

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the Act

Chamber Ref: FTS/HPC/RT/23/3600

Re: Property at 15, Paris Street, Falkirk, FK39BN registered in the Registers of Scotland under Title Number STG11469 (“the Property”)

The Parties:

1. Falkirk Council per its employee, Mr. Craig Beatt, Private Sector Officer (Enforcement and Liaison), Housing and Communities, The Forum, Callendar Business Park, Falkirk, FK1 1XR as third-party applicant in terms of Section 22(1A) of the Act (“the Third -party Applicant”);
2. Mr. Stuart Spence residing at the Property (“the Tenant”) and
3. Mr. Christopher Johnston residing care of 11, Canalside Drive, Reddingmuirhead, FK2 0FA (“the Landlord”)

Tribunal Members:

K Moore (Chairman) and A McFarlane (Surveyor and Ordinary Member)

Decision of the Tribunal

The Tribunal determined that the Landlord has failed to comply with the duty imposed on him by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c) of the Act.

Background

1. By application received between 11 October 2023 and 19 December 2023 (“the Application”), Falkirk Council as a Third -party Applicant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c) of the Act.

2. The Application comprised an application form and copy correspondence from the Third -party Applicant to the Landlord requesting sight of the Electrical Installation Condition Report (“EICR”) for the Property and, if applicable, the Gas Safety Certificate for the Property.
3. The Application was referred to the Tribunal. An Inspection of the Property was fixed for 4 April 2024 at 10.00 with a Hearing by telephone conference fixed for 14.00 on the same day.
4. Prior to the Inspection and Hearing, the Landlord submitted a Gas Safety Certificate, an EICR for the Property, which did not comply with the Scottish Government Guidance as the signatory is not a member of NICEIC, SELECT or NAPIT and no certificate of competence was submitted, and photographs purporting to show that there is a smoke detector and a carbon monoxide detector in the Property.

Inspection and Hearing

5. The Inspection of the matters complained of in the Application took place at the Property on 4 April 2024 at 10.00. The Tenant and Mr. Beatt of the Third-party Applicant were present. The Landlord was not present and was not represented. The Tribunal inspected the matters raised in the Application and took a photographic record which is annexed hereto.
6. The Hearing took place on 4 April 2024 at 14.00 by telephone conference call. Mr. Beatt of the Third-party Applicant was present. Neither the Tenant nor the Landlord was present.
7. The Tribunal advised Mr. Beatt that the EICR was not acceptable as there was insufficient information in respect of the accreditation of the party who had prepared and signed it and so it did not meet Scottish Government Statutory Guidance.
8. The Tribunal advised Mr. Beatt that although the heat and smoke detectors in the Property were compliant with Scottish Government Statutory Guidance, carbon monoxide detector requires to be repositioned.

Findings of Fact

9. The Tribunal’s findings in fact were made from the Application, the Inspection, the documents lodged and the Hearing.
10. The Tribunal found the following matters established: -
 - a. There is a tenancy of the Property between the Landlord and the Tenant;
 - b. There is a current Gas Safety Certificate for the Property;
 - c. There is satisfactory evidence that there is provision for the detection of fires and for giving warning in the event of fire or suspected fire;

- d. There is provision for giving warning if carbon monoxide is present in a concentration hazardous to health, however this is not properly positioned in accordance with Scottish Government Statutory Guidance, and;
- e. The current EICR for the Property is not acceptable as it does not meet with Scottish Government Statutory Guidance.

Issues for the Tribunal

11. In these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Accordingly, the issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Section 13(1)(c) of the Act at the date of the Inspection.

Decision of the Tribunal and reasons for the decision.

12. In respect of the complaint in terms of Section 13 (1) (c) that the Landlord has failed to ensure that the installations 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, as there is no current acceptable EICR for the Property, the Tribunal cannot be satisfied that Property is in a reasonable condition. With regard to gas safety in the Property, as the provision for giving warning if carbon monoxide is present in a concentration hazardous to health is wrongly positioned, the Tribunal cannot be satisfied that Property is in a reasonable condition. Accordingly, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
13. The decision is unanimous.

Repairing Standard Enforcement Order

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

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Signed

K Moore

K Moore, Chairperson

4 April 2024

