

# Housing and Property Chamber First-tier Tribunal for Scotland

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**First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”)  
Housing (Scotland) Act 2006 (“the Act”)**

**Statement of decision in terms of regulation 26 (3) of the First-tier Tribunal for Scotland  
Housing and Property Chamber (Procedure) Regulations 2017 (“the regulations”)**

**Chamber Ref: FTS/HPC/RT/22/0593**

**Title number: STG39267**

**Re:** Property at 107 Thornton Avenue, Bonnybridge, FK4 1AP (“the property”)

**The Parties:**

Falkirk Council Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk,  
FK1 5XR per Ms Mhairi Ferrie (“the third party”)

Ms Caitlin Don, 107 Thornton Avenue, Bonnybridge, FK4 1AP (“the tenant”)

Mr Syed Abbas, 9 Holding, Kilsyth Road, Longcroft, Bonnybridge, FK4 1HD (“the  
landlord”)

**Tribunal Members:** Simone Sweeney (legal chairing member) Carol Jones (ordinary  
surveyor member)

**Decision**

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 Act to  
ensure that the property meets the repairing standard under section 13, determined that the  
landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act.

The Tribunal proceed to make a Repairing Standard Enforcement Order (“RSEO”) as  
required by section 24 (2) of the Act.

The decision of the Tribunal was unanimous.

## Background

1. By application of 1<sup>st</sup> March 2022 the third party sought a determination of whether the landlord has complied with the duties imposed by section 14 (1) (b) of the Act.
2. The application contended that the landlord had failed to comply with his duties to ensure that the property meets the repairing standards in sections 13 (1) (b) (c) (d) (f) and (g) of the Act in that the landlord has failed to ensure, at all times during the tenancy, that:-

### **Section 13 (1):-**

*“(b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order...*

*(c) 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.*

*(d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order...*

*(f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.*

*(g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. ”*

3. The third party specified the nature of the work to be done in the following terms:-

*“Landlord requires to undertake electrical checks and provide valid Electrical Installation Condition Report (EICR) and instruct PAT testing if required, Obtain a Gas Safety certificate, Install interlinked Fire, Smoke and Heat Detectors, Provide evidence that working CO2 detector is installed.”*

4. By Notice of Acceptance of Application dated 28<sup>th</sup> March 2022, a Convenor having delegated powers under section 23 A of the Act determined that the application be referred to the Tribunal, in terms of section 23 (1) (a). The Tribunal served notice of

referral under and in terms of schedule 2, paragraph 1 of the Act upon both the landlord, tenant and third party in writing on 13<sup>th</sup> April 2022.

5. By email dated 15<sup>th</sup> March 2022 the third party confirmed that the application no longer included a complaint under section 13 (b) of the Act. The email from the third party's officer, Ms Mhairi Ferrie, was in the following terms,

*"I would be grateful if the application can be progressed without the reference to dampness in the property."*

Therefore the Tribunal proceeded to consider the application in terms of sections 13 (c) (d) (f) and (g) of the Act, only.

6. An inspection of the property was arranged to take place on Thursday 19<sup>th</sup> May at 10.30am. A hearing by telephone conference was arranged to take place on 27<sup>th</sup> May at 10am. Intimation of this information was provided to parties and to the tenant, in writing. The hearing was rescheduled to take place on Thursday 19<sup>th</sup> May at 2pm. This change was intimated to both parties and to the tenant by email.
7. In light of the nature of the complaint, the Tribunal issued a direction dated 4<sup>th</sup> May 2022. Reference is made to the terms of the direction and the requirement of the landlord to produce documentation to the Tribunal by 16<sup>th</sup> May 2022. The landlord has failed to respond to the Tribunal's Direction.
8. Before the Tribunal was a copy of the third party's application, copy letters and emails from the third party to the tenant and landlord, landlord registration information and a copy of the title information from Registers of Scotland. No written submissions or response to the application were produced by the landlord.

