



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

**Statement of Decision of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under section 60(5) of the
Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RT/21/1525

**Burnbank Cottage, Glensburgh Road, Grangemouth, FK3 8XL ("the
Property")**

The Parties:-

**Falkirk Council, The Forum, Suite 1, Callendar Business Park, Falkirk,
FK1 1XR ("The Third Party")**

**Robert Young Burnbank Cottage, Glensburgh Road, Grangemouth, FK3
8XL ("The Tenant")**

**Ms Gillian Haggarty residing at 17 Elizabeth Gardens, Stoneyburn,
Bathgate, EH47 8BP ("The Landlord")**

Tribunal Members:

Jacqui Taylor (Chairman) and Andrew Taylor (Ordinary Member)

1. Background

1.1 The Tenant leases the Property from the Landlord. No copy of the lease had been provided but Craig Beatt, on behalf of the Third Party, had confirmed by email to the Tribunal that he had spoken to Robert Young, the Tenant, and Robert Young had confirmed that he leased the Property from the Landlord.

1.2 The Third Party applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act').

2. Application

The application by the Third Party stated that they considered that the Landlord has failed to comply with her duty to ensure that the Property meets the repairing standard. They advised 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 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 for health.

In particular the application referred to a letter from Craig Beatt, a Private Sector Officer with Falkirk Council to the Landlord dated 12th May 2021 which stated that he believed the Property did not comply with the repairing standard and it listed the work that was required :-

- 2.1 Smoke and Heat detectors have to be installed.
- 2.2 The EICR report is required.
- 2.3 A carbon monoxide detector is required.
- 2.4 A Gas Safety Certificate is required.

The letter also mentioned that an Energy Performance Certificate and Legionella Assessment is required as part of her Landlord registration application although they are not part of the Repairing Standard.

3. Notice of Acceptance

On 28th June 2021, Martin McAllister, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received on 24th June 2021, and he referred the application under Section 22 (1) of the Act to a Tribunal.

4. Case Management Discussion

4.1 This case called for a conference call Case management Discussion (CMD) at 2pm on 24th August 2021.

Miss Kate Smith, private sector officer with Falkirk Council, attended on behalf of the Third Party.

The Landlord did not attend and was not represented.

The Tribunal Administration had sent the Landlord an email on 13th July 2021 advising her of the CMD. The Landlord had replied to the Tribunal Administration by email dated 2nd August 2021 requesting additional time to provide the certificates. The Tribunal was satisfied that the Landlord was aware of the CMD and therefore the terms of Tribunal Rule 29 had been met and proceeded with the Case Management Discussion.

4.2 The Tribunal acknowledged that under normal circumstances, they would arrange for the Ordinary Member to carry out an inspection to assist in the determination by the Tribunal of the application.

5. First Direction

The Tribunal issued a Direction to the Landlord dated 24th August 2021, in the following terms:

'Given the nature of the alleged repairs detailed in the Third Party's Application made under section 22(1) of the Housing (Scotland) Act 2006 and in order to assist in the determination of the Application, the Tribunal, on its own initiative and for the purpose of making inquiries in terms of paragraph 3(1) of schedule 2 of the Housing (Scotland) Act 2006, give the following Direction to the Landlord as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:

The Landlord is required to provide to the Tribunal:

- 1. A valid and compliant EICR Certificate.*
- 2. A valid and compliant Gas Safety Certificate.*

The said documentation should be lodged with the Chamber no later than close of business on 24th September 2021.'

The Tribunal Administration received no response to the Direction dated 24th August 2021.

6. Scheduled Inspection

The Tribunal decided that they needed to carry out an inspection of the Property. An inspection of the Property by the Tribunal was scheduled to be carried out at 3pm on 25th January 2022 but was cancelled as the Tribunal administration was unable to make contact with the Landlord to carry out the pre inspection covid checks.

7. Second Direction

The Tribunal issued a Direction to the Landlord dated 2nd February 2022, in the following terms:

'Given the nature of the alleged repairs detailed in the Third Party's Application made under section 22(1) of the Housing (Scotland) Act 2006 and in order to assist in the determination of the Application, the Tribunal, on its own initiative and for the purpose of making inquiries in terms of paragraph 3(1) of schedule 2 of the Housing (Scotland) Act 2006, give the following Direction to the Landlord as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:

The Landlord is required to provide to the Tribunal:

- 1. A valid and compliant EICR Certificate.*
- 2. A valid and compliant Gas Safety Certificate.*
- 3. A report by a qualified electrician confirming that the property has:*
 - 3.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.*
 - 3.2 One functioning smoke alarm in every circulation space, such as hallways and landings.*
 - 3.3 One heat alarm in every kitchen and*
 - 3.4 The alarms are interlinked and the installation complies with the regulations.*
- 4. A report by a qualified electrician confirming carbon monoxide alarm(s) have been installed in the Property in compliance with the regulations.*

The said documentation should be lodged with the Chamber no later than close of business on 25th February 2022.

Considering that (i) the Tribunal previously issued a Direction to the Landlord dated 24th August 2021 directing that she provide the Tribunal with a valid and compliant EICR certificate and a valid and compliant Gas Safety Certificate by 24th September 2021 and she failed to do so and (ii) the Landlord failed make herself available to the Tribunal Administration by telephone or email for preinspection covid checks prior to the scheduled inspection on 25th January 2022 with the result that the inspection could not proceed,

The Landlord is given Notice that if she fails to lodge the specified documentation with the Tribunal by 25th February 2022 the Tribunal will determine that the said documentation is not available and issue and register over the title of the Property a Repairing Standard Enforcement Order requiring the said documentation to be produced.'

The Tribunal Administration received no response to the Direction dated 2nd February 2022.

3. Decision

8.1 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 proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

The Tribunal determine that as the Landlord has not provided the Tribunal with a valid EICR Certificate and a valid Gas Safety Certificate (as directed in the Direction issued by the Tribunal dated 2nd February 2022) the gas and electrical installations in the Property are not in a reasonable state of repair and proper working order.

8.2 The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1) (h) of The Housing (Scotland) Act 2006).

The Tribunal determine that as the Landlord has not provided the Tribunal with evidence that compliant smoke alarms and heat detectors have been installed in the Property (as directed in the Direction issued by the Tribunal dated 2nd February 2022) the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

8.3 The house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1) (h) of The Housing (Scotland) Act 2006).

The Tribunal determine that as the Landlord has not provided the Tribunal with evidence that compliant carbon monoxide alarms have been installed in the Property (as directed in the Direction issued by the Tribunal dated 2nd February 2022) the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.


8.4. The Tribunal accordingly determine that the Landlord has failed to comply with the duties imposed by Sections 13 (1)(c) and (h) of the Act, as stated.

8.5. The decision of the Tribunal was unanimous.

9. 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.

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.

Signed **J Taylor**

Chairperson 

Date: 14th March 2022