

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

**Chamber Ref: FTS/HPC/RT/20/2525**

**Title no: STG46574**

**94 Alyth Drive, Polmont FK2 0YW (“the property”)**

**The Parties:-**

**Falkirk Council, Private Sector Team, The Forum, Suite 1, Callendar Business Park, Falkirk FK1 1XR (“the third party applicant”)**

**Mr Ronald Peddie, Callendarfield, Burnbrae Gardens, Falkirk FK1 5SB (“the Landlord”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Colin Hepburn (Ordinary Member)**

### Decision

The Property does not meet the Repairing Standard. The Landlord has not complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

### Background

1. By way of application received on 7 December 2020 the third party applicant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 24(1)(b) of the Act in respect of the property.
2. In the application the third party applicant stated that the Landlord had failed to comply with his duty to demonstrate that the property meets the repairing standard. The only element of the repairing standard put at issue are those contained within Section 13(1)(c)
  - Whether 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.

3. Under normal circumstances, the Tribunal would arrange for the Ordinary Member to carry out an inspection to assist in the determination by the Tribunal of the application. Unfortunately, this has not been possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, this Case Management Discussion (CMD) 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. Five CMD hearings have now taken place on : 21 January 2021, 24 February 2021, 30 March 2021, 27 April 2021 and 9 June 2021.
4. The application is brought by a third party, namely the relevant local authority responsible for the landlord's registration. The third party applicant's representative is Mr Craig Beatt of the Private Sector Team of Falkirk Council.
5. A initial Case Management Discussion (CMD) took place on 21 January 2021 at 10.00 am. Written representations were required from the landlord by 8 January 2021, but no response was received timeously. On the evening before the CMD the landlord emailed written submissions, together with an email from his electrician, and a corresponding invoice in respect of work completed at the property. The landlord failed to join the teleconference CMD hearing. The third party applicant was represented by Mr Craig Beatt.

#### Discussion at CMD 21 January 2021

6. The written application highlights that on 2 July 2020 the landlord renewed his landlord registration with Falkirk Council. Within the "prescribed information" part of the application, it was indicated that no up to date Electrical Inspection Condition Report (EICR) for the property was held.
7. Falkirk Council made requests for this to be produced, but the requests have not been fulfilled by the landlord. In the circumstances, Falkirk Council wrote to the landlord on 31 August 2020 to confirm they were commencing enforcement action. This application to the Tribunal was subsequently lodged.
8. The landlord has owned the property since November 2003. The current tenant, who is not a party to these proceedings, is Mr Douglas Kerr. According to the Council's records he has occupied the property since 28 March 2012.
9. The landlord submitted that he has always had regard to the condition of the property which has always been well maintained. He reports that throughout 2020 the property was upgraded which had been planned for. This included painting and the installation of a new cooker

and a modern efficient heating system. New double glazing had been planned, but could not be installed due to ongoing Covid-19 restrictions.

10. The landlord had produced an email from his electrician, named Mike Thomson. This confirms works at the property, as referenced above, were completed on 11 September 2020. A corresponding invoice is also produced which includes reference to the supply and installation of a new electrical consumer unit and a check being undertaken in respect of the main electrical installation.
11. The landlord stated in his submissions that his electrician is not registered with one of the required bodies to prepare and produce an EICR Certificate. His submissions appeared to suggest however that he was willing to obtain the required EICR Certificate.
12. The landlord appeared to be under the mistaken belief that the request for a formal EICR Certificate by a qualified electrician, registered with one of the prescribed bodies, is merely a bureaucratic requirement which the Council have imposed. This is not the case. There is a clear statutory obligation which rests upon the landlord, as all other landlords in Scotland, to produce such documentation.
13. The Tribunal decided that it would be proportionate to encourage the landlord to instruct and obtain the necessary EICR Certificate which is required to enable his landlord registration renewal to be approved. At this stage, this appears a more proportionate means by way to proceed. The landlord should take notice however that the Tribunal could have proceeded to make a Repairing Standard Enforcement Order (RSEO) which would be formally registered in the Land Register requiring him to produce an EICR Certificate within a period of time. In the event he did not do so, then the Tribunal would thereafter consider making a decision that the landlord had failed to comply with the RSEO. The landlord should take further notice, that a landlord who, without reasonable excuse, fails to comply with an RSEO is committing a criminal offence.
14. The Tribunal tended to the view that the landlord's lack of cooperation in obtaining the EICR at this stage is down to his misunderstanding of the essential and important requirement to obtain one. In these circumstances, a Direction is issued seeking his compliance. The requirement in the Direction was for the production of a valid EICR Certificate within the next 28 days. This required specific reference to be had to the smoke and heat detectors within the property and in particular reference as to whether they comply with the necessary Scottish Government Guidelines.
15. The Tribunal was also advised on behalf of the third party that there are other outstanding requirements as regards the landlord's