#### **Inspection of the property, Thursday 19<sup>th</sup> May at 10.30am**

9. In attendance at the inspection was the Tribunal, only. Ms Ferrie, for the third party had contacted the Tribunal's administration in advance of the inspection to confirm that she would not be in attendance. The landlord was absent.
10. At 10.30am the Tribunal knocked the door of the property to gain access. There was no response. Further attempts were made, without success. The Tribunal's clerk

made a call to the tenant on a telephone number provided by Ms Ferrie for the third party. The call went onto voice mail. A final attempt to gain access by knocking the door was made at approximately 11am. There being no response the Tribunal accepted that access to the property could not be gained and left.

### **Telephone Hearing, Thursday 19<sup>th</sup> May at 2pm**

- 11.** In attendance at the telephone hearing was Ms Ferrie on behalf of the third party. The landlord did not participate in proceedings. Satisfied that intimation of the rescheduled hearing had been provided to the landlord, the Tribunal proceeded with the hearing at approximately 2.05pm.
- 12.** Ms Ferrie confirmed, again, that the complaint of the third party did not include dampness. Reference had been made in the papers to dampness at the property by way of background, only. Ms Ferrie explained that her role is to manage all private rented landlords for Falkirk Council. An officer from the third party's Environmental Health team (Marjory Pryde) had attended the property in November 2021 in relation to a report of dampness coming from a suspected problem in the common roof area. In the course of her inspection, the Environmental Health officer had identified various things in relation to the property which she thought to be of relevance to Ms Ferrie's department. The Environmental Health officer had set out her concerns in an email to Ms Ferrie dated, 5th November 2021. The email was before the Tribunal. *Inter alia*, it provided, "*I also noted that there was no heat alarm in the kitchen and that the smoke alarms were not interlinked.*" Ms Ferrie had never visited the property. She had never met the tenant. However, Ms Ferrie's colleague, Environmental Health officer, Marjory Pryde, had been inside the property on 5<sup>th</sup> November 2021. Ms Pryde had identified that there was no heat alarm in the kitchen and that smoke alarms were not interlinked. Ms Ferrie had no reason to doubt her colleague and had acted upon her colleague's concerns about the smoke and heat detection within the property by writing to the landlord.
- 13.** No copy tenancy was before the Tribunal. The third party had requested same from the tenant, without success. In an earlier email to the Tribunal's administration, Ms Ferrie had indicated that the tenancy began on 3<sup>rd</sup> August 2018.

14. A summary of the efforts which had been made by the third party to communicate with the landlord was produced by Ms Ferrie.
15. Ms Ferrie had written to the landlord on 9<sup>th</sup> November 2021. The communication had been intimated by email at 15:54 hours to the email address, [shah\\_4@hotmail.co.uk](mailto:shah_4@hotmail.co.uk). This was the email address which the landlord had provided to the third party. The email provided, in so far as is relevant,

*“ ...under The Private Landlord Registration (Information) (Scotland) Regulations 2019, Please provide copies of the following safety certificates 1. Gas certificates 2. Electrical Documents ie EICR 3. Electrical Appliance Test (PAT) 4. Fire, smoke and heat detection 5. Carbon monoxide Detector... Please confirm whether you provide any electrical appliances. If so please provide documentation that a Portable Appliance Testing (PAT test) has been carried out. Please confirm that you have one smoke alarm in the room which is frequently used by the occupants for general daytime living purposes (normally living room/lounge), one in every hall or landing which are interlinked and a heat alarm in every kitchen (this will be shown on your EICR). If applicable the property must be fitted with a carbon monoxide detector in any room with a carbon fuelled appliance (such as heater or boiler, but not a cooker) or that there is a flue from such an appliance. Please provide the above information within 2 weeks of this email.”*

