

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 Reference: FTS/HPC/RT/23/1301

2 Balfour Crescent, Larbert FK5 4BA (“the property”)

Diamond Administration Ltd, 2 Carronvale Road, Larbert, FK5 3LZ (“The Landlord”),

Falkirk Council - Private Sector Team, Suite 2, The Forum, Callendar Business Park, Falkirk, FK1 5XR (“the Third-Party Applicant”)

Tribunal Members

J [REDACTED] Bonnar (Legal Member)

S [REDACTED] Hesp (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 an electrical installation condition report and a gas safety certificate for the property and evidence that the property has the correct smoke and heat detectors. The Third Party advised that the tenant did not wish to be a party to the application.**
- 2. On 26 June 2023, the parties were notified that the Tribunal would inspect the property on 9 August 2023 at 10am and that a hearing would**

take place on the 9 August 2023 at 2pm, by telephone conference call. The Third Party was notified that they should arrange for access to the property and a letter was issued to the Tenant advising her about the inspection.

3. On 28 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 21 July 2023. The Landlord did not respond to the direction.
4. The Tribunal attended the property on 9 August at 10am. Neither the Landlord nor the Third Party was represented. The Tribunal were not provided with access to the property by the tenant and could not carry out the inspection. 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 Hearing

5. Mrs McFarlane told the Tribunal that she has not been inside the property. Her team were contacted by the Council's Housing Needs Team about another rented property owned by the same landlord. She inspected that property and noted the absence of smoke and heat detectors. She issued a letter to the Landlord in connection with the that property and four others owned by the Landlord, including the property which is the subject of the application. The Landlord was instructed to provide an EICR, Gas Safety Certificate and evidence that the correct smoke and heat detectors had been installed. A director of the Landlord telephoned on 5 May 2023, in response to the letter. He said that they would provide the documents and evidence which had been requested. No further response was received. Mrs McFarlane advised the Tribunal that she has also attempted to contact the tenant, without success. She invited the Tribunal to determine that the property does not meet the repairing standard and to issue an RSEO requiring the landlord to provide evidence regarding the smoke and heat detectors, an EICR from an accredited electrician and a gas safety certificate.

Findings in Fact

6. The Landlord has not provided evidence that they have installed smoke and heat detectors at the property which comply with current regulations and guidance.
7. The Landlord has not provided a gas safety certificate for the property or evidence that a Carbon Monoxide detector has been installed at the property.
8. The Landlord has not provided an EICR for the property.

Reasons for decision

9. The Tribunal considered the issues of disrepair set out in the application and the information and evidence provided by the Third Party.
10. 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 repairing standard issues at the property prior to lodging the application.
11. The Tribunal issued a direction to the Landlord on 28 June 2023 which stipulated that the Landlord was required to provide a gas safety certificate for the property from a Gas Safe registered engineer and an EICR issued by an electrician accredited by one of the three recognised professional bodies. The Tribunal also directed the landlord to provide evidence regarding smoke, heat, and Carbon Monoxide detection. In the direction, the Landlord was put on notice that failure to provide the evidence and documents may result in the Tribunal drawing an inference that the property does not meet the repairing standard. The Tribunal also notes that the Third Party also wrote to the Landlord for these documents, before lodging the application, without success. As the Landlord has failed to provide the stipulated evidence and documents, the Tribunal is satisfied that the property does not comply with the repairing standard.

12. The Tribunal concludes that the Landlord has failed to comply with the repairing standard as set out in Sections 13(c) and (h) of the Act.

Decision

13. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

14. 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, Legal Member

22 August 2023