

Housing and Property Chamber First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: FTS/HPC/RT/19/1624

Title Number: STG34772

**136 Glasgow Road, Camelon, Falkirk FK1 4HR
("The Property")**

The Parties:-

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

**Mr Brian Harley, 136 Glasgow Road, Camelon, Falkirk FK1 4HR
("the Tenant")**

**Mr Martin Higgins, 30 Overton Crescent, East Calder EH53 0RS
("the Landlord")**

Whereas in terms of their decision dated 26 August 2019, The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that:-

- (a) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

the Tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlord:-

- (a) To provide a current Electrical Installation Condition Report by a qualified electrical contractor registered with SELECT or NICEIC or NAPIT dated after the date of this order.

(b) To replace the mortice lock on the front door of the property with a new mortice lock.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 30 days from the date of service of this Notice.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page(s) are executed by Graham Harding, solicitor, 20 York Street Glasgow, chairperson of the tribunal at Perth on 26 August 2019 before this witness:-

G Harding

E Kenyon

- witness

Chairperson

ELLEN KENYON name in full

THORNTONS Address

7 WHITEFLIARS CREE

PERTH PH20PA

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 Ref: FTS/HPC/RT/19/1624

**136 Glasgow Road, Camelon, Falkirk FK1 4HR
("The Property")**

The Parties:-

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

**Mr Brian Harley, 136 Glasgow Road, Camelon, Falkirk FK1 4HR
("the Tenant")**

**Mr Martin Higgins, 30 Overton Crescent, East Calder EH53 0RS
("the Landlord")**

**Tribunal Members
Graham Harding (Legal Member)
Nick Allan (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) in relation to the house concerned, and taking account of the written submissions submitted on behalf of the Landlord and on behalf of the Third Party and the evidence on behalf of the Third Party and the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 27 May 2019 the Third Party applied to the Housing and Property Chamber for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").

2. The application by the Third Party stated that the Tenant considered that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-

- (a) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (b) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (c) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Specifically the Third Party complained that:-

A smoke detector was required in living room.

A heat detector was required in kitchen.

There was no carbon monoxide detector fitted in the kitchen.

The Tenant did not have copy of the Gas Safety Certificate or Electrical Installation Condition Report or Energy Performance Certificate.

The front door lock mechanism was sticking causing difficulty locking and unlocking same.

- 3. By Minute of Decision dated 11 June 2019 a legal member of the Housing and Property Chamber with delegated powers accepted the application and referred it to a Tribunal
- 4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Third Party and the Tenant.
- 5. Following service of the Notice of Referral on the Tenant (by letter dated 8 July 2019), he made no written representation to the Tribunal. The Landlord (by email dated 12 July 2019), made written representations to the Tribunal. The Third Party made further written representations to the Tribunal by email dated 19 and 29 July 2019. In his representations the Landlord requested a postponement of the inspection and hearing but this was refused as the Landlord although to be out of the country had indicated that all the necessary work would be completed prior to the date arranged for the inspection and hearing.
- 6. The Tribunal inspected the property on the morning of 12 August 2019. Mr Craig Beatt on behalf of the Third Party and the Tenant were present during the inspection. The Landlord was not present or represented. The Ordinary Member of the Tribunal took photographs of the property which are attached as a schedule to this decision.

7. Following the inspection of the Property the Tribunal held a hearing at STEP Stirling and heard from Mr Beatt on behalf of the Third Party. The Landlord did not attend and was not represented. The Tenant did attend and made representation to the Tribunal.
8. The Tenant explained that some time before Easter his partner could smell gas in the property and had reported it to the gas people who had come out and turned off the gas supply. They had checked for leaks in the whole block of 12 flats but had not found where the smell had come from. The flat's gas had been left turned off as it had to be checked by a qualified engineer. The Tenant said that he had told the Landlord but it had taken 5 or 6 weeks for an engineer to come out. During that time the flat had been very cold and the Tenant said he had been quite ill. The Tenant went on to say that when the engineer did come it turned out that there was nothing wrong with the system however he felt the engineer should have come out sooner.
9. For his part Mr Beatt advised the Tribunal that the Tenant had contacted Falkirk Council on 25 March 2019 regarding the issue with the gas supply. He had contacted the Landlord on the same day. The Landlord had then made no reference to the repair issues but had asked for advice on how he could end the tenancy which Mr Beatt had provided. Mr Beatt went on to say that on 1 April he sent a reminder to the Landlord and followed this up with a further telephone call to the Tenant during which he ascertained the lack of heat and smoke detectors in the property and he arranged an inspection to take place on 4 April 2019. Following the inspection, M Beatt said he noted the defects mentioned in the application. In addition at that point the gas boiler was not connected. The following day he sent a letter to the Landlord requesting the issues be addressed. Mr Beatt went on to say that subsequently the Landlord was still going on about evicting the Tenant and also saying that the Tenant was making it difficult for access to be arranged. Mr Beatt said he raised this with the Tenant who refuted the allegation. Mr Beatt went on to say that subsequently the gas boiler had been reconnected but by 15 May 2019 there was still no EICR or Gas Safety Record and the Smoke, Heat and Carbon Monoxide Detectors had not been fitted nor the front door lock repaired. Mr Beatt said that he therefore decided to make an application to the Housing and Property Chamber.
10. The Tenant advised the Tribunal that he had not been given a copy of the Gas Safety Record but accepted that it had been provided to the Tribunal. The Tenant said he had concerns about the EICR as he did not know how the electrician who had installed the heat, Smoke and Carbon Monoxide detectors would have been able to have also carried out the necessary inspection of the electrical installations in the property without going into every room and that was something the electrician had not done. The Tenant also said that nothing had been done by the Landlord to remedy the problem with the front door lock. He explained that at times his 17-year-old daughter could be locked out of the property because the lock