16. Ms Ferrie submitted that the email had been delivered to the recipient, successfully. She could not be sure whether she had requested a “read” receipt from the landlord. In any event no confirmation of same was before the Tribunal.
17. There was no response from the landlord to Ms Ferrie’s email dated 9<sup>th</sup> November 2021. Therefore a second email was sent to the landlord at the same email address on 1<sup>st</sup> December 2021 requesting an update. A copy of the email dated 9<sup>th</sup> November 2021 was attached. Again, nothing was forthcoming from the landlord.
18. On 8<sup>th</sup> December 2021, a third email was sent to the landlord at the email address, above. The email was in the following terms,

*“I refer to my email below to which I have received no response. Please provide the required safety certificates for your property at 107 Thornton Avenue Bonnybridge as requested in my emails of 9/11/2021 and 1/12/2021. Failure to do so will result in enforcement action being started in the form of a referral to the Housing and Property Chamber...”*

Copies of the earlier emails from the third party were attached to the email of 8<sup>th</sup> December 2021. No response was forthcoming from the landlord.

**19.** On 8<sup>th</sup> February 2022, Ms Ferrie attempted a fourth email to the landlord. The content of that email was also put into a letter which was sent to the landlord at, 9 Holding, Kilsyth Road, Longcroft, Bonnybridge, FK4 1HD. This address was that provided by the landlord at the time of landlord registration. It was also the address for which Falkirk Council noted as the landlord occupying for the purposes of Council Tax. Copies of the email and the letter were produced and before the Tribunal.

**20.** The email and letter provided, in so far as is relevant,

*“...I believe that the property does not now meet the Repairing Standard set out in section 13(1) of the Housing (Scotland) Act 2006...section 14 (1) (b)... you, as landlord must ensure that the house meets the Repairing Standard at all times during the tenancy. At the present time you are not complying with that duty. I am now notifying you of the work which needs to be done and would ask you to carry out the work within a reasonable time as required by the Act. The work which needs to be carried out is: 1. Provide copy of the current Electrical Installation Condition Report (EICR), from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 of C2 items of disrepair. The report must include specific reference to the provision for smoke and heat detection in accordance with existing Scottish Government statutory guidelines 2. Provide a copy of the PAT test is (sic) you provide any mobile electrical appliances 3. Provide Gas Safety Certificate 4. Install correct smoke and heat detection as per guidance 5. Install CO detector...”*

21. Ms Ferrie provided her contact details at the foot of the letter should the landlord wish to make contact. There being no response, Ms Ferrie proceeded to lodge an application with the Tribunal on 1<sup>st</sup> March 2022.
22. It was confirmed that the landlord continues to be registered with the third party as a private landlord. His role as a private landlord is due for renewal in November 2022. Should the requested gas and electricity information remain unavailable by that time and in the event that any order were to be issued by the Tribunal in response to the third party's application, these matters will be taken into account in assessing the landlord's eligibility for renewal. A renewal request had previously been made by the landlord in 2017. The request was approved in 2019. The reason for the delay in the decision was due to the third party reviewing and changing its procedures for private landlord registration and private landlord renewal applications in and around 2017. The landlord entered into a tenancy agreement with the tenant to reside at the property in 2018. Ms Ferrie submitted that the landlord was, "*technically*" a landlord in 2018 and it was not inappropriate therefore for the agreement to have been made at that time.
23. The landlord has been registered as a private landlord with the third party since around 2012. Ms Ferrie confirmed that no request had been made of the landlord to provide the gas and electrical certification between 2012 and November 2021.
24. Ms Ferrie was unable to say whether the landlord responds to any other third party communications by email or letter.
25. The telephone hearing concluded at approximately 2.50pm.

### **Findings in Fact**

The Tribunal makes the following findings in fact:

26. That the landlord has been registered as a private landlord with the third party since 2012.
27. That the landlord entered into an agreement to let the property to the tenant on 3<sup>rd</sup> August 2018.
28. That the installations for the supply of electricity within the property are not in a

reasonable state of repair and in proper working order.

