

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



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

**Statement of Reasons: Housing (Scotland) Act 2006 Section 24**

**Chamber Ref: FTS/HPC/RT/22/3928**

**Property: 8 Mary Street, Laurieston, Falkirk FK2 9PW('The House')**

**The Parties: -**

**Laura Irvine, residing at 8 Mary Street, Laurieston, Falkirk FK2 9PW ('the tenant')**

**Rowland Reilly, 198 Whitehouse Road, Edinburgh EH4 6BX ('the landlord')**

**Craig Beatt, Falkirk Council, Private Sector Team, The Forum, Suite 2, Callendar Business Park, Falkirk FK1 1XR ("the third party")**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('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 (the "Act") in relation to the house concerned, and taking into account the evidence led at the hearing and of the written documentation submitted by the parties, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

## Background

1. By application received on 26<sup>th</sup> October 2022, the third party applied to the First-tier Tribunal (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.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:
  - *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*
  - *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 house meets the tolerable standard.*
  - *The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire*
  - *The housing has satisfactory provision for warning if carbon monoxide is present in a concentration that is hazardous to health*
3. The application contained correspondence between the third party and the landlord dated 23<sup>rd</sup> September 2022 which specified that the said failure was established as the following work needed to be carried out
  - Fit interlinked smoke and heat detectors throughout the property in accordance with existing Scottish Government statutory guidelines
  - provide a copy of the current electrical installation condition report (EICR), from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no category C1 or C2 items of disrepair. The report must include specific reference to the provision for smoke and heat detection in accordance with existing Scottish Government statutory guidelines.

- provide a copy of the current gas safety certificate from a registered Gas Safe engineer, which refers to the provision or carbon monoxide detection
  - Kitchen -window to right of back door cracked full length of frame; broken handles, does not open. Window to left of back door has only one pane of glass in unit; Rubber seal broken and hanging out of frame
  - three wooden kitchen cupboard doors broken
  - Living room - 3/4 of ceiling without covering (rafters showing due to water leak)
  - Hall (downstairs)- central heating radiator not connected to wall
  - Front door sticks when opening and closing; Locking mechanism also sticks
  - Hall (upstairs) hole in ceiling where a light fitting was situated after water leak
  - Tenant's bedroom - hole in ceiling within wardrobe
  - Bathroom - toilet does not flush, mechanism broken. No hot or cold water at bath. No hot or cold water at sink. No hot water at electric shower.
  - Girls room - water tank in cupboard not boarded in. Entrance to loft has no hatch in place.
  - Boys room - No flooring in cupboard where water tank is situated (due to water leak – can see down into living room)
  - Sockets – in living room, kitchen and hall electrical sockets with no on/off switches.
4. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 14<sup>th</sup> December 2022.
5. Prior to the hearing the landlord lodged a gas safety certificate dated 27<sup>th</sup> January 2023 showing the gas appliances to be in a satisfactory condition at that date. An EICR was also submitted however the address in the report was different from the house and was not therefore included in the bundle of papers before the Tribunal.

## Hearing and Inspection

6. The tribunal inspected the house on the morning of 6<sup>th</sup> February 2023.
7. Photographs were taken by the tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
8. A hearing took place by teleconference at 2pm on 6<sup>th</sup> February 2023. All parties were in attendance.
9. The tenant confirmed that she had lived in the property since August 2012. She had moved into the house with her former partner. He had moved out of the property several years ago at which point she had taken over responsibility for paying the rent. The tenant advised that she had relied on her former partner to notify the landlord of repairs that required to be carried out and that she had not had any contact herself with the landlord. The tenant explained that due to the condition of the property she had contacted Falkirk Council for advice on being rehoused. She had been referred to the private sector team who had explained that she had a statutory right to have repairs carried out.
10. At the inspection and hearing the tribunal considered each of the issues specified in the application in turn: -
11. Smoke and heat detectors: The smoke detectors in the living room and kitchen had been tested during the inspection. Whilst functioning individually they were not interlinked. Mr Beatt advised that he had attended the property prior to the inspection and had noted that the detectors were not interlinked. The landlord stated that he had given instructions to the electrician that the detectors should be installed to meet the statutory requirements. He had understood that they had been interlinked. He would take the matter up with the electrician.
12. Gas safety certificate/carbon monoxide detector: The Tribunal noted that prior to the hearing the landlord had provided an up-to-date gas certificate which stated that the appliances in the property were in a satisfactory condition, including the carbon monoxide detector. However, during the course of the inspection it was observed that the carbon monoxide detector was located on the wall in the living room, where no gas appliances were present, rather than in the kitchen where the gas boiler was located.