would not open or else locked in the property. He said there was a risk to life if she and the younger children were in on their own and there was a fire and they could not unlock the door to escape.

Summary of the issues

11. The issues to be determined are as stated at paragraph 2 above.

Findings of fact

12. The Tribunal finds the following facts to be established:-

- The tenancy is a private residential tenancy that commenced on 24 October 2018.
- There is a heat detector in the kitchen.
- There is a smoke detector in the hall and lounge
- The smoke and heat detectors are hard-wired and linked to each other.
- There is a carbon monoxide detector in the kitchen.
- There is a Gas Safety Record prepared by a registered Gas Safe Engineer dated 23 April 2019.
- There is a SELECT Electrical Installation Condition Report dated 16 July 2019.
- The SELECT membership number is missing from the said Electrical Installation Condition Report.
- The EICR Inspection was said to be carried out by Kris Brown for and on behalf of Star Sparks Electrical, 78 Oakland Square.
- Star Sparks Electrical are not registered as members of SELECT.
- The mortice lock on the front door of the property sticks and does not open properly.

Reasons for the decision

13. Although the Landlord had submitted in his written representations that all the works would be completed and the necessary certificates provided the Tribunal was satisfied that as at the date of the inspection and hearing this was not the case. The Tribunal was pleased to note that the carbon monoxide, smoke and heat detectors were in place and operational. The

Tribunal was also satisfied that there was a valid current Gas Safety Record prepared by a registered Gas Safe Engineer. The Tribunal however, did have concerns that the Electrical Installation Condition Report may have been prepared by a person who was not a registered member of SELECT and therefore not authorised to produce such a report. The Tribunal noted that the EICR had been authorised for issue by a Mr Colin Campbell of Elite Contracts who are registered with SELECT but it appears to be dated 11 July 2019, prior to the date when the inspection was carried out by the electrician. The Tribunal was therefore not satisfied that the EICR provided by the Landlord was valid particularly when account was taken of the evidence of the Tenant who had said that the electrician had not inspected the electrical installations in each room of the property.

14. The Tribunal was also satisfied from the inspection and the difficulty the Ordinary Member had in operating the mortice lock on the front door that it required to be replaced. There was clearly a health and safety risk to the occupants of the property in the event of a fire within the property or the block.
15. Whilst the Landlord had made progress towards bringing the property up to meet the repairing standard the Tribunal was satisfied from its findings at the inspection, the documents submitted and the evidence heard at the hearing that the property did not meet the repairing standard.

Decision

16. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
17. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
18. The decision of the Tribunal was unanimous.

Right of Appeal

19. **A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of section 63

20. Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

G Harding

Signed

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Date 26 August 2019

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Chairperson

**Housing and Property Chamber
First-tier Tribunal for Scotland**



**Photograph Schedule
Top floor flat, 136 Glasgow Road, Camelon, Falkirk, FK1 4HR**

Case Reference: FTS/HPC/RT/19/1624

Date of inspection: 12/08/2019

Time of inspection: 10.30 am

Weather conditions: Dry and sunny

Present: Mr Graham Harding – Legal Member
Mr Nick Allan – Ordinary Member
Mr Brian Harley – Tenant
Mr Craig Beatt – Falkirk Council



Photo 1 – Front elevation



Photo 2 – Carbon monoxide detector



Photo 3 – Heat detector in kitchen



Photo 4 – Smoke alarm in hallway



Photo 5 – Faulty door lock

Additional Inspection note

1. The Tribunal observed that the smoke alarm fitted to the Living room ceiling functioned correctly when tested, and was hard-wired to the alarms in the hallway and kitchen.

Nick Allan FRICS
Surveyor – Ordinary Member
First-tier Tribunal
Housing and Property Chamber - 13th August 2019