

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Housing (Scotland) Act 2006 Section 24

Chamber Ref: FTS/HPC/RT/22/1390

The Property: 41 Mariner Road, Camelon, FK1 4JR (“The Property”)

The Parties:

Falkirk Council, Private Sector Housing, The Forum, Callendar Business Park, FK1 1SR (“the Third-Party Applicant”); and

Mr Andrew Aylwin, 41 Mariner Road, Camelon, FK1 4JR (“the Tenant”); and

Mr Calum Watt, 128 Henderland Road, Bearsden, Glasgow, G61 1JA (“the Landlord”)

Tribunal Members:

G McWilliams- Legal Member

S. Hesp - 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 or not the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the 2006 Act”), in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and that a Repairing Standard Enforcement Order (“RSEO”) should be made.

Background

1. The Third-Party Applicant applied to the Tribunal on 13th May 2022 in terms of Section 22 of the Housing (Scotland) Act 2006. The Applicant complained that the Landlord had not complied with elements of the Repairing Standard and, in this regard, provided a copy of their letter to the Landlord outlining work which the Third-Party Applicant considers should be carried out to comply with the Repairing Standard, dated 4th February 2022. The work referred to was the provision of a 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 terms of disrepair and including reference to the provision of smoke and heat detection in accordance with existing Scottish Government statutory guidelines. The Third-Party Applicant also sought that the Landlord produce a Gas Safety Certificate. In subsequent correspondence with the Tribunal’s office the Third-Party Applicant lodged a copy of an email from Ms C. Ray, Environmental Health Officer, Falkirk Council, dated 22nd December 2022, which listed repair issues at the Property in December 2022.
2. After the Application was lodged with the Tribunal the Landlord submitted an EICR which had not been completed by an accredited electrician and a Gas Safety Certificate which was due for renewal on 22nd February 2023. In correspondence with the Tribunal’s Office the Landlord stated that he had not produced a current, satisfactory EICR and a satisfactory Gas Safety Certificate as his contractors were unable to access the Property. He stated that the Tenant suffers from mental health problems and he and his contractors had not been able to communicate with the Tenant.

Inspection

3. The Tribunal Members attempted to inspect the Property in the morning of 25th April 2023. The Third-Party Applicant’s Ms K. McFarlane as well as Ms Ray were present. The Landlord Mr Watt was not present or represented. The Tribunal did not receive any answer from their various knocks on the door of the Property over a period of 15 minutes. Ms Ray called the Tenant during this period but received no answer. Accordingly, the Tribunal were unable to access and inspect the Property.

Hearing

4. The Tribunal held a Hearing which proceeded remotely by telephone conference call at 2.00pm on 25th April 2023. The Third-Party Applicant’s Ms K. McFarlane and Ms C Ray attended. The Landlord did not attend and was not represented. There was no explanation for his absence.
5. The Tribunal heard oral evidence and a submission from Ms McFarlane.

6. Ms McFarlane relied on the terms of the Application and referred to her said e-mail to the Landlord Mr Watt dated 4th February 2022. She stated that she had had subsequent communications with Mr Watt but that the works requiring to be done regarding provision of a current and satisfactory EICR and Gas Safety Certificate remained outstanding. She stated that Mr Watt had been advised by the Third-Party Applicant of his right as Landlord to seek to gain entry to the Property through a Tribunal Application.
7. The Tribunal considered all of the available evidence and written representations as well as the submission of Ms McFarlane.
8. The Repairing Standard is set out in Section 13 of the Housing (Scotland) Act 2006, as amended:

A Property (house) meets the Repairing Standard if:-

- (a) The house is wind and watertight 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,
- (e) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,
- (f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
- (h) The house meets the tolerable standard.

Findings in Fact

9. Having considered all of the evidence, written representations and Ms McFarlane's oral submission the Tribunal made the following findings in fact:
 - i) The Tenant and Third-Party Applicant have not been provided with copies of a satisfactory EICR, for the Property, containing no Category C1 or C2 terms of disrepair and including reference to the provision of smoke and heat detection in accordance with existing Scottish Government statutory guidelines by the Landlord; and
 - ii) The Tenant and Third-Party Applicant have not been provided with copies of a satisfactory Gas Safety Certificate, for the Property, by the Landlord.

Decision, Reasons and RSEO

10. In an email sent to the Tribunal's office on 24th April 2023 Mr Watt accepted that a current, satisfactory EICR, completed by an accredited electrician, and a current Gas Safety Certificate, in satisfactory terms, had not been obtained. The lack of a current EICR and Gas Safety Certificate in respect of the Property were accepted facts. The Tribunal heard Ms McFarlane's evidence that she had liaised with Mr Watt and advised him of his right to seek entry to the Property through a Tribunal process. Ms McFarlane communicated with the Tribunal in the Application and correspondence, and gave her oral evidence at the Hearing, in a straightforward and dispassionate manner. Mr Watt did not attend at the Hearing and did not contradict Ms McFarlane's evidence in this regard. Accordingly, the Tribunal found, on a balance of probabilities that Mr Watt was aware of the formal Tribunal process which he could undertake to gain entry to the Property and so that his contractors can produce a current EICR and current Gas Safety Certificate. The Tribunal found that Mr Watt had delayed in attending to these matters. They therefore found, on a balance of probabilities, that the installations in the Property for the supply of gas and electricity are not in a reasonable state of repair and in proper working order. The Tribunal found that the Property does not meet the tolerable standard. The Tribunal therefore decided that the Property does not meet the Repairing Standard, specifically in terms of Section 13(1)(c) and (h) of the 2006 Act. Given that the Application had been lodged in May 2022 and the EICR and Gas Safety Certificate required had still not been submitted, notwithstanding that Mr Watt is aware of the process to be gone through to gain entry to the Property the Tribunal decided that it was fair and reasonable to make an RSEO.
11. The Tribunal, having considered Ms Ray's email dated 22nd December 2022, also observed that the Property may not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in that the smoke and heat detection alarms in the Property may not be interlinked. Ms Ray's email also stated that there were holes in the kitchen ceiling and loose light fittings and sockets throughout the Property, as well as a damaged wall on the ground floor of the Property. There was no complaint within the Application, and in the Third-Party Applicant's letter to Mr Watt, dated 4th February 2022, regarding these issues. Accordingly, the Tribunal recommends that Mr Watt investigates these matters and carries out any necessary works to remedy these issues, in compliance with the Repairing Standard, as a matter of priority.
12. The Tribunal have therefore decided to make an RSEO, as required by Sections 24 (I) and 24(II) of the 2006 Act, in the following terms:
- a) **The Landlord is to carry out such actions and works, and to provide appropriate documentation, to ensure that the Property complies with the Repairing Standard. Specifically the Landlord has to:-**
 - i) **Instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to carry out a certified electrical inspection and testing of the**

entire electrical installation of the Property and exhibit a satisfactory EICR, containing no Category C1 or C2 terms of disrepair, and satisfactory Portable Appliance Testing (“PAT”) Certificate to the Tribunal; and

- ii) Instruct a suitably qualified Gas Safe engineer to inspect all the gas appliances in the Property and provide the Tribunal with a satisfactory, complete Gas Safety Certificate.**

- b) In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, and the remedial actions and works which require to be carried out, the Tribunal determines that the RSEO requires to be complied with by 30th June 2023.**

13. The decision of the Tribunal was unanimous.

Right of Appeal

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.

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.

Signed: G McWilliams



Legal Member

Date: 9th May 2023