13. Kitchen windows: The tenant confirmed that both windows in the kitchen had been repaired and were in a satisfactory fully functioning condition.
14. Kitchen cupboards: It had been observed at the inspection that a new kitchen had been installed since the application was submitted. All parties agreed that there were no outstanding issues with the kitchen cupboards.
15. Living room ceiling: The landlord explained that since the application had been lodged, he had arranged for a significant amount of work to be carried out to the house. He had instructed a full rewire of the property, a new central heating system and new built-in kitchen. He had also arranged for the living room ceiling to be replastered. This had been completed however there was still some outstanding cornice work and redecoration required. The landlord confirmed that this finishing work would be carried out as part of the overall upgrading of the property, and undertaken once all the other invasive and disruptive work had been completed.
16. Central heating radiator in the downstairs hall: The landlord confirmed that as part of a new central heating system being installed a new radiator was now properly fixed to the wall. The other parties were in agreement that this repair had been completed.
17. Front door: It was observed at the inspection that the front door is in a poor state of repair and sticks both when being opened and when the lock is used. The landlord accepted that the door required to be repaired and explained that he had arranged for repairs to be carried out to the door however, those had not been carried out in time for the inspection.
18. Hole in upstairs ceiling: All parties were in agreement that the hole in the upstairs hallway where there had previously been a light fitting had been repaired. It was observed during the inspection that the hole had been repaired however the area had not been skim coated and there was no light fitting in the upper hall as the hole had been covered over.
19. Hole in tenant's wardrobe: All parties were in agreement that the hole had been repaired. However, it was observed during the inspection that it still required to be skim plastered and redecorated. Another damaged section of the cupboard ceiling containing a taped up electrical cable still requires to be repaired. The tenant confirmed that there had been a light located in the wardrobe which had been removed, leaving the exposed wire. It was

observed that this posed a significant hazard. The landlord advised that he would raise the issue with the electrician shortly after the hearing and instruct any necessary repairs.

20. Bathroom: The tenant advised that the issues with the bath, sink and toilet had been resolved since the application had been submitted. However, as had been observed at the inspection the shower was not properly functioning and there was no water supply to the shower. The landlord advised that the issue appeared to be due to the electrical power to the shower as the plumbing issues had been rectified.
21. Water tank in tenant's daughter's bedroom: All parties were in agreement that the water tank had been removed from the bedroom, and the previously exposed area sealed off appropriately.
22. Loft hatch in tenant's daughter's room: The tenant confirmed that as was observed at the inspection, there was no hatch in place over the entrance to the loft. The entrance was located within the built-in wardrobe in the bedroom. The tenant advised that the lack of a hatch had no material effect on her daughter's enjoyment of the room as the wardrobe door was usually closed.
23. No flooring in cupboard in tenant's son's room: It was observed during the inspection that there was a lack of flooring in the built-in cupboard. As the ceiling in the living room had been replaced there was no longer a hole into the living room however, the flooring in the cupboard itself had not been replaced. The tenant advised that she did not use the cupboard.
24. Electrical sockets/EICR: the application stated that there were electrical sockets in the kitchen, living room and hallways which did not have on/off switches. The landlord gave evidence that he had instructed an electrician to carry out a complete rewire of the property. He had understood that most of that work had been completed to a satisfactory standard. The tenant explained that the sockets in the kitchen had been replaced however three replacement sockets in the kitchen were not currently functioning. As noted above there was also an electrical fault in relation to the shower. The landlord was not certain if the sockets which had been left which did not have on/off switched met current regulations and explained that he had instructed an electrician in good faith. He advised that he would be speaking with his electrician shortly after the hearing and would be raising the issues in relation

to the sockets, shower and carbon monoxide monitor. The landlord explained that he had been provided with an EICR by his electrician which stated that the electrics within the property were in a satisfactory condition. The landlord stated that this had been forwarded to the Tribunal however, the electrician had put the incorrect address on the EICR. As the EICR did not refer to the house, it was not in the papers before the Tribunal. The landlord advised that he would also raise this matter with the electrician.

