



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/23/1635

**Property : 14 Tummel Place, Grangemouth FK3 OJH (“Property”)
Parties:**

Falkirk Council, Suite 2, The Forum, Callender Business Park, Falkirk KK1 1XR(“Third Party”)

Angela Davis, 14 Tummel Place, Grangemouth FK3 OJH (“Tenant”)

David Scott, 52 Amity Road, Reading RG1 3LJ (“Landlord”)

Tribunal Members :

Joan Devine (Legal Member); Sara Hesp (Ordinary Member)

DECISION

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c),(d)(f) and (g) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

Background

1. By application dated 22 May 2023, the Third Party applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Third Party stated that they believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1)(c)(d)(f) and (g) of the Act. The Application stated that the work which required to be carried out was:
 - Provide a valid Electrical Installation Condition Report (“EICR”) and instruct PAT testing if required.
 - Obtain a gas safety certificate
 - Confirm interlinked fire, smoke and heat detectors installed
 - Provide evidence the working carbon monoxide detector installed
3. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 21 September 2023.

4. The Tribunal issued a direction dated 10 August 2022 seeking production of the following by 31 August 2023 :
 - A current Electrical Condition Installation Report (“EICR”) from a SELECT, NICEIC OR NAPIT registered electrician following a full inspection of the electrical installation and apparatus throughout the Property confirming the installation and apparatus is fully functioning and meets current regulatory standards and containing no category C1 or C2 items of disrepair. The EICR should include specific reference to the provision for smoke and heat detection in accordance with existing Scottish Government guidelines.
 - A current Gas Safety Certificate for the Property.
 - Evidence of the installation of a carbon monoxide alarm at the Property.
5. On 30 August 2023 the Landlord lodged a written submission in which he stated that discussions were ongoing with the Tenant regarding access to the Property for the necessary works to be undertaken. On 19 September 2023 the Landlord emailed the Tribunal advising that the Tenant would vacate the Property on 20 September 2023. The Landlord lodged a copy of an email from the Tenant to the Landlord confirming she would vacate by 20 September 2023.

The Inspection

6. The Tribunal inspected the Property on the morning of 21 September 2023. The weather conditions at the time of the inspection were dry and bright. The Landlord was present at the Property during the inspection as was his wife, Patricia Rapley. The Tenant was not present. A schedule of photographs taken at the inspection is provided with this Decision.

The Hearing

7. The Hearing took place on 21 September 2023 by conference call. The Landlord was in attendance with his wife as a supporter. The Third Party was represented by Craig Beatt. The Tenant was not in attendance.
8. The Tribunal noted that the certification set out in the direction had not been received. The Tribunal noted that the inspection showed that there was a smoke detector in the ground floor and upper floor hall of the Property but they were not interlinked. There was no smoke detector in the living room. There was no carbon monoxide detector beside the boiler which was in the bedroom on the upper floor. There was no heat detector in the kitchen.
9. The Tribunal noted that a copy of a tenancy agreement between the Landlord and the Tenant had not been provided and asked the Landlord about the contractual arrangements between the Parties, noting that the title to the Property indicated that the Landlord acquired title in 2004. The Landlord told the Tribunal that when he bought the Property the arrangement between the Parties was that he would pay the mortgage and the Tenant would deal with upkeep of the Property. He said that he was then made redundant and went into debt. He said that the local authority paid the rent direct to him for a period but he had not

received any rent for at least five years. He could not confirm the period during which rent was paid or the amount of rent although he thought it may have been around £200 per month. The Landlord said he could not recall whether a written tenancy agreement was put in place but if it had been put in place it would have been around 2008 / 2010. The Landlord said that he did not agree with the Tenant to reduce the rent to nil, she simply stopped paying the rent. Mr Beatt said that the local authority would need to have been satisfied that a tenancy was in place in order to pay the housing benefit but they would only retain the paperwork for a certain period of time, perhaps one year.

10. The Tribunal asked the Landlord about his intentions for the Property. He said that he intends to rewire the Property, replace the bathroom, kitchen and boiler and install double glazing and then sell the Property. He said he will not rent the Property again. He said that he lives in Reading which meant he would need to take unpaid leave from work in order to oversee contractors. He said that the Property would need to be cleared before an electrician could provide a quote for carrying out work.

The Evidence

11. The evidence before the Tribunal consisted of:
 - 11.1 The Application completed by the Third Party Applicant
 - 11.2 Land Register report relating to the Property
 - 11.3 Notification letter to the Landlord dated 1 August 2022
 - 11.4 Summary of actions by the Third Party Applicant
 - 11.5 Emails between the Third Party Applicant and the Landlord regarding works required at the Property.
 - 11.6 The Tribunal's inspection of the Property
 - 11.7 Written submission from the Landlord
 - 11.8 The oral representations of the Landlord.

Summary of the Issues

12. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

Findings in Fact

13. Tribunal made the following findings in fact:
 - 13.1 The Tenant has lived in the Property since approximately 2005.

- 13.2 The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
- 13.3 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
- 13.3.1 Smoke alarms had been fitted in the ground floor hall and the upstairs hall but they are not interlinked.
- 13.3.2 There is no smoke alarm in the living room.
- 13.3.3 There is no carbon monoxide monitor in the Property.
- 13.3.4 There is no heat detector in the kitchen.

Reasons for Decision

14. The Tribunal first considered whether the arrangements between the Landlord and the Tenant constituted a tenancy for the purposes of the Act. In order to constitute a tenancy there requires to be agreement between the Parties as to the property, the parties and the rent. There clearly was agreement on the first two elements. Having heard from the Landlord at the Hearing it was clear that at some stage there was agreement on an amount of rent to be paid. Although the Tenant stopped paying at one point, the Parties did not agree that the rent should be reduced to nil. In the circumstances a tenancy did exist for the purposes of the Act.
15. Following its inspection and the hearing, the Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1) (c),(d)(f) and (g) of the Act.
16. The smoke detectors in the Property are not interlinked. There is no smoke detector in the living room, no heat detector in the kitchen and no carbon monoxide detector in the Property. The Tribunal had not been provided with a current EICR, gas safety certificate or any evidence of PAT testing.
17. It was apparent to the Tribunal that it will take the Landlord some time to clear the Property and to carry out the necessary works. That will be reflected in the RSEO.

Decision

18. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that the installations in the Property for the supply of electricity and space heating are not

in a reasonable state of repair and in proper working order; the appliances provided by the landlord are not in a reasonable state of repair and in proper working order; the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

19. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) of the Act.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

J Devine

**Legal Member
28 September 2022**

Housing and Property Chamber
First-tier Tribunal for Scotland



14 Tummel Place, Grangemouth FK5 0TH

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Schedule of photographs taken on 21 September 2023



Photograph 1: Front elevation

Photograph 2: Hallway



Photograph 3: Landing: smoke detector (same model in hallway)



Photograph 4: Front bedroom: boiler cupboard



Photograph 5: Gas Boiler



Photograph 6: Kitchen (through door): general view



Photograph 7: Living room: general view



Photograph 7: Living room: general view

