

# 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 sections 26 and 27**

**Chamber Reference: FTS/HPC/RT/21/1524**

**Title number: Subjects registered in the Land Register of Scotland under title number STG18102**

### **The Parties**

**Falkirk Council Private Sector Team, The Forum, Suite 1 Callendar Business Park, Falkirk, FK1 1XR (“the Third Party Applicant”)**

**Mr Alan Kerr, 91 High Street, Bonnybridge, Falkirk, KD4 1BY (“The Landlord”)**

**Subjects: 8L Easton Drive, Shieldhill, Falkirk, FK1 2DR (“the Property”)**

### **Tribunal Members**

Ms H Forbes (Legal Member)

Mr N Allan (Ordinary Member)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) having made such enquiries as it saw fit determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order (“RSEO”) dated 28<sup>th</sup> August 2021 in relation to the Property. The Tribunal has determined to grant a Rent Relief Order reducing the rent payable by 40%.**

### **Background**

1. By application received in the period between 24<sup>th</sup> June and 8<sup>th</sup> July 2021, made under section 22 of the Act, the Third Party Applicant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The Third Party Applicant considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard, in 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. The Third Party Applicant stated that the Landlord has failed to supply an Electrical Installation Condition Report

("EICR"). As part of the Application, the Tenant enclosed copy correspondence sent to the Landlord and the Tenant. The Third Party Applicant provided formal notification to the Landlord on 13<sup>th</sup> May 2021.

3. A decision to refer was made by a legal member with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber) on 15<sup>th</sup> July 2021. On the same day, a Direction was issued to the Landlord requiring the Landlord to produce a current EICR, and, in the event that the Property has gas, a current Gas Safety Certificate. No response was received from the Landlord.
4. A Case Management Discussion took place by telephone conference on 26<sup>th</sup> August 2021. Ms Mhairi Ferrie was in attendance on behalf of the Third Party Applicant. The Landlord was not in attendance. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Landlord had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Landlord.
5. Ms Ferrie outlined the background to the case. Following notification from the local authority's revenues team, it was discovered that the Property was let to a tenant and that the Landlord was not a registered landlord. The Landlord was contacted. He made an application to register on 3<sup>rd</sup> March 2021, but the application was incomplete and could not be processed. The Landlord has been contacted on several occasions regarding the lack of an EICR. He has undertaken to provide this, but has not done so. Attempts to contact the tenant have been unsuccessful. The Landlord has confirmed that the tenant pays rent. The Landlord has stated that there is a Gas Safety Certificate in place, but he has not provided this. The Third Party Applicant has not been able to access the Property and is unaware of whether there is satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire. It is the position of the Third Party Applicant that the Property does not meet the Repairing Standard.
6. The Tribunal agreed that matters were focused and that it could make a decision without further procedure, bearing in mind the terms of Rule 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The Tribunal considered there was no reason to proceed to an inspection of the Property, as what is required is a current EICR and Gas Safety Certificate.
7. The Tribunal determined 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 in proper working order. The Tribunal accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
8. The Tribunal made an RSEO dated 28<sup>th</sup> August 2021 requiring the Landlord to:

1. *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 is either 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 1<sup>st</sup> 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 and requires to address the necessary provision in the Property for detecting fires and for giving warning in the event of fire or suspected fire and for giving warning if carbon monoxide is present in a concentration that is hazardous to health.*
2. *Produce a Gas Safety Certificate for the Property prepared by a suitably qualified gas engineer registered in the Gas Safe Register*
9. The works were required to be carried out within four weeks of the date of issue of the RSEO, which was issued on 2<sup>nd</sup> September 2021.

## **Decision**

10. The Landlord has not produced the required certification. The Tribunal considers that the Landlord has had sufficient time to take the required action and has failed to do so.
11. Accordingly, the Tribunal takes the view that the Landlord's failure to implement the RSEO amounts to a breach of the RSEO.
12. In accordance with the relevant provisions of section 26(2)(d) of the Act, the Tribunal required to determine whether a Rent Relief Order ("RRO") should be made. The Tribunal took into account the seriousness of the matter. The Tribunal decided that a RRO should be imposed, reducing the rent payable by 40%.
13. The Tribunal, having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the RSEO, determined that the Landlord has failed to comply with the RSEO in terms of section 26(1) of the Act and that a notice of the failure be served on the Local Authority for the area in which the House is situated.
14. The decision of the Tribunal is unanimous.

## **Right of Appeal**

15. **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 the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

# H.Forbes

Legal Member/Chair  
11<sup>th</sup> November 2021