registration. This includes the need for the production of an Energy Performance Certificate (EPC) and the production of a Legionella Risk Assessment. These aspects do not form part of the application nor are they part of the repairing standard. In the circumstances, the Tribunal determined not to seek specific production of such items but the landlord is encouraged to fully cooperate and produce these items in early course to the Council.

#### The Tribunals Direction issued after the CMD on 21 January 2021

16. The Landlord was ordered to produce a valid EICR in terms of the Direction issued. The Direction was issued to the Landlord by letter dated 27 January 2021 which was sent by recorded delivery post.
17. The Direction was not complied with.

#### Discussion at CMD 24 February 2021

18. Mr Craig Beatt represented the interests of the third party applicant again. The Landlord did not participate. He had instructed a friend, Mr Pawel Orłowski, to represent his interests. Mr Orłowski advised the Tribunal that the Landlord had instructed the necessary EICR to be prepared and that this was being undertaken on 26 February 2021.
19. Mr Beatt referred to the discussion which had taken place on 19 January 2021. He requested that the Tribunal make an RSEO obliging the Landlord to produce an EICR. This was necessary due to health and safety considerations and the need to ensure adequate protection to the current tenant and any others occupying the property. Everyone was in agreement that a further period of time should be allowed to enable the Landlord to produce the necessary EICR. Mr Orłowski agreed that the EICR would be produced to the Tribunal by 12 March 2021.

#### The Tribunals Direction issued after the CMD on 24 February 2021

20. A further Direction was issued requiring the EICR to be produced by the Landlord by 5.00 pm on Friday 12 March 2021.
21. The Direction was complied with in that on 11 March 2021 the Landlord emailed the Tribunal attaching the EICR completed on 26 February 2021 by Neil Hart (Electrical) Ltd which is an approved NICEIC contractor.

#### Discussion at CMD 30 March 2021

22. Mr Beatt represented the interests of the Third Party Applicant again. The Landlord did not participate nor had he instructed anyone else to represent his interests.

23. It was identified that the EICR, dated 26 February 2021, raises issues of potential concern. One C3 (improvement recommended) issue was noted to have been detected. A separate Defect Report then refers to two other matters which are categorised as C2 (potentially dangerous – urgent remedial action required) issues which are 3 cracked sockets in the lounge and no main bonding on the water pipe. It was unclear from the documents whether these matters have been repaired/rectified. The EICR makes clear reference to the provision of a hardwired smoke detector, but it remains unclear whether there is provision for heat detection in the kitchen and whether the smoke and heat detection is in accordance with Scottish Government Guidelines. As the EICR raised issues of potential public health and safety, the Tribunal had no option other than to continue matters and to issue a further Direction seeking clarification.

#### The Tribunal's Direction issued after the CMD on 30 March 2021

24. A Direction was issued in the following terms:-

**"The Landlord is required to provide** a letter from Neil Hart (Electrical) Ltd to clarify the following issues to the Tribunal by 5.00 pm on Wednesday 26 May 2021.

The Electrical Inspection Condition Report (EICR) and other documentation for the property already lodged refers to only one C3 issue being identified but also subsequently refers to two C2 issues, which may or may not have been repaired. The tribunal requires to know how many C2 and how many C3 issues were identified at the time of the electrical inspection carried out on 26 February 2021 together with the detail of such defects. The letter now requested must also specify which of these defects have been repaired / rectified. It must also include specific reference to the provision for smoke and heat detection within the property and whether this is in accordance with existing Scottish Government Guidelines."

