

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/23/1314

Title No: STG45980

2/1 Falkirk Road, Larbert FK5 3AF ("The Property")

The Parties:-

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

Diamond Administration Ltd, 2 Carronvale Road, Larbert, Stirlingshire FK5 3LZ ("the Landlord")

Tribunal Members: Richard Mill (Legal Member) and Andrew McFarlane (Ordinary Member)

Decision

The property does not meet the repairing standard. The landlord has not complied with the duty imposed by section 14(1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

Background

1. The third party applicant Local Authority applied to the tribunal for a determination of whether the landlord has failed to comply with the duties imposed by section 14(1) of the Act in respect of the property.
2. In the written application the third party applicant stated that the landlord had failed to comply with its duty to ensure that the property meets the repairing standard according to section 13(1)(a), (b), (c), (d), (f), (g) and (h), which set out the following obligations:-
 - whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
 - whether 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.
 - whether the installations in the house for the supply of water, gas and electricity and for sanitation, space heating or heating water are in a reasonable state of repair and in proper working order.
 - whether any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
 - whether the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 - whether the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
 - whether the house does not meet the tolerable standard.

Direction

3. On 12 June 2023 the tribunal issued the following Direction:

“The Landlord is required to produce:

- a current Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.

- a copy of the current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection and details the condition of the gas boiler.

The said documentation should be lodged with the Chamber no later than 12 noon on Friday 7 July 2023."

The has landlord failed to comply with the tribunal's Direction.

Findings in Fact

- (a) The title to the subjects known as 2/1 Falkirk Road, Larbert FK5 3AF is held by the landlord in the Land Register for Stirling STG45980.
- (b) On 8 March 2023 Falkirk Council Housing Needs Team contacted Falkirk Council Private Sector Team to raise concerns regarding the condition of the property as reported by the tenant. It had been reported that there was no hot water or heating within the property and that there was no carbon monoxide detector. It was further reported that widow fittings and electrical sockets were in a dangerous state of repair.
- (c) On 14 March 2023 the Private Sector Team made enquiries with regards to ownership, and arrangements were made to attend at the property for the purposes of a property inspection. It was agreed that this would be a joint visit along with an environmental health officer.
- (d) On 23 March 2023, Kate McFarlane, private sector officer, and Marjory Pryde, Falkirk Council environmental health officer attended the property. Numerous repairs issues were identified of concern, including the electrics, water system including wastewater and boiler not working correctly, and lack of smoke detection.
- (e) On 24 March 2023, Kate McFarlane, private sector officer, completed a Notification of Repair Letter. The landlord was given 2 weeks to make contact and to provide necessary safety documents with the deadline of 7 April 2023. The said letter was issued via recorded delivery post but the landlord has failed to make any contact with Falkirk Council.
- (f) The tribunal issued a direction on 12 June 2023 requiring the landlord to provide documentary evidence that the electrical and gas supplies were safe and that there were adequate detectors for smoke, heat and carbon monoxide. The landlord has failed to comply with the tribunal.

Reasons for Decision

4. The tribunal determined the application having regard to the bundle of papers which were made available, together with their observations at the inspection.
5. The tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.
6. The tribunal has attempted to personally inspect the property on two occasions without success due to lack of entry. It is not necessary nor proportionate to seek to do so again. The tribunal has no reason not to find the enquiries made by the representatives of Falkirk Council on 23 March 2023 to be diligent, and their conclusions reliable. The tribunal attaches significant weight to that relevant inspection. Given the serious concerns for the health and safety of the tenant, but also the public at large, the tribunal has proceeded to determine the application without any further delay. The tribunal has restricted their findings at this stage to the most serious health and safety concerns with regards to the electrical and gas supplies and the lack of smoke, heat and carbon monoxide detectors in the property.
7. The documentary vouching of Falkirk Council has been unchallenged by or on behalf of the landlord. The tribunal requires to determine matters on a balance of probabilities. It is more likely than not that the concerns of Falkirk Council have not been addressed by the landlord. Neither the tenant nor the landlord have confirmed otherwise. The landlord has failed to engage in this tribunal process and failed to adhere to the tribunal's direction.
8. The tribunal determined to make a Repairing Standard Enforcement Order (RSEO). The tribunal determined that the landlord be provided with a period of 4 weeks to carry out these works which is reasonable given the nature and extent of the works.

Decision

9. The tribunal, having made enquiries for the purposes of determining whether the landlords have complied with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the landlord has failed to comply with his duty imposed by Section 14(1)(b) of the Act in respect that the property does meet the repairing standard.

Right of Appeal

10. 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.
11. 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 pages are executed by Richard George Mill, solicitor,
_____ legal member of the tribunal at Edinburgh on
10 October 2023 before this witness:-

R Mill

_____ Legal Member

C McNaught

_____ Witness

CAROL MCNAUGHT Name