

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/RP/RT/23/1232

**Re: 12 Ward Avenue, Redding, Falkirk, FK2 9UL
("the Property")**

The Parties: -

Ms Laura Myles, residing at the Property ("the Tenant")

**Falkirk Council, Private Sector Team, Callendar Business Park, Falkirk,
FK1 1XR ("the Third Party Applicant")**

and

**Mr Ian Lindsay, 7 Muirfield Road, Stenhousemuir, Larbert, Falkirk, FK5
3BS ("the Landlord")**

The Tribunal

**Mr Maurice O'Carroll (Legal Member and Chair)
Ms Sara Hesp (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) in relation to the Property concerned, and taking account of the evidence available to it following inspection determined that the Landlord has failed to comply with the duty imposed by section 14 (1)(b) of the Act.

Background

1. By application dated 18 April 2023, the Third Party Applicant applied to the Housing and Property Chamber 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 Third Party Applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets

the repairing standard and in particular that the Landlord had failed to ensure that:-

- (a) there was an up to date valid Gas Safety Certificate (“GSC”) and Electrical Installation Condition Report (EICR) in force in respect of the Property
 - (b) there was provision for the detection of smoke in the Property, via interlinked smoke alarms in the living room, hallway and upstairs landing conform to Scottish Government Regulations
 - (c) there was provision for heat detection in the kitchen
 - (d) the doorway to the Property from the garden to the conservatory and from the conservatory to the house had a secure lock
 - (e) a broken window in in the conservatory had been replaced
 - (f) the back door to the Property was secure
 - (g) the front door to the Property was secure
 - (i) the kitchen sink was not leaking and kitchen units were in good working order and
 - (j) the exposed vents from the former heating system in the Property were removed and covered over
3. By letter dated 6 June 2023, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1A) of the Act to a Tribunal to address the applicant’s concerns in terms of section 13(1)(d, f and g) of the Act.
 4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.
 5. A Direction dated 13 June 2023 was served on the Landlord on the same day requiring the Landlord to produce a valid GSC and EICR in respect of the Property. The deadline for compliance was set for 30 June 2023. As no compliance had been effected by that date, a reminder was sent on 14 July 2023 and the Direction was re-issued on 15 July 2023. The Landlord failed to comply with the Direction.
 6. An inspection of the Property was arranged for 28 July 2023. A full set of papers sent to the Landlord by Recorded Delivery post was returned by Royal Mail on 18 July 2023 marked “not called for.” Service of the Tribunal papers was effected by means of direct personal service by Sheriff Officer on 19 July 2023. A certificate of intimation was sent to the Tribunal by Sheriff Officers demonstrating personal service at the Landlord’s home address on 21 July 2023 at 1.45pm. The Tribunal was therefore satisfied that the Landlord had been given due notice of the hearing on 28 July 2023.
 7. By email dated 27 July 2023 timed at 09.14h, the Landlord requested a postponement of the inspection and hearing citing a family bereavement. No further detail was provided. The Tribunal had regard to rule 28 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”) as amended. Considering the

absence of specific detail regarding the circumstances in which the postponement was sought and against the background of non-compliance with the Direction and the need to effect personal service of Tribunal papers by means of Sheriff Officer, the Tribunal was not satisfied that cause had been shown to grant the postponement sought by the Landlord. Notice of refusal of the postponement request was sent to the Landlord by email on 27 July 2023 timed at 13.03h.

8. The Tribunal inspected the Property at 10am on 28 July 2023 as arranged and intimated to the parties. Miss Kate McFarlane, Private Sector Office with Falkirk Council (the Third Party Applicant) attended. The Tenant was present at the Property during the inspection and provided entry to the Property. The Landlord was not present at the inspection.
9. Following the inspection of the Property the Tribunal held a hearing at Wallace House, Maxwell Place Stirling. The Third Party Applicant attended the hearing. The Landlord did not attend the hearing and did not appoint a representative to appear on his behalf. In terms of rule 29 of the 2017 Regulations, the Tribunal was satisfied that the requirements of rule 24(1) on giving notice had been complied with and therefore that it was entitled to proceed with consideration of the application in the absence of the Landlord.
10. Accordingly, the Tribunal proceeded to deliberate in the absence of the Landlord, based upon the evidence of the Third Party Applicant, the written information before it and the matters found by it during the inspection of the Property.

Summary of the issues

11. The issue to be determined was whether the Property met the Repairing Standard in terms of section 14(1)(b) of the 2006 Act by reference to the alleged defects set out above at paragraph 2 of this decision.