25. This Direction was not complied with. On 19 April 2021 the Landlord emailed the Tribunal to advise that he had ongoing health issues which was delaying his response to the Tribunal Direction.

#### Discussion at CMD 27 April 2021

26. Mr Beatt represented the interests of the third party applicant again. The Landlord did not participate, nor had he instructed anyone else to represent his interests.
27. In conjunction with the discussions with Mr Beatt, the Tribunal agreed that the Landlord should be afforded one further and final opportunity to

provide the necessary documentation to the satisfaction of the Tribunal given his references to his ill health.

The Tribunals Direction issued after the CMD on 27 April 2021

28. A Direction was issued in the following terms:-

**"The Landlord is required to provide** a letter from Neil Hart (Electrical) Ltd to clarify the following issues to the Tribunal by 5.00 pm on Wednesday 26 May 2021.

The Electrical Inspection Condition Report (EICR) and other documentation for the property already lodged refers to only one C3 issue being identified but also subsequently refers to two C2 issues, which may or may not have been repaired. The tribunal requires to know how many C2 and how many C3 issues were identified at the time of the electrical inspection carried out on 26 February 2021 together with the detail of such defects. The letter now requested must also specify which of these defects have been repaired / rectified. It must also include specific reference to the provision for smoke and heat detection within the property and whether this is in accordance with existing Scottish Government Guidelines."

The Direction also contained the following warning to the Landlord:

**The Landlord should take note : The Tribunal understands that health issues may be affecting him but nonetheless the requirement to comply with the legislation applicable to private landlords requires to be adhered to and the further documentation required by the Tribunal does require to be produced. Failure to do so timeously may require the Tribunal at the next hearing to make a Repairing Standard Enforcement Order (RSEO) which would be registered in the Land Register. Failure to comply with an RSEO is a criminal offence.**

Discussion at CMD 9 June 2021

29. Mr Beatt represented the interests of the third party again. The Landlord did not participate nor had he instructed anyone else to represent his interests.
30. Mr Beatt referred to the long history of this application and the repeated failures on the part of the Respondent to comply either with the Council's earlier request or the Tribunal's requests. In the circumstances he asked that the Tribunal make a Repairing Standard Enforcement Order.

Decision

31. The Tribunal, having made enquiries 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 property, determined that the Landlord has failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does not meet the repairing standard.

#### Reasons for Decision

32. The Tribunal determined the application having regard to the original bundle of papers issued to parties and the submissions made on behalf of the third party applicant.
33. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the reference.
34. The current Scottish Government Statutory Guidance On Electrical Installations And Appliances In Private Rented Property specifies the following:
- A duty to carry out electrical safety inspections came into force on 1 December 2015.
  - There are two parts to the electrical safety inspection, (1) an inspection of installations, fixtures and fittings and (2) a record of testing of appliances provided by the landlord.
  - The tenant must be given a copy of the inspection when it is done. A new tenant must be given a copy of the most recent inspection before the tenancy begins.
  - Landlords should ensure that inspections are carried out by a competent person – there is guidance on what standard is expected here – but a landlord can carry out appliance testing if they have undertaken appropriate training.
  - The minimum standard is that an electrical safety inspection is carried out every five years – but testing can be carried out more frequently.
35. The Tribunal was satisfied that the Landlord has not adhered to the Scottish Government requirements. An EICR must be completed by a suitably competent person. "Competent person" means a skilled person (electrically) as defined in amendment 3 of BS7671. In Scotland, this will usually mean that they are a registered with NICEIC, a member firm of the Electrical Contractors' Association of Scotland (SELECT), or a member of the National Association of Professional Inspectors and Testers (NAPIT).
36. The Tribunal was satisfied that the Landlord has failed to comply timeously with requests to produce evidence that the necessary statutory requirements which he is obliged to adhere to have been met. This is regrettable as the issue can be resolved easily. Nonetheless the

failure to adhere to the statutory requirements is a serious matter, raises direct issues of a health and safety nature and may lead to injury or death. Accordingly the Tribunal concluded that the making of the RSEO was both necessary and proportionate.

Right of Appeal

37. 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.
38. 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 11 June 2021 before this witness:-

R Mill

\_\_\_\_\_ Legal Member  
C McNaught

\_\_\_\_\_ Witness

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