

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/23/0283

Property: 1st Floor Right, 2 Manor Street, Falkirk, FK1 1NH ("the Property")

Title Number: STG23795

Parties:

Falkirk Council Private Sector Team, Suite 1, The Forum, Callendar Business Park, Falkirk, FK1 5XR ("the Applicant")

John McIntosh, residing at 22b Newmarket St Falkirk FK1 1JQ (the "Landlord")

And

Walter C Nichol, residing at 1st Floor Right, 2 Manor Street, Falkirk, FK1 1NH ("the Tenant")

Tribunal Members:

Paul Doyle (Legal Member)

Andrew McFarlane (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 evidence led by the Applicant 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. On 30 January 2023 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet the repairing standard.

2. The applicant says that the respondent 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) The installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act; and
- (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the 2006 Act; and
- (c) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of Section 13(1)(f) of the 2006 Act; and
- (d) The property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health, in terms of Section 13(1)(g) of the 2006 Act.

3. Specifically, the applicant complained that the landlord's application for renewal of landlord registration disclosed that

- (i) he could not obtain a clear EICR,
- (ii) there is no Gas Safety Certificate for the property,
- (iii) the property does not have interlinked Fire, smoke and heat detectors, and
- (iv) there is no CO alarm in the property.

4. On 13 February 2023 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

5. On 1 March 2023 the Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon all parties.

6. Following service of the Notice of Referral the Landlord made written representations on 27/03/2023 and 06/04/2023. The Applicant made written representations on 04/04/2023. The tenant has not made any representations.

7. Tribunal members tried to inspect the Property by prior arrangement at 10am on 17 April 2023. The applicant was not present. The Landlord was neither present nor represented. There was no-one in the property to allow access. The attempt at inspection had to be abandoned.

8. The Tribunal held a hearing by telephone conference at 2.00pm on 17 April 2023. The Tenant was neither present nor represented. The Landlord was neither present nor represented. The applicant was represented by Ms M Ferrie.

Summary of the issues

9. The issue to be determined is

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006?)

Findings of fact

10. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of 1st Floor Right, 2 Manor Street, Falkirk, FK1 1NH ("the property"). The tenant rents the property from the landlord.

(b) On 26 May 2022, the landlord submitted an application to renew his landlord registration to the applicant. As part of his renewal application, the landlord told the applicant that there was no gas safety certificate for the property, that he did not have a satisfactory EICR, that no PAT testing had been carried out, and that the property does not have a carbon monoxide detector.

(c) Between 1 June 2022 and 5 August 2022 there was an email exchange between the applicant and the landlord. The applicant asked the landlord to produce a satisfactory, up-to-date, EICR and to confirm the arrangements for fire, smoke and heat detection. The landlord produced an EICR dated 21/12/2022 which certified that the electrical installation in the property is unsatisfactory and highlighted 18 potentially dangerous parts of the overall electrical installation.

(d) On 27 March 2023 the landlord purchased two long-life, battery operated, smoke alarms. He then installed both of them in the property.

(e) To meet the requirements of section 13(1)(f) of the 2006 Act and the Housing (Scotland) Act 2006 (Modification of the Repairing Standard)

Regulations 2019, the property requires mains wired or long-life sealed battery, interlinked, smoke and heat detectors within the property.

(f) The property does not have interlinked smoke and heat detectors, nor carbon monoxide detectors, and so does not comply with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(g) The larger building (of which the property forms part) has a supply of gas. There is no supply of gas to the property. The property does not have any gas-fired installations.

(h) The landlord has not provided an electrical installation condition report (EICR) or Portable Appliance Test Certificate (PAT). An up-to-date, satisfactory EICR and PAT is still required.

Reasons for the decision

11. (a) On 1 March 2023, all parties were told that this property will be inspected by tribunal members at 10am on 17 April 2023. By email dated 3 March 2023, the applicant's representative said that she would not attend the inspection, but would attend the hearing.

(b) Tribunal members met outside the property before 10 am on 17 April 2023. At just past 10am, Tribunal members entered the common passageway and climbed to the first floor. There, they knocked on the front door of the property. Nobody was there to allow access to the property. Tribunal members waited approximately 15 minutes before abandoning the inspection.

(c) Even though the tribunal members were not able to inspect the property, there is sufficient documentary evidence to justly determine the application.

(d) The applicant asks for four things

(i) An up to date satisfactory EICR and PAT certification

(ii) A Satisfactory Gas Safety Certificate

(iii) Evidence of installation of interlinked smoke, heat, and fire detectors

(iv) Evidence of installation of a CO monitor

(e) This application arose because of the detail provided by the landlord himself when he applied to the applicant to renew his landlord's registration. The documentary evidence placed before us clearly shows that the landlord candidly admitted that he did not have a satisfactory electrical installation condition report and had no PAT certification when he applied for the landlord registration renewal.

(f) Since this application was raised the landlord has produced an EICR dated 22/12/2022. That EICR highlights 18 category 2 (C2) findings, and certifies that the electrical installation in the property is not satisfactory.

(g) We accept the landlord's assertion that there is no gas supply to the property. Having found as fact that there is no gas supply, there cannot be a need for a gas safety certificate. If there is no gas supply, there is no need for a CO monitor.

(h) In response to the request for confirmation that there are interlinked fire, smoke, and heat detectors in the property, the landlord produced a recent receipt for two battery operated smoke detectors, and photographs of those smoke detectors fixed to the ceiling within the property.

(i) Battery operated smoke detectors have not been acceptable since 2019. To meet the requirements of section 13(1)(f) of the 2006 Act and the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019, the property requires interlinked smoke and heat detectors within the property.

(j) This application is now clearly focused on two important matters

(i) Production of a satisfactory electrical installation condition report (EICR) & satisfactory PAT certification, and

(ii) The installation of interlinked fire, smoke and heat detectors.

(k) The narrow focus in this case, combined with the documentary evidence and the landlord's candid admissions, mean that we can determine this case without arranging a further inspection of the property.

(l) The documentary evidence makes it clear that the landlord does not have a satisfactory electrical installation condition report, nor does he have certification of satisfactory PAT testing.

(m) The landlord admits that interlinked fire, smoke, and heat detectors are not installed in the property.

(m) A Repairing Standard Enforcement Order is therefore necessary because the property does not meet the requirements of Section 13(1)(c) & (f) of the 2006 Act.

13. The tribunal therefore make a repairing standard enforcement order requiring the landlord to

(i) Install interlinked smoke and heat detectors within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(ii) Instruct a suitably qualified SELECT, NICEIC or NAPIT registered electrician to carry out a certified electrical inspection of the entire electrical installation in the property and all electrical appliances and equipment supplied by the landlord and carry out all necessary remedial works to rectify any identified C1 and C2 categorised areas. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with a satisfactory

EICR and PAT prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

14. The decision of the tribunal was unanimous.

Right of Appeal

15. 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

16. 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.

Signed

P Doyle

Legal Member

17 April 2023