

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/23/1237

Title Number: STG61394

46 Westquarter Avenue, Westquarter, Falkirk, FK2 9RL (“the Property”)

Parties:

**Falkirk Council, The Forum, Callender Business Park, Falkirk, FK1 5XR
 (“the Third Party”)**

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

Tribunal Members:

**Josephine Bonnar (Legal Member)
 Andrew McFarlane (Ordinary Member)**

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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, determined that the Landlord has not complied with the duty imposed by Section 14(1)(b) of the Act.

Background

- 1. The Third Party applied to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The Third Party stated that the Landlord has failed to meet the repairing standard in relation to the property. In particular, the Landlord has failed to provide evidence that the property has the correct smoke and heat detectors, an electrical installation condition report and a gas safety certificate for the property. The Third**

Party advised that the tenant did not wish to be a party to the application.

2. On 8 June 2023, the parties were notified that the Tribunal would inspect the property on 2 August 2023 at 10am and that a hearing would take place in Wallace House, Stirling on 2 August 2023 at 11.45 am. This was converted to a hearing by telephone conference call on the 2 August 2023 at 2pm, at the request of the Third Party.
3. On 26 June 2023, the Tribunal issued a direction to the Landlord. The Landlord was directed to provide:- (i) A current Electrical Installation Condition Report (EICR) for the property from a SELECT, NICEIC or NAPIT accredited electrician containing no category C1 or C2 items of disrepair, which also confirms that smoke and heat detectors have been installed at the property in accordance with Scottish Government guidance, and (ii) If there is a gas supply to the property, a copy of the current gas safety certificate from a Gas Safe registered engineer which refers to the provision of carbon monoxide detection and details the condition of the boiler. The Landlord was notified that if he failed to provide the said documents and evidence, the Tribunal might draw an inference from that failure that the property does not comply with the repairing standard. The documents were to be provided by 14 July 2023.
4. On the 1 August 2023, the Third Party submitted an EICR dated 28 June 2023. They also submitted a gas safety certificate dated 26 July 2023. These documents were sent to the Third Party, but not the Tribunal. The EICR did not appear to have been provided by a SELECT, NAPIT or NICEIC accredited electrician. The gas safety certificate had been issued by a Gas Safe registered engineer.
5. The Tribunal inspected the property on 17 August 2023 at 10am. Access was provided by the Tenant. The Third Party was represented by Mrs McFarlane. The Landlord did not attend. The hearing took place by telephone conference call at 2pm on the same date. The only participant was Mrs McFarlane on behalf of the Third Party.

The Inspection

6. The property is a ground floor flat in generally poor condition. The Tribunal noted that there are smoke and heat detectors in the hall, living room and kitchen. When tested, these were found to be in working order but not interlinked. A schedule of photographs taken during the inspection is attached to this decision.

The Hearing

7. Mrs McFarlane advised the Tribunal that the inspection had been her first visit to the property, as the tenant had not responded to her attempts to contact her. The Tribunal noted that the smoke and heat detectors in the property are in the correct locations and appear to be capable of being interlinked. However, they are not currently connected to each other. Mrs McFarlane invited the Tribunal to determine that the property does not meet the repairing standard and to issue an RSEO requiring the landlord to repair or replace the smoke and heat detectors and obtain an EICR from an accredited electrician.

Findings in Fact

8. The Landlord has installed smoke and heat detectors at the property. These are in working order but not interlinked.
9. The Landlord provided a gas safety certificate for the property from a Gas Safe engineer dated 26 July 2023.
10. The Landlord has provided an EICR for the property. The electrician who prepared the report is not registered with SELECT, NAPIT or NICEIC.

Reasons for decision

11. The Tribunal considered the issues of disrepair set out in the application and the information and evidence provided by the parties.
12. Section 14(1) of the 2006 Act states “The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy.” In terms of Section 14(3) of the 2006 Act “The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it”. Section 22(3) of the 2006 Act states that an application can only be made if the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with the repairing standard. The Tribunal is satisfied that the Third Party notified the Landlord of the repairs issues at the property prior to lodging the application.
13. The Tribunal is satisfied that the Landlord has provided a gas safety certificate for the property from a Gas Safe registered engineer. This is in satisfactory terms. An EICR has also been provided but, as the electrician is not registered with one of the three recognized professional

bodies, the Tribunal is not satisfied that he is suitably qualified. The report is therefore not satisfactory.

14. The Tribunal is satisfied that wireless smoke and heat detectors have been installed at the property. When tested these were found to be in working order, but not interlinked.
15. The Tribunal is therefore satisfied that the Landlord has failed to comply with the repairing standard in relation to smoke and heat detectors at the property and the EICR.
16. The Tribunal concludes that the Landlord has failed to comply with the repairing standard as set out in Sections 13(1)(c) and (h) of the Act.

Decision

17. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
18. The decision of the Tribunal is unanimous.

Right of Appeal.

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.

In terms of Section 63 of the Act, 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.

J Bonnar
18 August 2023