

Housing and Property Chamber

First-tier Tribunal for Scotland



Repairing Standard Enforcement Order (RSEO) made under Section 24 of the Housing (Scotland) Act 2006

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

Whereas in terms of their decision dated 10 December 2019, The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘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”), the Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Tribunal requires the Landlord to:

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 out 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 orders that the works required by this Order must be carried out and the Electrical Condition Installation Report exhibited within six weeks of the date of service of this Order on the Landlord.

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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

IN WITNESS WHEREOF these presents, typewritten on this and the preceding page, are executed by George Barrie Clark, Chairperson of the Tribunal, at Lasswade, on 10 December 2019, before this witness, Valerie Elizabeth Jane Clark, residing at Droman House, Lasswade, Midlothian.

G Clark

. Legal Member/Chair .

V Clark

. Witness

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 Section 26 (1) of
the Housing (Scotland) Act 2006**

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

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 duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made.

Background

1. 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 for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. 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. In particular, the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, that any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health and that the house meets the tolerable standard.

3. The application was accompanied by a Notification of Repair Letter sent by the Third Party Applicant to the Landlord on 10 July 2019. The letter listed the following work which needed to be carried out and which formed the basis of the application:
 - Smoke and Heat Detection to be installed within property.
 - Windows throughout to be repaired as draughty and to be made safe and secure. Handles missing or not working properly. No safety catches.
 - Front and back door to be repaired due to draughts and made secure. No lock on back door.
 - Heating system to be repaired, radiators not working.
 - Kitchen units to be repaired or replaced, doors hanging wrong and held together with nails.
 - Hole in ceiling of kitchen cupboard to be repaired.
 - Broken tiles on kitchen floor to be repaired.
 - CO detector to be installed in correct place – tenant bought CO detector.
 - Electrical Installation Condition Report to be completed and provided.
 - EPC to be provided.
4. On 5 September 2019, the President of the Housing and Property Chamber intimated a decision to refer the Tenant's application under Section 22 (1) of the Act to a Tribunal, gave Notice of Referral and of the date set for an inspection and Hearing.
5. The Tribunal inspected the Property on the morning of 10 December 2019 and was admitted by the Interested Party. The Third Party Applicant was represented by Kate Smith, Private Sector Officer, Falkirk Council. The Landlord was not present or represented at the inspection.
6. The Tribunal comprised George Clark (Legal Member/Chairperson) and Lori Charles (Ordinary Member/surveyor).
7. A Schedule of Photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

The Hearing

8. Following the inspection, the Tribunal held a Hearing at Wallace House, Stirling. Ms Smith attended the Hearing, but the Landlord was not present or represented.
9. Ms Smith, on behalf of the Third Party Applicant told the Tribunal that there was little to add to the written representations and the evidence the Tribunal had seen for itself at the Inspection.
10. Ms Smith then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

Findings of fact

11. The Tribunal makes the following findings of fact:
 - The Property comprises an end-terrace former local authority house of non-traditional construction erected c.1940s. The accommodation is arranged over two floors and there are three bedrooms.
 - All the windows in the Property have recently been replaced with double glazed units. There are minor snagging items, but the windows are secure and sealed, with no evidence of draughts.
 - There are no smoke detectors in the hall, living room or first floor landing, no heat detector in the kitchen and the battery operated carbon monoxide detector in the living room was provided by the Interested Party.
 - The front and back entrance doors are not wind and watertight. The back door leads directly down to a woodstore, which is not secure, but there is a lock on the back door itself.
 - There is an open fire in the living room and a back boiler, with the provision of hot water supplemented by an immersion heater. The heating system was not on at the time of the inspection, but the Interested Party confirmed that the radiators heated up when the open fire was lit.
 - The kitchen is dated. One of the floor unit cupboard doors does not close properly.
 - There are two small tears in the vinyl flooring in the kitchen and minor cracks in the tiled flooring.
 - The Tribunal has not seen an Electrical Installation Condition Report in respect of the Property.

Reasons for Decision

12. The Tribunal was satisfied that the issues with the windows identified in the Notification of Repair Letter submitted with the application had been satisfactorily dealt with, but the Property does not have a system for detecting fires or for giving warning in the event of fire or suspected fire and. The carbon monoxide monitor is battery operated and was provided by the Interested Party. The Landlord's obligation is to install mains-wired and interlinked smoke and heat detectors and a carbon monoxide monitor in accordance with current Guidelines issued by the Scottish Government. When this work is completed, the Tribunal will require to see a satisfactory Electrical Installation Condition Report containing no C1 or C2 items of disrepair. The Interested Party chooses not to leave the open fire lit overnight but she did confirm to the Tribunal that, when it is lit, it fulfils the function via the back boiler of providing heating to the radiators throughout the Property and heating the water. The front and back entrance doors are in need of repair or replacement as they are not wind and watertight. The vinyl flooring in the kitchen is damaged and will have to be repaired or replaced and repairs are needed to the one of the floor units in the kitchen to ensure that it opens and closes properly. There is a hole in the ceiling in the kitchen cupboard, but its function is to accommodate pipework, so it is not an item of disrepair.
13. The Landlord should have provided the Interested Party with an Energy Performance Certificate at the commencement of the tenancy, but his failure to do so does not constitute a failure to ensure the Property meets the Repairing Standard.

