

# 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/23/1321**

**79 McLaren Terrace, Carronshore, Falkirk FK2 8EQ  
("The Property")**

**The Parties:-**

**Falkirk Council, Private Sector team, Suite 1, The Forum, Callendar  
Business Park, Falkirk FK1 5XR  
("the Third Party Applicant")**

**Mr Steven Thicot, 79 McLaren Terrace, Carronshore Falkirk FK2 8EQ  
("the Tenant")**

**Mr Kenneth McBride, 40B Russell Street, Falkirk FK2 7HS  
("the Landlord")**

**Tribunal Members**

**Graham Harding (Legal Member)**

**Nick Allan (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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and his representative at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1. By application dated 25 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 Landlords had failed to ensure that:-

- (a) 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.
- (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (c) The house met the tolerable standard.

Specifically the Tenant's representative complained that:-

The Landlord had failed to provide a current Electrical Installation Condition Report from a SELECT, NICEIC or NAPIT accredited electrician that contained no Category C1 or C2 items of disrepair and that the report must include specific reference to the provision for heat and smoke detection in accordance with Scottish Government statutory guidelines.

3. By Notice of Acceptance dated 15 May 2023 a legal member of the Tribunal accepted the application and the Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord on 8 June 2023.
4. The Tribunal also issued Directions to the Landlord on 16 May 2023 requiring the Landlord to produce a current Electrical Installation Condition Report with no category C1 or C2 items and that by 23 June 2023. The Landlord failed to comply with the Tribunal's direction.
5. Following service of the Notice of Referral. The Landlord's case papers were returned to the Tribunal administration marked "not called for" the tribunal administration then sent the case papers again by first Class ordinary Post.
6. An inspection and hearing due to take place on 27 July 2023 were postponed at the request of the Third Party Applicant.
7. The Tribunal inspected the Property on the morning of 4 October 2023 the Tenant was present. Neither the Landlord nor a representative from the Third Party Applicant were in attendance. The Ordinary Member of the Tribunal took photographs of the property which are attached as a schedule to this decision.
8. Following the inspection of the Property the Tribunal held a hearing by teleconference and heard from the Third Party's representative, Mrs Marie Ferry. Neither the Tenant or the Landlord attended.

## The Hearing

9. Mrs Ferrie confirmed that as far as she was aware from the Council Tax Register the address of the Landlord was correct. She confirmed that there had been no further communication from the Landlord and the required Electrical Installation Condition Report ("EICR") remained outstanding
10. The Tribunal advised Mrs Ferrie that it had been noted at the inspection that the property had hard wired interlinked smoke and heat detectors that were in working order. It had also noted that there was a CO detector installed in the kitchen although this had been fixed to the ceiling and therefore did not comply with current regulations.
11. The Tribunal expressed its concern that the Landlord had not only decided not to engage with the Tribunal by not participating in the proceedings but he had also failed to comply with the Tribunal's Direction of 16 May 2023. The Tribunal noted that failure to comply with a direction was a criminal offence and could result in a prosecution.
12. For the Third Party Applicant, Mrs Ferrie asked the Tribunal to grant the application and make a Repairing Standard Enforcement Order requiring the Landlord to produce the previously requested EICR.

## Findings in fact

13. The Tenant is in a Private Residential tenancy of the property that commenced on 26 July 2022 at a rent of £3600.00 every 6 months.
14. In order to comply with his Landlord Registration, the Third Party applicant required the Landlord to provide an EICR with no Category C1 or C2 items by an accredited electrician.
15. The Landlord provided an EICR dated 12 September 2022 that had a C2 item namely that there was no earth at the lights most of which were plastic but were chrome in the bathroom and kitchen.
16. Despite being requested to provide a further EICR with no C1 or C2 items by both the Third Party Applicant and in a Direction from the Tribunal the Landlord has not provided any further report.
17. The property has functioning interlinked smoke and heat detectors installed.
18. The property has a CO detector incorrectly installed in the kitchen.

### **Reasons for the decision**

19. The Tribunal was satisfied that proper intimation of the case papers including the Tribunal's direction had been sent to the Landlord by First Class Ordinary Post. The Tribunal was therefore satisfied that the Landlord was aware of the proceedings and what was expected of him.
20. The Tribunal considers the failure of the Landlord to comply with its Direction to be a serious omission and is considering referring the matter to the police. A decision will be made in due course. In the meantime, the Tribunal is satisfied that it is appropriate that it makes a Repairing Standard enforcement Order given that the Landlord despite being given every opportunity to provide an appropriate EICR has failed to do so.
21. The Tribunal has not made it a requirement of the RSEO that the CO detector is repositioned in compliance with the regulations but would strongly recommend that this is done.

### **Decision**

22. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
23. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
24. The decision of the tribunal was unanimous.

### **Right of Appeal**

25. **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**

26. 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.

Signed       Graham Harding

Date           11 October 2023

Chairperson

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## Inspection Photograph Schedule 79 McLaren Terrace, Carronshore, Falkirk, FK2 8EQ

**Case Reference:** FTS/HPC/RT/23/1321

**Date of inspection:** 04/10/2023

**Time of inspection:** 10.00 am

**Weather conditions:** Dull and overcast

**Present:** Mr Graham Harding – Legal Member  
Mr Nick Allan – Ordinary Member  
Mr Steven Thicot – Tenant



Photo 1 – Rear elevation



Photo 2 – Main door access on rear elevation

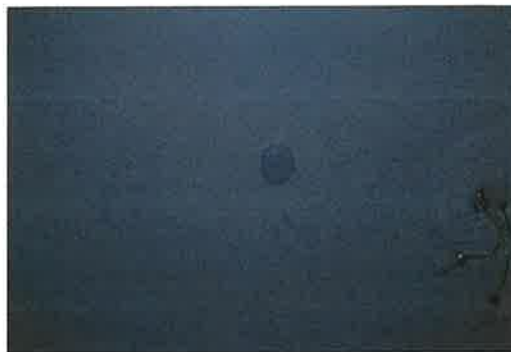


Photo 3 – Smoke alarm in Living room



Photo 4 – Smoke alarm in Hallway



Photo 5 – Heat alarm in Kitchen



Photo 6 – Location of Boiler in Kitchen



Photo 7 – CO<sub>2</sub> Monitor on Kitchen ceiling

### **Inspection notes**

1. The Tribunal noted the presence of a smoke alarm in the Living room, a smoke alarm in the Hallway and a Heat sensor in the Kitchen.
2. The Tribunal tested the alarms and noted that they were fully functioning, and interconnected.
3. The Tribunal further observed that the Carbon Monoxide monitor was incorrectly located on the Kitchen ceiling, and should be relocated to a position within the Kitchen in accordance with current Scottish Government guidelines.

Nick Allan FRICS  
Surveyor – Ordinary Member  
First-tier Tribunal for Scotland  
Housing and Property Chamber – 4<sup>th</sup> October 2023