

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/20/2553

Title Number STG7791

13 Iona Place, Hallglen, Falkirk, FK1 2PU (“the property”)

The Parties:-

Falkirk Council, Private Sector Team, The Forum, Suite 1, Callendar Business Park, Falkirk FK1 1XR (“the third party applicant”)

Mr Andrew and Mrs Margaret Sneddon, 9 Stanmore Gardens, Lanark ML11 7RZ (“the landlords”)

Tribunal Members:

Richard Mill (Legal Member) and Sara Hesp (Ordinary Member)

Decision

The Property does not meet the Repairing Standard. The Landlord has not complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary.

Introduction

This is an application in which the Tribunal is asked to determine whether the landlord has complied with the ‘repairing standard’ duty imposed by Section 14 of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property at 7 Cuttyfield Place, Carronshore FK2 8TA.

Under normal circumstances, the Tribunal would arrange for the Ordinary Member to carry out an inspection to assist in the determination by the Tribunal of the application. Unfortunately, this has not been possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, remote Case Management Discussions (CMD) were arranged. The Tribunal has managed to determine the issues arising in this application without the need for a physical inspection of the property.

Background and Procedure

The application is brought by a third party, namely the relevant local authority responsible for the landlords' registration. The third party applicant's representative is Mr Craig Beatt of the Private Sector Team of Falkirk Council.

The background to the application is as follows:-

- On 13 May 2020 the private sector team was contacted by another department of Falkirk Council to provide information and assistance to the tenant of the property who is Mr Derek Fraser. There were issues around the condition of the tenancy and also the terms of the written lease entered into. Following information being provided, the tenant was to progress matters himself.
- On 15 September 2020 the third party applicant made contact with the tenant, Mr Fraser, and asked for an update on the progress of relevant repairs issues. Mr Fraser advised that these had not been resolved.
- On 5 October 2020 Mr Beatt was permitted entry to the property by the tenant and carried out an assessment in relation to the repairing standard. Relevant issues were noted.
- On 7 October 2020 the third party applicant sent a Notification of Repair letter to both landlords by registered post. On the same day an email was sent to both landlords.

The issues identified by Mr Beatt at the time of his inspection, and the issues referred to within the Notification of Repair letter have not been evidenced to have been resolved by the landlords.

The issues of concern identified by the third party applicant at the time of the inspection on 5 October 2020 were:-

1. There were no hard wired / wireless smoke and heat detectors installed in the property.
2. The electric water heater switch in the kitchen was faulty and sparked. No hot water was available in the property.
3. The oil filled electric heater in the small bedroom does not switch on.
4. The window the living-room is faulty and does not close properly.

A current Electrical Installation Condition Report (EICR) was requested by the third party applicant which has not been produced.

Upon intimation of the application to the landlords by Sheriff Officer delivery, written representations were required from the landlords by 30 March 2021, but none were received.

A first CMD took place on 3 March 2021. The landlords did not join the teleconference hearing. There was no barrier to them doing so. The Tribunal issued a Direction to seek relevant documentation from the landlords. This

required compliance by 1 April 2021. Nothing was received from the landlords.

A further Case Management Discussion (CMD) took place by teleconference on 13 April 2021. Mrs Sneddon joined the hearing and advised that she awaited the EICR from her electrician who had carried out an inspection. An issue had also been raised in respect of the windows being wind and watertight. Mrs Sneddon reported that some of the windows had been replaced and that draft excluders could be placed on the remaining single glazed units. A further Direction was issued in the following terms:

“The Tribunal requires the landlords to produce:

1. An 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, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.
2. A copy of the current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection.
3. Vouching from a suitably qualified tradesman regarding the condition of the windows with reference to the ability to open and close the windows effectively so as to be draft proof, together with the production of relevant colour electronic photographs of the windows.”

The said documentation required to be lodged with the Chamber no later than close of business on 30 April 2021. No documentation was received.

A further CMD took place on 12 May 2021. Mrs Sneddon failed to join the hearing. She had advised the Tribunal in the context of another hearing on the same day in respect of another property, that she was in receipt of the documentation required by the Tribunal, apologised again for not having produced it and accepted that the failure to do so was unacceptable. The Tribunal determined that it was proportionate and fair to allow one further and final opportunity for the landlords to cooperate. It was determined to allow a further 7 days for the documentation to be lodged, failing which, the Tribunal made it clear that a Repairing Standard Enforcement Order would be made. Mrs Sneddon accepted that this was reasonable. A Direction in identical terms to that issued at the CMD on 13 April 2021 was made requiring the documentation by 19 May 2021.

Disappointingly no documentation was produced by the landlords.

Reasons for Decision

The Tribunal determined that the landlords had failed to satisfy the Tribunal

that the repairing standard, in terms of the 2006 Act is complied with. The landlords have been afforded every fair opportunity to evidence this but have failed to do so.

The Tribunal determined the application having regard to the bundle of papers which were made available, together with the representations made on behalf of both parties in the course of the CMD hearings.

The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material with which to reach a fair determination of the reference.

The Tribunal requires to be satisfied that the property is safe for the tenant, and all others in and in the vicinity of the property. In the absence of clear valid documentary evidence regarding the electrical installations the Tribunal could not be satisfied about these issues. Serious health and safety concerns arise where landlords cannot evidence they are meeting the statutory requirements. The statutory requirements place legal obligations on all private sector landlords for very good reason. The Tribunal accepted the submissions from Mrs Sneddon regarding her poor health but this does not excise the requirement to meet all legal obligations which exist.

The Tribunal relied upon the oral evidence of Mr Beatt in respect of the condition of the windows in the property. This evidence was found to be credible and reliable. Mrs Sneddon herself, at the CMD on 13 April 2021 conceded that there were issues of concern with the windows and was far from clear that they were all resolved. The Tribunal was not satisfied that the windows in the Property are wind and watertight.

Decision

The Tribunal, having made enquiries 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 property, determined that the Landlord has failed to comply with their duty imposed by Section 14(1)(b) of the Act in respect that the property does not meet the repairing standard.

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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Daly Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 20 May 2021 before this witness:-

R. Mill

Legal Member

C. McNaught

Witness

CATHERINE MCNAUGHT

Name

69-71 DALRY ROAD

Address

EDINBURGH

EH11 2AA