



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) in terms of Section 24(1) of the Housing  
(Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/22/1834**

**Property : 54 MacDonald Terrace, Lochgilphead PA31 8TE (“Property”)**

**Parties:**

**Kevin Agnew and Shiree Agnew, formerly residing at 54 MacDonald Terrace,  
Lochgilphead PA31 8TE (“Tenant”)**

**Mrs Lyndsay Martin, 7 Dun Mor Avenue, Lochgilphead PA31 8TP (“Landlord”)**

**Complete Clarity Solicitors, 34 Woodlands Road, Glasgow G3 6UR (“Landlord’s  
Representative”)**

**Tribunal Members;**

Joan Devine (Legal Member); Mike Links (Ordinary Member)

**DECISION**

The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c) and (h) of the Act. The Tribunal therefore issues a repairing standard enforcement order. The Tribunal's decision is unanimous.

**Background**

1. By application dated 11 June 2022, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Act.
2. In the application, the Tenant stated that they believed that the Landlord had failed to comply with their duty to ensure that the property met the repairing standard as set out in Sections 13(1) (c), (f) and (h) of the Act. The Application stated that:
  - The fire and smoke alarms were not interlinked
  - The fuse board failed its inspection and needed changed
3. The Application was referred to the Tribunal and an inspection and Hearing were fixed for 13 and 14 October 2022 respectively.

4. Prior to the Inspection the Tenant advised the Tribunal that they had removed from the Property on 26 August 2022. In the application concerns were raised regarding a possible electrical hazard and smoke and heat detection. In those circumstances the Tribunal issued a Minute of Continuation and a Direction requesting sight of a current EICR.
5. By emails dated 23 September and 7 October 2022 the Landlord's Representative submitted a written representations in which they stated that the Application should not proceed as the Tenant had removed from the Property, the Landlord intended to sell the Property and the required smoke alarms had been installed. They also produced an invoice dated 14 September 2022 from LDW Services for the supply of smoke alarms and a heat detector; an email from LDW Services dated 12 September 2022 regarding gaining access to the Property and an EICR dated 13 September 2021 which stated at part 5 that extensive works were required to make the electrical installations satisfactory. 10 specific items were listed with 8 of them being categorised as "C2" which means those items were in need of urgent remedial action.

#### The Inspection

6. The Tribunal inspected the Property on 13 October 2022. The weather conditions at the time of the inspection were overcast and dry. The Landlord was present at the Property during the inspection. The Property is a two storey mid-terrace house.

#### The Hearing

7. The Hearing took place on 14 October 2022 by conference call. Kara MacGregor-Duke of the Landlord's Representative was in attendance. The Tribunal explained that the inspection of the Property had taken place on 13 October 2022. At the inspection the Tribunal noted that that the required number of smoke alarms were present in the Property as was a heat alarm in the kitchen. The Tribunal tested the alarms and found that they were operational and interlinked. The Tribunal explained to the Landlord's Representative that whilst they were able to determine that items 4,5 and 9 on the EICR had been repaired and item 10 had been removed, they were unable to determine the position as regards the other items on the EICR, particularly those marked C2. A qualified electrician would require to inspect the electrical installations in the Property. Ms MacGregor-Duke submitted that an updated EICR was not required as the Property was no longer tenanted and was to be sold. She asked the Tribunal to allow the Application to be abandoned.

#### The Evidence

8. The evidence before the Tribunal consisted of:
  - 8.1 The Application completed by the Tenant
  - 8.2 Land Register report relating to the Property
  - 8.3 Photographs of the interior of the Property

- 8.4 An invoice dated 14 September 2022 from LDW Services for the supply of smoke alarms and a heat detector
- 8.5 An email from LDW Services dated 12 September 2022 regarding gaining access to the Property
- 8.6 A copy EICR for the Property dated 13 September 2021
- 8.7 The Tribunal's inspection of the Property
- 8.8 The oral representations of the Landlord's Representative

#### Summary of the Issues

9. The issue to be determined was whether the Property meets the repairing standard as set out in Section 13 of the Act and whether the Landlord had complied with the duty imposed on them by Section 14(1)(b).

#### Findings in Fact

10. Tribunal made the following findings in fact:

- 10.1 The Tenant had lived in the Property since 27 March 2020 in terms of a tenancy agreement.
- 10.2 Tenant removed from the Property on 26 August 2022.
- 10.3 The tenancy was a tenancy of a house let for human habitation, which does not fall within the exceptions set out in Section 12(1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
- 10.4 The Tribunal in its inspection carefully checked the items which were the subject of the application. Inside the Property the Tribunal observed the following:
  - 10.4.1 There were smoke detectors in the living room, the downstairs hall and the upstairs hall. There was a heat detector in the kitchen / diner. The alarms were interlinked and operational.
  - 10.4.2 Items 4, 5 and 9 on the EICR had been rectified.
  - 10.4.3 Item 10 on the EICR had been removed.

### Reasons for Decision

11. The Tribunal rejected the submission that the Application should be abandoned. The Tribunal determined that the Property does not meet the repairing standard as required by Section 13(1) (c) and (h) of the Act.
12. Whilst the Landlord had told the Tribunal that a number of the “C2” entries in the EICR had been rectified, this was not something that could be confirmed at the inspection. A qualified electrician would require to be instructed to produce an EICR which confirmed that the installations and apparatus are fully functioning and meet current regulatory standards.

### Decision

13. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act, and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and the Property does not meet the tolerable standard.
14. The Tribunal therefore makes a repairing standard enforcement order as required by Section 24(2) 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.**

**Legal Member  
17 October 2022**