### **Summary of the issues**

25. The issue to be determined is whether the house meets the repairing standard as laid down in section 14 of the Act and whether the landlord has complied with the duty imposed by sections 13(1)(c) and (d) of the Act.

### **Findings in fact: -**

26. The tribunal find the following facts to be established: -

- a. The tenant has resided in the house since August 2012.
- b. At the time of the inspection the smoke and heat detectors within the house were not interlinked and do not meet current Scottish government guidelines.
- c. The landlord has failed to produce an EICR for the house.
- d. The carbon monoxide detector in the house has been located outside the room where the gas boiler is situated and does not therefore meet Scottish Government guidelines.
- e. The living room ceiling has been replaced since the application was submitted however it has not been repainted and is missing some cornicing.
- f. A new fitted kitchen has been installed in the house since the application was submitted.
- g. The windows in the kitchen have been repaired since the application has been submitted.
- h. The radiator in the lower hallway has been replaced and is correctly fixed to the wall.

- i. The front door to the house is not functioning properly and sticks when opening. The locking mechanism requires to be repaired.
- j. Holes in the ceiling in the upper hall and the tenant's bedroom have been patched.
- k. There is an outstanding repair required to the cupboard ceiling in the tenant's bedroom, and a remaining issue with an exposed electrical cable.
- l. The exposed location of the removed water tank in the tenant's daughter's bedroom has been repaired.
- m. The ceiling within the tenant's bedroom cupboard together with the landing ceiling have yet to be skim plastered and repainted.
- n. The shower was not functioning at the time of the inspection.
- o. There is no hatch in place at the entrance to the loft located in the tenant's daughter's bedroom cupboard.
- p. There is no adequate flooring in the cupboard within the tenant's son's room.
- q. Three electrical sockets in the kitchen were not functioning at the date of the inspection.
- r. Sockets within the Livingroom, lower and upper halls had no on/off switches.

### **Reasons for the Decision**

- 27. The Tribunal determined the application having regard to the bundle of papers which had been available to parties prior to the hearing, the inspection and the oral representations at the hearing.
- 28. The Tribunal was only able to consider those items which formed part of the intimated application.
- 29. The Tribunal accepted that the landlord had instructed significant upgrading works to be carried out in the house, however at the date of the inspection and hearing the works were still in progress. The Tribunal accepted that the landlord had instructed an electrician in good faith and expected that works would be carried out to a satisfactory standard however, it was clear during the inspection that the fire detection systems and carbon monoxide detector

fell below statutory guidelines. The Tribunal determined that the upgrading of the electrical installations was incomplete.

30. In relation to the condition of front door, the hatch to the loft and the floor in the tenant's son's bedroom it was evident from the inspection that repairs had not been carried out. The landlord did not dispute at the hearing that repairs were required to these items.

31. Observations: The Tribunal noted that as well as the items specified in the application the tenant raised concerns about mould growth in her son's bedroom. She explained that she had discovered mould growth under the carpet and on her son's mattress. She was concerned at the health implications of living in a property affected by mould growth. Mr Beatt advised that he would discuss this further with the tenant and if necessary lodge a further application as the item was outwith the scope of the present application. Mould growth was observed during the inspection and it was noted that damp meter readings in the bedroom cupboard were high. The Tribunal also observed an electrical wire in the tenant's built-in wardrobe described at paragraph 19. The Tribunal considered that this constituted a danger to the tenant and that the landlord should ensure any wires are made safe. The Tribunal did note that there were ongoing electrical repairs in the house which should include this item. The Tribunal also noted that whilst the hole in the ceiling at the upper hall had been repaired, the previous light fitting had not been replaced which would limit provision of lighting in that area.

## **Decision**

The tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

## **Right of Appeal**

**A landlord, tenant or third-party applicant 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 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.

M C Kelly

Legal Member

Chairperson:

Date: 17th February 2023