

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the tribunal”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

Case Reference Number: FTS/HPC/RT/22/0889

Re: 9 Burnbank Road, Grangemouth FK3 8QE (“the house”)

Land Register Title No: STG42751

The Parties:

Falkirk Council – Private Sector Team, Suite 2, The Forum, Callendar Business Park, Falkirk FK1 1XR (“the third-party applicant”)

Ms Amy Hay, residing at the house (“the tenant”) (non-participating party)

Mr Kevin Riddell, 4/1 8 Haggs Gate, Glasgow, G41 4BB (“the landlord”)

Tribunal Members:

Sarah O’Neill (Chairperson) and David Godfrey (Ordinary (Surveyor) Member)

Decision

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 house, and taking account of all the available evidence, determines that the landlord has not failed to comply with the said duty. The tribunal’s decision is unanimous.

Background

1. By application received on 28 March 2022, the third-party applicant applied to the tribunal for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.

2. In its application, the third-party applicant stated that it believed the landlord had failed to comply with his duty to ensure that the house met the repairing standard as set out in section 13(1) (c) of the Act. The application stated that the landlord had failed to ensure that installations in the house for the supply of water, gas and electricity and for sanitation, space and heating water are in a reasonable state of repair and in proper working order.
3. The third-party applicant complained that the landlord had failed to provide a copy of the gas safety certificate for the house. They also noted on the application form that the landlord had not provided an Energy Performance Certificate or Legionella Assessment, but that these items do not fall under the repairing standard.
4. An email was received from the third-party applicant on 30 March 2022 in response to a letter from the tribunal administration requesting a copy of the tenancy agreement and contact details for the tenant. The email stated that these details had been requested from the tenant but there had been no response and also provided some further details regarding the tenancy.
5. On 6 April 2022, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. On the same date, the Convener issued a direction to the landlord, directing him to provide to the tribunal a valid and compliant gas safety certificate by 5 May 2022.
6. No response to the direction was received from the landlord by that date. An email was however received from him on 1 May 2022 stating that he had just received the letter, that he intended to obtain the necessary certificates, and that he was not currently in the UK.
7. On 10 May 2022, the tribunal administration wrote to the parties notifying them that an inspection and hearing had been arranged for 14 June 2022. The parties were invited to submit written representations by 31 May 2022. A response was received from the third-party applicant on 11 May 2022, confirming that they wished to attend the hearing. Written representations were received from the landlord on 23 May and 6 June 2022.
8. Given the nature of the sole complaint made in the application, the tribunal decided that it was not necessary to carry out an inspection of the house. It therefore cancelled the inspection.

The hearing

9. A hearing was held by teleconference on 14 June 2022. Ms Kate Smith of Falkirk Council was present and represented the third-party applicant. The landlord was not present and was not represented. The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. The tribunal therefore proceeded with the hearing in the absence of the landlord, in terms of rule 29 of the 2017 rules.

The evidence

4. The evidence before the tribunal consisted of:
 - The application form completed by the third-party applicant, together with accompanying documents, including a document headed 'Summary of Actions by Third Party Applicant - Falkirk Council'; copy application for landlord registration renewal by the landlord; and letters from the third-party applicant to the tenant dated 8 February and 22 March 2022 notifying her of their intention to apply to the tribunal.
 - Letters from the third-party applicant to the landlord dated 10 November, 1, 8 and 22 December 2021 setting out the various documents sought from him as part of the landlord registration renewal process.
 - Notification of repairs letter from the third-party applicant to the landlord dated 8 February 2022.
 - Email from the third-party applicant dated 30 March 2022.
 - Written representations received from the third-party applicant on 11 May 2022.
 - Written representations received from the landlord dated 23 May and 6 June 2022.
 - EICR and legionella certificate relating to the house which were received from the landlord on 6 June 2022.
 - Gas Safety Certificate relating to the property by Steven Boyd of SB Heating & Gas Services, Bearsden dated 3 June 2022, received from the landlord on 6 June 2022.
 - The oral representations of the third-party applicant at the hearing.

Summary of the issues

5. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord has complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

6. The tribunal made the following findings in fact:
 - The house is owned by the landlord, whose landlord registration renewal was currently pending due to the various outstanding certificates.
 - There was a tenancy in place between the landlord and the tenant which began on or around 1 May 2018.
 - There was no written tenancy agreement between the landlord and the tenant.
 - The landlord had provided to the tribunal a valid gas safety certificate dated 3 June 2022 in respect of the house which had been produced by a Gas Safe registered engineer.

Reasons for decision

7. The tribunal noted that the only complaint in the application was that there was no valid and up to date gas safety certificate for the house. As noted on the application form, while landlords are required to obtain an Energy Performance Certificate and Legionella Assessment, these items do not fall under the repairing standard.
8. The tribunal noted that the gas safety certificate which had been produced by the landlord had been produced by a Gas Safe registered engineer and showed that the gas installation was satisfactory. There was reference to a dangerous safety valve having been adjusted by the engineer during the inspection. The certificate confirmed, however, that both the boiler and the hob were now safe. It also showed that smoke alarms and a carbon monoxide alarm had been fitted and were satisfactory.
9. The ordinary (surveyor) member of the tribunal noted that the certificate included a comment that there was no earth bonding on the meter, which was not in line with current standards. The relevant standards, however, were those in place at the time the meter was installed. The tribunal was therefore content that the gas safety certificate was satisfactory.

10. Ms Smith indicated that she had not seen the gas safety certificate, which had also been sent by the respondent by email to the third-party applicant. She was able to locate this during the hearing, however, and once she had had the opportunity to read it, she confirmed that she was happy with the certificate.
11. The tribunal determined that the installations in the house for the supply of water, gas and electricity and for sanitation, space and heating water are in a reasonable state of repair and in proper working order.

Summary of decision

12. On the basis of all the evidence before it, the tribunal determined that the landlord had not failed to comply with the duty under section 14(1) (b) of the Act. The decision of the tribunal was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the application.

Rights of Appeal

13. 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.
14. 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.

Date... 14 June 2022