

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Housing (Scotland) Act 2006: Section 24

Case Reference FTS/HPC/RP/21/0792

Mr Alan Smith, 25 Main Street, Patna, KA6 7LN (“the Tenant”)

Mr Brian Smith, 3 Bankknowe Terrace, Tayport, DD6 9LL (“the Tenant’s Representative”)

New City Homes Ltd, a Company registered under the Companies Acts (SC135301) and having its registered office at The Knowe, 42 Auchinleck Road, Cumnock, Ayrshire, KA 18 1AE (“the Landlord”)

25 Main Street, Patna, KA6 7LN registered in the Land Register of Scotland under Title Number AYR94445 (“the Property”)

Tribunal Members: Martin McAllister (Legal Member) and Donald Wooley, surveyor, (Ordinary Member) (“the tribunal”).

Decision

The tribunal made a repairing standard enforcement order in terms of Section 24(2) of The Housing (Scotland) Act 2006.

Background

1. By application dated 29th March 2021, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland 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 as amended (the 2006 Act). The application is in terms of Section 22 (1) of the 2006 Act (“the 2006 Act.”)
2. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: 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. Specifically, the application states that the Landlord has failed to provide

a gas safety certificate or an electrical installation inspection report including PAT testing for appliances (EICR).

3. On 20th May 2021, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President and on the same day it issued a Direction under Regulation 16 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations") requiring the Landlord to produce a gas safety certificate, EICR (including PAT testing) and an energy performance certificate.

Case Management Discussion

4. A case management discussion was held by audio conference on 7th July 2021. The Tenant's Representative participated and there was no appearance from the Landlord.
5. The purpose of a case management discussion was explained. Mr Smith said that no gas safety certificate or EICR had been provided to the Tenant.
6. Mr Smith said that the Landlord is a limited company and that its sole director, Mr George Edward Glover, had died. He said that he understood that this had been in November 2020. He said that East Ayrshire Council had advised that his affairs are being dealt with by Messrs Mathie Morton, solicitors in Ayr. Mr Smith said that he had assumed that the firm was also dealing with New City Homes Ltd.
7. Mr Smith referred the Tribunal to a copy of the letter which the Tenant had written to Messrs Mathie Morton on 17th February 2021 and which had been sent by first class signed for mail. This letter required the Landlord to comply with its obligations to produce an EICR (including PAT testing) and a gas safety record.
8. Mr Smith referred the Tribunal to a copy of the letter which the Tenant had sent to the Landlord at its registered office on 3rd May 2021. This letter required the Landlord to comply with its obligations to produce an EICR (including PAT testing) and a gas safety record and had been sent by first class signed for mail.
9. Mr Smith said that the Tenant has had to deal with a repair which was required to the central heating boiler because there is no letting agent involved in the tenancy and there is no one to whom a repairs issue can be reported to. He said that the tenant paid for the repair on the basis that, in due course, he would recover it from the Landlord. He confirmed that the Tenant is still occupying the Property and that he is still paying rent into the bank account of the Landlord.
10. Mr Smith said that New City Homes Ltd is still in existence notwithstanding that it has only one Director who is now deceased. He said that there are safety issues for the Tenant who should be satisfied that the Property has the appropriate gas safety record certificate and EICR.

11. The tribunal considered that the issue before it was focused and that the application could be determined without an evidentiary Hearing. In coming to that view, the tribunal had regard to the powers contained with Rules 17 and 18 of the Regulations.

Discussion

12. The tribunal noted the terms of the private residential tenancy agreement between the Tenant and the Landlord. It is dated 25th February 2019. It accepted that the Tenant is still in occupation of the Property.
13. Companies House maintains a public register of companies. The Tribunal had regard to it and noted that the Company is still in existence and that its registered office is still that which is detailed in the application. The tribunal noted that the register discloses that George Edward Glover is listed as the only director.
14. The tribunal had regard to the Title Sheet of the Property which shows the owner to be George Edward Glover. The tribunal considered that it was entitled to assume that the limited company and that Mr Glover had entered into a contractual arrangement whereby the owner of the Property had allowed it to be let out by New City Homes Ltd.
15. The tribunal considered that no purpose would be served by carrying out an inspection of the Property. What is required is for it to be satisfied that the appropriate certification with regard to gas and electricity is in order.
16. The tribunal considered whether or not it is significant that it appears that New City Homes Ltd effectively has no Director if Mr Glover is deceased. Whilst it is somewhat surprising that the beneficial owners of the shares of the limited company have not taken steps to appoint a director, the company still exists and, as such, is a legal person. It was a party to the residential tenancy agreement and, as such, is bound to comply with the requirements of the 2006 Act.
17. The tribunal noted that, according to the Scottish Landlord Register, the registered landlord is George Glover. New City Homes Ltd may therefore be an unregistered landlord.

Decision

18. The tribunal noted that the Landlord had failed to comply with the Direction dated 20th May 2021 and that the absence of the gas safety certificate and the EICR are health and safety issues. It considered that it is appropriate to make a repairing standard enforcement order in the following terms:
 1. **The Landlord is required to produce a current Electrical Installation Condition Report for the Property and PAT testing for any portable appliances supplied by the Landlord. The Report requires to be prepared**

by a suitably approved electrician who either is employed by a firm that is a member of an accredited registered scheme operated by a recognised body or a self-employed member of an accredited registration scheme operated by a recognised body, or is able to complete, sign and submit to the Tribunal the checklist at Annex A of the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property issued on 1st December 2016 together with copies of documentary evidence in support of the checklist. The Report requires to have no recommendations in the C1 or C2 category.

2. The Landlord is required to produce a satisfactory Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register.
3. The repairing standard enforcement order requires to be complied with by 11th August 2021.

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 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.

M McAllister

Martin Joseph McAllister,
Solicitor, legal member of
Tribunal.
7th July 2021