

Housing and Property Chamber First-tier Tribunal for Scotland



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

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

Chamber Reference: FTS/HPC/RT/21/1524

Title number: Subjects registered in the Land Register of Scotland under title number STG18102

The Parties

Falkirk Council Private Sector Team, The Forum, Suite 1 Callendar Business Park, Falkirk, FK1 1XR (“the Third Party Applicant”)

Mr Alan Kerr, 91 High Street, Bonnybridge, Falkirk, KD4 1BY (“The Landlord”)

Subjects: 8L Easton Drive, Shieldhill, Falkirk, FK1 2DR (“the Property”)

Tribunal Members

Ms H Forbes (Legal Member)

Mr N 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 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 the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application received in the period between 24th June and 8th July 2021, made under section 22 of the Act, the Third Party Applicant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The Third Party Applicant considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard, in that

the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order.

3. The Third Party Applicant stated that the Landlord has failed to supply an Electrical Installation Condition Report (“EICR”).
4. As part of the Application, the Tenant enclosed copy correspondence sent to the Landlord and the Tenant.
5. The Third Party Applicant provided formal notification to the Landlord on 13th May 2021.
6. A decision to refer was made by a legal member with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber) on 15th July 2021. On the same day, a Direction was issued to the Landlord requiring the Landlord to produce a current EICR, and, in the event that the Property has gas, a current Gas Safety Certificate. No response was received from the Landlord.
7. Notification of a Case Management Discussion (“CMD”) set down for 26th August 2021 was made to parties by letter dated 27th July 2021

Case Management Discussion

8. A CMD took place by telephone conference on 26th August 2021. Ms Mhairi Ferrie was in attendance on behalf of the Third Party Applicant. The Landlord was not in attendance.
9. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Landlord had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Landlord.
10. Ms Ferrie outlined the background to the case. Following notification from the local authority’s revenues team, it was discovered that the Property was let to a tenant and that the Landlord was not a registered landlord. The Landlord was contacted. He made an application to register on 3rd March 2021, but the application was incomplete and could not be processed. The Landlord has been contacted on several occasions regarding the lack of an EICR. He has undertaken to provide this, but has not done so. Attempts to contact the tenant have been unsuccessful. The Landlord has confirmed that the tenant pays rent. The Landlord has stated that there is a Gas Safety Certificate in place, but he has not provided this. The Third Party Applicant has not been able to access the Property and is unaware of whether there is satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire. It is the position of the Third Party Applicant that the Property does not meet the Repairing Standard.

Tribunal discussion

11. The Tribunal agreed that matters were focused and that it could make a decision without further procedure, bearing in mind the terms of Rule 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The Tribunal considered there was no reason to proceed to an inspection of the Property, as what is required is a current EICR and Gas Safety Certificate.

Decision

12. The Tribunal determined that:

The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order.

The Tribunal took cognizance of the significant amount of correspondence and approaches made to the Landlord by the Third Party Applicant concerning this matter over a significant period of time, the fact that the Landlord had confirmed that there was no EICR, and confirmed that there is gas in the Property. The Landlord has also failed to respond to the Direction issued.

13. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
14. The decision of the Tribunal was unanimous.

Right of Appeal

15. **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.**

Where such an appeal is made, the effect of the decision and 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.

H Forbes

Legal Member and Chairperson
Date: 28th August 2021