submissions made on behalf of either party. The Tribunal therefore required to consider the Application based on the written representations submitted and the Application itself.

Summary of the Issues

- 9) The issue to be determined is whether:
 - a) The installations in the Property 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 a proper working order.

Findings of fact

- 11) The Tribunal finds the following facts to be established:-
 - a) That there is tenancy for the purposes of section 14(1) of the Act.
 - b) That the Landlord is the heritable proprietor of the subjects at 8 Abbotsford Drive, Laurieston, Falkirk FK2 9LN.

- c) That no current and compliant Electrical Installation Condition Report has been provided by the Landlord for the Property.

Reasons for the decision

- 11) The Tribunal was not satisfied that the installations in the Property for the supply of gas, electricity or space heating were in a reasonable state of repair and in a proper working order for the following reasons:
 - a) Whilst a copy of a purported EICR had been produced by the Landlord to the Third-Party dated 18 May 2021, it was not compliant and therefore was not valid.
 - b) The purported EICR did not appear to be completed by a competent person, as required by section 19B of the Act. The name on the purported EICR was a "P Murphy" and the organisation was detailed as "MMS" of Station Road, Kilsyth. The purported EICR was also issued on a form detailing that the issuer was a NICEIC Approved Contractor. A check of the NICEIC register revealed no person named "P Murphy" or "MMS" of Station Road, Kilsyth was registered with them.
 - c) The purported EICR appeared to list one "C2" and one "C3" fault which appeared to be subsequently scored out by a manuscript line being put through them and the initials "PM" put beside them. No evidence of any work to remediate either was produced with the purported EICR and in any event it is not appropriate to amend an EICR in that fashion.
 - d) Further, on page 5 of the purported EICR, it appeared that 4 entries (In section 7.7) had been altered by the use of correction fluid which obscured the original entries. Again, it is not appropriate to amend an EICR in that fashion.
 - e) Further, there is nothing on the purported EICR that suggests that any circuit for the Property's smoke detection system was tested, which would be expected in an EICR.

Decision

- 14) The Tribunal accordingly determined that the Landlord has failed to comply with her duties imposed by Section 14 (1)(b) of the Act.
- 15) The Tribunal therefore decided to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
- 16) The decision of the tribunal was unanimous.

Right of Appeal

- 17) 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.

- 18) 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.

R Cowan

Signed

Date 19 August 2021

Chairperson