

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

122 Hayfield Terrace, Denny FK6 5PB ("the House")

The Parties:

Falkirk Council, Suite 2, Callendar Business Park, Falkirk FK1 1 XR ("the Third Party")

Marie Barrett and Paul Barrett, 6 Clayton Park, Bridge of Earn, Perth PH2 9FD ("the Landlord")

Reference number: FTS/HPC/RT/23/3111

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 parties, 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 2023 (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:

"(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"

The Third Party complained about: the absence of electrical and gas related certificates and adequate carbon monoxide detection.

On 8 September 2023, the Tribunal made a Direction ordering the Landlord to provide a Landlord's Gas Safety Certificate which specifically addressed the issue of carbon monoxide detection and an Electrical Installation Condition Report (EICR). No response was received.

By letter of 11 October 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:

John McHugh, Chairperson
Greig Adams, 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 Third Party.

A hearing and inspection were fixed for 24 November 2023.

The Tribunal inspected the House on 24 November 2023. Mr Beatt of the Third Party and the tenant was present. The Landlord was neither present nor represented.

Following the inspection, the Tribunal held a telephone hearing on the same day. Mr Beatt attended. The Landlord was neither present nor represented. The Tribunal considered the written evidence submitted by the parties and their submissions.

Submissions at the Hearing

The Third Party advised that it had not been provided with an EICR and that the Landlord's Gas Safety Certificate which it had received and passed to the Tribunal had raised two faults – the absence of a carbon monoxide detector and the absence of earth bonding of the boiler.

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 The tenant occupies the House under a private residential tenancy agreement.
- 3 Paul Barrett and Marie Mullin are the registered owners of the House.
- 4 Paul Barrett and Marie Barrett are registered as Landlords of the House.
- 5 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 6 The Third Party notified the Landlord's representative of the defects in the House which are now the subject of the Application by letter of 7 August 2023.
- 7 The inspection on 10 March 2023 revealed:
 - a. No additional Landlord's Gas Safety Certificate addressing the carbon monoxide alarm or the earth bonding was made available.
 - b. A new fusebox appeared to have been installed recently. The tenant reported that other electrical works had been completed recently but no EICR has been made available. The tenant reported that he had not received an EICR from the Landlord.
 - c. A carbon monoxide alarm was present.

A schedule of photographs taken at the inspection has been provided to the parties.

Reasons for the Decision

Electrical Installation Condition Report (EICR)

No EICR has been provided.

Gas Safety Certificate

The Landlord had made available in advance of the inspection a Landlord's Gas Safety Certificate dated 30 August 2023. It noted the absence of earth bonding and the absence of carbon monoxide detectors. No other certificate has been provided.

Carbon Monoxide Detection

A carbon monoxide detector was in place in boiler cupboard.

The Repairing Standard

The Tribunal considers that the absence of an EICR and of a Landlord's Gas Safety Certificate without noted faults 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 Landlord's failure to engage in the present process and the fact that the Tribunal has issued a Direction concerning the same matters a considerable time ago, the Tribunal have allowed 31 days for the repairs to be carried out.

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.

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.

John M McHugh
Chairperson

Date: 28 November 2023