

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/21/0331

Title Number STG7824

7 Cuttyfield Place, Carronshore FK2 8TA ("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 22 December 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 22 December 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 22 December 2020 were:-

1. There were no hard wired / wireless smoke and heat detectors installed in the property.
2. The windows in the kitchen, utility room and bathroom were drafty and do not close properly.

A current Electrical Installation Condition Report (EICR) and Gas Safety Certificate were requested by the third party applicant which have not been produced.

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

By way of email sent to the tribunal on 30 March 2021, the second respondent, Mrs Margaret Sneddon, advised that "all works had been carried out". No further details or documentary evidence was provided, though an indication was given that there was a willingness to provide any further information required. The Tribunal issued a Direction requiring the landlords to produce all documentary evidence and vouching which relate to the issues raised in the application by the third party applicant. The landlords were specifically require to produce 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 items of disrepair, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance, and a copy of the current Gas Safety

Certificate for the property which refers to the provision for carbon monoxide detection. The requested documentation was required by 9 April 2021. The Direction of the Tribunal was not complied with.

A first Case Management Discussion (CMD) took place by teleconference on 13 April 2021. Mrs Sneddon advised that she was in receipt of a gas safety certificate and 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 advised once more 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 have 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.

This application has been brought to the Tribunal by the local authority though the tenant of the property has a relevant interest. The tenant is Ms Evija Cukura. She has been advised of the application and was invited to make any relevant submission and was invited to attend the CMD. She indicated that she did not wish to attend the hearing but submitted information to the tribunal. She had evidenced communications with the landlords regarding her concerns about the state of the windows and the condition of the gas boiler. She reported that when she moved into the property in 2016 the landlords acknowledged the poor condition of the windows and intention to replace them. The most recent communication from the tenant highlighted that a gas engineer and electricity engineer have visited the property and that smoke, heat and carbon monoxide detectors have been installed. The Tribunal was satisfied on the basis of this information that the property has adequate provision for the detection of fire and carbon monoxide.

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 the required clear valid documentary evidence regarding the electrical and gas installations the Tribunal cannot be satisfied about these issues. Serious health and safety concerns arise where landlords do not 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 excuse 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 21 May 2021 before this witness:-

R. Mill

Legal Member

C. McNaught

Witness

CATHERINE MCNAUGHT Name

69-71 DALY ROAD Address *

EDINBURGH

EH11 2AA