

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



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

**STATEMENT OF DECISION OF THE TRIBUNAL
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

38 Fortingall Crescent, Polmont, Falkirk KK2 0QD ("the House")

**The Parties: Falkirk Council, The Forum, Callendar Business Park, Falkirk FK1
1XR ("the Third Party")**

Zafar Chaudhry, 33/5 Grierson Crescent, Edinburgh EH5 2AY ("the Landlord")

Reference number: FTS/HPC/RT/22/3276

DECISION

The Tribunal, having made such enquiries as are 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 (hereinafter "the Act") in relation to the House, and taking account of the evidence led at the inspection and hearing and of the written documentation attached to the application and submitted by the Third Party, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 7 September 2022 (hereinafter referred to as "the Application") the Third Party applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

- “(a) the house is wind and water tight and in all other respects reasonably fit for human habitation;*
- (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;...*
- (c) the installations in the house 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.*
- ...(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order...*
- ...(h) the house meets the tolerable standard.” (in particular as set out in Section 86 (1) of the Housing (Scotland) Act 1987:*
- “(j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire:*
- (k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration hazardous to health”*

The Third Party complained about: the absence of an EICR and Landlord's Gas Safety Certificate; the back door not being wind and watertight; the front lobby being in need of repair; the bath needing resealed and the bath panel requiring replacement; the kitchen units needing repair, including that the sink unit was not properly sealed allowing water to enter the kitchen cupboard; and inadequate fire and carbon monoxide detectors.

On 4 January 2023, the Tribunal issued a Direction requiring the Respondent to produce evidence of how he came to be the landlord of the House and a copy of the tenancy. No response was received.

By letter of 12 January 2023, the President of the Tribunal intimated a decision to refer the application under section 23(1) of the Act for determination.

The Tribunal comprised the following members:

- Jr McHugh, Chairperson
- M Links, Ordinary (Surveyor) Member.

The Tribunal served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

A hearing and inspection were originally fixed for 24 February 2023 but could not proceed as service of the notice of the hearing was not able to be made upon the Landlord at the address in the Application. Service of notice of the inspection and hearing on 18 April 2023 was made at a new address, 33/5 Grierson Crescent, Edinburgh EH5 2AY by Sheriff Officers on 16 March 2023.

The Tribunal inspected the House on 18 April 2023. The Third Party's representatives were present. The Landlord did not attend.

Following the inspection, the Tribunal held a hearing on the same day at STEP, Stirling. Kate McFarlane and Nicola Watson of the Third Party were present. The Tribunal considered the written evidence submitted by the Third Party and its submissions.

Submissions at the Hearing

The Third Party confirmed that the Landlord had not engaged with it at all. The Third Party had been asked by the tenant to inspect the House in August 2022. The tenant had advised that he had no written tenancy agreement but that the House had been let to him by the Landlord. The Third Party had observed on inspection the following:

There was no Landlord's Gas Safety Certificate nor EICR.

There were no fire or carbon monoxide detectors.

The back door was not wind and watertight

The front lobby was in need of repair. It was suspected that it was allowing water ingress.

The bath needed resealed and the bath panel required replacement.

The kitchen units required repair. The sink unit was not properly sealed allowing water to enter the kitchen cupboard.

The Third Party's letters to the Landlord raising these issues had received no response.

The tenant had moved out of the House by 1 March 2023.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Tribunal confined its inspection to the items of complaint detailed within the Application.

The Tribunal made the following findings in fact:

- 1 The House is a ground floor flat.

- 2 Pardeep Singh was the tenant under a private residential tenancy which has not been recorded in writing.
- 3 Elaine Scott is the registered owner of the House.
- 4 The Landlord Register includes the Landlord as the relevant landlord for the address of the House.
- 5 The Tenant took possession of the House from on or around August 2022 and vacated the House on or around 1 March 2023.
- 6 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 7 The Third Party notified the Landlord of the defects in the House which are now the subject of the Application by letter of 22 August 2022.
- 8 The inspection on 18 April 2023 revealed:
 - a. No Landlord's gas safety certificate has been produced.
 - b. No EICR has been produced.
 - c. No smoke or heat detectors were fitted.

No schedule of photographs taken at the inspection has been provided to the parties.

Reasons for the Decision

Access to the inside of the House was not made available. It is empty and appears unoccupied. It appears to be the subject of ongoing repairs.

The Tribunal was accordingly unable to assess some of the matters raised in the Application as inspection of them was not possible.

Fire Detection

It was observed from looking through the House windows that smoke/heat detectors were not present in the House.

Gas and Electrical Safety

The Landlord has failed to provide a Landlord's Gas Safety Certificate or an EICR.

The Repairing Standard

The Tribunal considers that the absence of fire detection and of the Landlord's Gas Safety Certificate and the EICR represent breaches of the repairing standard. Accordingly, a Repairing Standard Enforcement Order should be made. Having regard to the nature of the works required at the House, the Tribunal have allowed 31 days for the repairs to be carried out.

The Tribunal is not yet able to make a determination on the other matters raised in the Application.

Decision

The Tribunal, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act in respect of the matters noted above.

The Tribunal further determined that it would reserve consideration of the remaining aspects of the Application which it had been unable to consider owing to no access to the inside of the House being available on inspection. The Tribunal will reach a decision on those matters once an inspection has taken place.

The decision of the Tribunal was unanimous.

Right of Appeal

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 of the 2006 Act

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.

J M McHugh
Chairperson

Date: 27 April 2023