Findings of fact

12. The Tribunal finds the following facts to be established:
 - The Tenant occupies the Property further to a Private Residential Tenancy agreed with the Landlord and signed by both parties on 11 April 2020 when the tenancy commenced.
 - Rent is £450 PCM payable in advance.
 - There is no current GSC or EICR in respect of the Property.
 - The Landlord has failed to comply with the requirements of the Direction referred to above, contrary to the provisions of Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016.
 - Kate McFarlane of the Third Party Applicant notified the Repairing Standard issues referred to above at paragraph 2 to the Landlord by letter dated 22 March 2023.

13. The Tribunal found the following additional facts to be established after inspection:-

- The Property is two bedroom dwelling house over two floors located in the residential area of Redding, Falkirk.
- On entry there is hallway corridor with lounge and dining area to the left providing internal access to the conservatory with kitchen and back door to the garden area directly ahead. The stairs are to the right of the hallway immediately upon entry.
- Upstairs there is a landing providing access to the two bedrooms and family bathroom.
- There is no smoke detector in the living room.
- There are smoke detector base units in the hallway and landing with no functional smoke detectors actually installed.
- There is no heat detector in the kitchen.
- The door to the conservatory from the garden does not have a secure lock. The Tenant demonstrated the holes in the door where the handle used to be located.
- The sliding door from the conservatory into the main house does not have a handle or lock. The sliding door does not operate and may only be moved by manual effort rather than the intended sliding mechanism.
- Entry to the rear of the Property may be effected without a key by means of entering the insecure conservatory door and then into the main house via the unsecured sliding door.
- There is a boarded up window on the left of the conservatory where a pane of glass has been broken but not replaced.
- The back door has recently been planed by the Tenant's father and therefore shut properly at the time of the inspection.
- The front door has a bolt lock and is capable of being securely closed and locked. The Tenant reported that the door sometimes flies open when there is a gust of wind but this did not occur during inspection.
- There is leak underneath the kitchen sink. The waste pipe was discoloured and moisture evident underneath the sink. The Tenant reported that water leaks to the right of the unit housing the sink.
- Two unit doors in the kitchen were misaligned. Two drawer handles were misaligned. Two handles on units were missing. The Tenant reported that frequent repairs to hinges were necessary as they came away with use due to the age of the base units.
- The former (now non-operational) storage heating system is to the left of the door on entry to the kitchen.
- Floor vents which served the former heating system are located in the hallway under the hallway rug, in the Tenant's bedroom at the front of the Property underneath a fitted carpet and item of furniture and a third in the child's bedroom at the rear of the Property.
- The vent in the child's bedroom was located near the bedroom door next to a radiator and directly across the entry and exit point. It had

a hole in the grating leaving sharp edges and was an obvious trip and direct injury hazard.

- The gas boiler is in a cupboard off the main bedroom to the front of the Property. It had a functional CO detector.

A schedule of photographs is appended to the present decision

The Tribunal decision

14. The Tribunal found unanimously that the Property failed to meet the Repairing Standard as set out in section 13(1) (d) and (f) of the 2006 Act contrary to the Landlord's obligation in terms of section 14(1) thereof.

Reasons for the decision

15. There is no GSC or EICR in respect of the Property despite a Direction requiring those to be produced ahead of the inspection and hearing.
16. The Property does not have required smoke detection installations in principal circulation areas and main living areas as required by Scottish Government Regulations.
17. The kitchen does not have heat detection. The kitchen sink leaks and the doors to the kitchen units do not function satisfactorily and are not fit for purpose.
18. The door to the conservatory from the garden is unsecured. The door from the conservatory to the main house is unsecured and the sliding door does not function.
19. There is a broken pane of glass in the conservatory which has not been replaced.
20. The floor vent in the hallway could easily be exposed if the rug is moved. The floor vent in the child's bedroom is a clear hazard, both for tripping and injury on contact as it is at the main point of access to the room, has a gap in the grill and sharp edges exposed. It is not capable of being informally covered up, unlike the other two vents.
21. The back door and front door to the Property are capable of being opened and closed and of being secured. Therefore, despite repairs having in part been effected by a member of the Tenant's family (in respect of which she had no obligation), no breach of the Repairing Standard was found in these respects. The front door would however benefit from having a snib lock fitted in addition which would avoid the issue of blowing open during high winds or gusts.

Decision outcome

22. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the 2006 Act.

Right of Appeal

- 23.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.**

Effect of section 63

24. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.