29. That any electrical fixtures, fittings and appliances provided by the landlord within the property are not in a reasonable state of repair and in proper working order.
30. That there is no heat detector within the kitchen of the property.
31. That there are smoke alarms within the property.
32. That the smoke alarms within the property are not interlinked.
33. That the property has no provision for detecting carbon monoxide.

### **Reasons for Decision**

34. The third party requested evidence from the landlord in the form of an up to date Electrical Installation Condition Report (“EICR”) from an appropriately qualified electrician being a member of NICEIC, SELECT or NAPIT. The requests were made on 9<sup>th</sup> November 2021, 1<sup>st</sup> and 8<sup>th</sup> December 2021 and 8<sup>th</sup> February 2022. No response was forthcoming from the landlord. The Tribunal directed the landlord to produce evidence of same by 16<sup>th</sup> May 2022. The landlord failed to produce the requested information. There was no contradictor from or on behalf of the landlord that the property has an adequate installation in the house for the supply of electricity and that it is in a reasonable state of repair and in proper working order. The Tribunal determines that in the absence of anything to the contrary, the property fails to comply with section 13 (1) (c) of the Repairing Standard.
35. The third party requested evidence from the landlord of any electrical appliances provided at the property and evidence of Portable Appliance Testing (“PAT”). The requests were made on 9<sup>th</sup> November 2021, 1<sup>st</sup> and 8<sup>th</sup> December 2021 and 8<sup>th</sup> February 2022. No response was forthcoming from the landlord. The Tribunal directed the landlord to produce evidence of same by 16<sup>th</sup> May 2022. The landlord failed to produce the requested information. There was no contradictor from or on behalf of the landlord that any electrical appliances are provided and, if so, that they are in a reasonable state of repair and in proper working order. The Tribunal determines that in the absence of anything to the contrary, the property fails to comply with section 13 (1) (d) of the Repairing Standard.
36. The email of 5<sup>th</sup> November 2021 from the third party’s Environmental Health Officer,



Marjory Pryde provided Ms Ferrie with observations made from her inspection of the property on that same date. Ms Pryde's email read, "*there was no heat alarm in the kitchen and that the smoke alarms were not interlinked.*" The Tribunal interpret the email to mean that within the kitchen there was no provision for detecting heat. Also, that smoke alarms were in evidence within the property but these were not interlinked as required by statutory guidance for smoke alarms. There was no contradictor from or on behalf of the landlord. The Tribunal directed the landlord to produce evidence of same by 16<sup>th</sup> May 2022. The landlord failed to produce the requested information. The Tribunal determines that the absence of heat detection within the kitchen and the absence of an interlinked system within the property is a failure to comply with section 13 (1) (f) of the Repairing Standard.

37. The third party requested evidence from the landlord that adequate detection for carbon monoxide is installed with the property. The requests were made on 9<sup>th</sup> November 2021, 1<sup>st</sup> and 8<sup>th</sup> December 2021 and 8<sup>th</sup> February 2022. No response was forthcoming from the landlord. The Tribunal directed the landlord to produce evidence of same by 16<sup>th</sup> May 2022. The landlord failed to produce the requested information. There was no contradictor from or on behalf of the landlord that the property has adequate provision for detecting carbon monoxide if present in a concentration that is hazardous to health. The Tribunal determines that the absence of detection for carbon monoxide within the property is a failure to comply with section 13 (1) (g) of the Repairing Standard.

## **Decision**

38. In light of the Tribunal's decision that the property fails to meet the Repairing standard in terms of section 13 (1) (c) (d) (f) and (g) of the Act, the Tribunal determines that the landlord has failed to comply with the section 14 (1) (b) duty of the Act. Accordingly, the Tribunal determines that a Repairing Standard Enforcement Order ("RSEO") must be issued as required by section 24 of the Act, which Order is referred to for its terms.

## **Appeals**

- 39.** 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 within 30 days of the date the decision was sent to them.
- 40.** 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.

S Sweeney Legal Chair, at Glasgow on 6<sup>th</sup> June 2022