Decision

14. The Tribunal, having considered all the evidence before it and the matters it had noted at the inspection, decided to make a Repairing Standard Enforcement Order in respect of the Property.
15. 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.

Signed.. **G Clark** Legal Member/Chairperson
Date: 10 December 2019

*This is the Schedule of Photographs
referred to in the foregoing
Statement of Decision dated
10 December 2019*

G Clark

Legal Services Chair

Housing and Property Chamber First-tier Tribunal for Scotland



Date of Inspection – 10/12/19 at 10:00am

Property Reference – FTS/HPC/RT/19/2475

Property Address – 59 Montgomery Street, Falkirk

Surveyor – Lori Charles

Weather – Heavy rain and windy

Front door



Front door has been fitted with draft excluder tape in parts, however, drafts were noted during the inspection.

Lounge



New double glazed windows have been fitted throughout the property and are draft free and operate well.

No smoke detector fitted to the lounge.

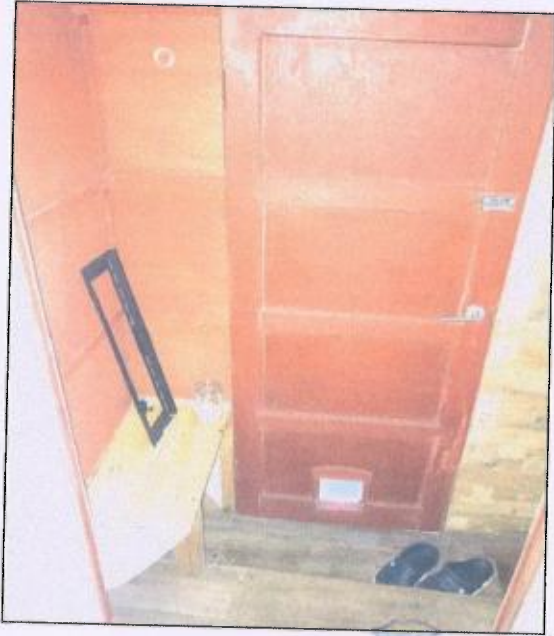


The property is heated by the original coal fire and back boiler. The current tenant has purchased electric heaters for when the coal fire is not in use.



The carbon monoxide detector requires to be fitted as per manufacturer's recommendations.

Kitchen



The back/kitchen door has been built over with a timber structure used to store firewood. No drafts were noted to the kitchen door and the locking mechanism was tested during the inspection and was in working order.



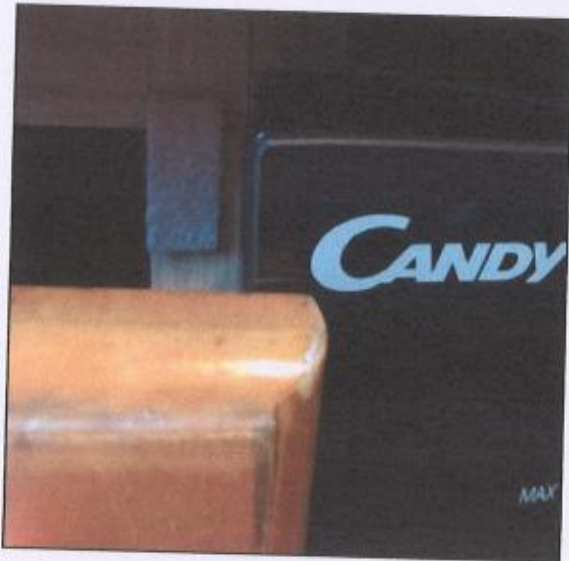
There is a hole in kitchen ceiling is for the radiator pipes from the back boiler System.



Vinyl flooring damaged in sections



Ceramic floor tiles have evidence of surface cracking



Kitchen cupboards are ill fitting and do not close. No heat detector fitted to the kitchen.

Bedrooms and bathroom



All new double glazed windows have been inspected throughout the property. Electric heating has been purchased by the current tenant.

General

There is no fire detection fitted throughout the property.

All windows have been replaced with new double glazed units. Some snagging was noted and the tenant advised that this has been reported.

L Charles

Lori Charles BSc Hons MRICS

Ordinary Member (Surveyor)

Date 10/12/2019

Schedule of photographs taken by the Ordinary Member of the First Tier Tribunal for Scotland (Housing and Property Chamber) on the 10th December 2019.

Reference Number FTS/HPC/RP/19/2475