

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier tribunal for Scotland under Sections 26 and 27 of the Housing (Scotland) Act 2006

Property: 59 Montgomery Street, Falkirk FK2 9BN (“the house”)

Title Number: STG6191

Chamber Reference: FTS/HPC/RT/19/2475

Parties:

Falkirk Council Private Sector Team, The Forum, Callendar Business Park, Falkirk FK1 1XR (“Third Party Applicant”)

Mr Ian Green, 27 MacFarlane Crescent, Cambuslang, Glasgow G72 7GG (“the Landlord”)

Ms Katarzyna Rodzik, 59 Montgomery Street, Falkirk FK2 9BN (“Interested Person”)

Tribunal Members – George Clark (Legal Member/Chairperson) and Lori Charles (Ordinary Member/Surveyor)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order made by the Tribunal on 10 December 2019, determined that the Landlord has not complied with the Order and that the failure to comply should be notified to the local authority and to Police Scotland. The Tribunal also made a Rent Relief Order.

Background

By application, received by the Tribunal on 7 August 2019, the Third Party Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland ("the Tribunal") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1) of the Housing (Scotland) Act 2006 ("the Act").

The application stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard.

Following an inspection and Hearing held on 10 December 2019, the Tribunal made a Repairing Standard Enforcement Order ("the Order"). The Order required the Landlord to complete the following within a period of six weeks from the date of service of the Order:

1. Install interlinked smoke detectors and a heat detector and carbon monoxide monitor to comply with current Scottish Government Guidelines, ensuring that they are powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.
2. Obtain an Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT registered electrician in respect of the property, dated after the date of installation of the smoke and heat detectors and carbon monoxide monitor and undertake any work which is identified in said report to be of Category C1 or C2.
3. Repair or renew the front and back entrance doors to ensure they are wind and watertight
4. Carry out such repairs as are necessary to the vinyl flooring in the kitchen, ensuring that it is in a reasonable state of repair and in proper working order, or to replace it.
5. Carry put such repairs as are necessary to ensure the door of the floor unit in the kitchen opens and closes properly and is fit for purpose.

The Tribunal was unable to gain entry to the Property for a reinspection scheduled for 17 March 2020. As a result of ongoing COVID-19 restrictions, the Tribunal is still unable to inspect the Property and, with no way of estimating when that position might change, the Tribunal decided to hold a Case Management Discussion in an effort to progress the case. The Case Management Discussion was held on 15 January 2021 at which the Tribunal was unable to make a finding as to whether Items 1,3,4 and 5 set out in the RSEO had been carried out. It did, however, find that the Landlord had failed to comply with the Order to produce an Electrical Installation Condition Report in respect of the Property. The view of the Tribunal was that the delay of more than a year in complying with the Order was unacceptable, given that the Landlord would be well aware that this was a matter which had potentially serious health and safety implication for the occupants of the Property.

Summary of the issues

The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order made on 10 December 2019 and, if not, whether a Rent Relief Order in respect of the Property should be made.

Reasons for the Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provide that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision.

The Tribunal determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order and that, in terms of Section 26(2) of the 20016 Act, the failure must be reported to the local authority. The Tribunal also decided to make a Rent Relief Order, to reflect the gravity of the Landlord's failure to comply.

Section 29 of the Act provides that a Landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence.

The Tribunal determined that Police Scotland should be notified of the Landlord's failure to comply with the Order.

The decision of the Tribunal was unanimous.

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.

G Clark

Signed

Date: 15 January 2021

George Clark, Legal Member/Chairperson

