

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Reference number: FTS/HPC/RT/23/1945

Re: Property at Elim House, 41 Ugie Street, Peterhead, AB42 1NX (“the Property”)

Title Number: ABN73500

The Parties:

**Aberdeenshire Council, Infrastructure Services (Housing), Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51 3WA
 (“The applicant”)**

Mrs Margaret Tinto and Mr Laurie Tinto, residing together at 70 Alexander Avenue, Kingseat, Newmachar, Aberdeen, AB21 0AS (“the Landlord”)

Interested Party:

Angela Thomson, residing at Elim House, 41 Ugie Street, Peterhead, AB42 1NX (“the Tenant”)

Tribunal Members:

**Paul Doyle (Legal Member)
Angus Anderson (Surveyor Member)**

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) in relation to the house concerned, and taking account of the evidence submitted by the applicant, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 14 June 2023 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet the Repairing Standard.

2. The applicant says that the respondent has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that:-

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 in terms of Section 13(1)(c) of the 2006 Act;

3. On 2 August 2023 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Applicant, and the Tenant on 21 September 2023.

5. By email dated 27 September 2023 the Applicant's representative, Ms Cheryl Greig, submitted further written representations and advised the Tribunal that the Applicant would not be represented at the hearing. No written representations were received from the Landlords.

6. Tribunal members inspected the Property at 10am on 6 November 2023. The Tenant was present. Neither the Landlord nor Applicant were present or represented. During the inspection on 6 November 2023, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

7. Following the inspection of the Property the Tribunal held a hearing at 48 Huntly Street, Aberdeen, at 12 noon on 6 November 2022. Neither the applicant nor the Landlord attended.

Summary of the issues

8. The issues to be determined are

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

Findings of fact

9. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of 41 Ugie Street, Peterhead, AB42 1NX ("the property"). The landlord let the property to the tenant more than 10 years ago.

(b) The property is a one bedroomed, ground floor, flatted dwellinghouse in a granite built block of four dwelling houses built in 1915. There are common garden areas to the front, back, and side of the building. The front door of the property opens onto a vestibule area, providing access to the livingroom. A central hall off the living room leads to the bedroom, bathroom, and kitchen. There is an external door to the rear (which does not open.) The property has gas central heating.

(c) Annual gas safety checks have not been carried out by the landlord for at least 5 years.

(d) The property has neither smoke alarms nor heat detectors. It has one carbon monoxide detector, which is discoloured and of some age, adjacent to the gas boiler. If we were considering the tolerable standard we would find that the property fails to meet the tolerable standard.

(e) The gas central heating boiler is located in a cupboard in the bedroom. There is a water leak from pipework beneath the boiler. The pressure gauge showed 2.5 bar, which is higher than the pressure should be when the system is cold. Externally, water was dripping from the pressure relief valve. The gas central heating boiler has not been serviced for 5 years. The landlord does not have an up to date gas safety certificate.

(f) In the kitchen there is a gas hob and electric oven. The electric oven does not work. The spark ignition for the gas hob does not work.

(g) Externally, there are leaking gutters. Overall, the property is in a poor state of repair. There are many defects in the property which are not within the scope of this application.

(h) The gas central heating boiler is defective. The landlord does not have an up to date gas safety certificate. The property fails to meet the requirements of section 13(1)(c) of the 2006 Act.

Reasons for the decision

10. (a) Tribunal members inspected this property at 10:00am on 6 November 2023. It was a crisp, autumn, morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) This application is restricted to s13(c) of the 2006 Act. If we were asked to consider s.13 (b), (d), (f), (g), and (h), we would find that the application was made out.

(c) Tribunal members inspected the gas central heating boiler in a cupboard in the bedroom. The boiler has obvious defects. The tenant told tribunal members that the boiler has not been serviced nor inspected for at least five years. What the tenant told us is consistent with the appearance of the boiler. There is no countervailing evidence. The tribunal finds that the boiler has been neither inspected nor serviced for at least 5 years.

(d) The weight of reliable evidence tells us that the landlord does not have a satisfactory up to date Gas Safety Certificate.

(e) A combination of tribunal members observations and the available documentary evidence tell the tribunal that the gas central heating boiler is defective and that there is no current gas safety certificate.

(f) The Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019 incorporated smoke and heat alarms into the tolerable standard in recognition of the danger fire poses to the occupants of a house, The revised tolerable standard includes criteria for '*satisfactory equipment for detecting fire and giving warning in the event of fire or suspected fire*'. There is now a requirement for

- one smoke alarm installed in the room most frequently used for general daytime living purposes (normally the living room/lounge);
- one smoke alarm in every circulation space, such as hallways and landings;
- one heat alarm installed in every kitchen;
- all smoke and heat alarms to be ceiling mounted; and
- all smoke and heat alarms to be interlinked.

(g) The Landlord has not complied with Scottish Government regulations and guidance on the fire safety of the Property, so the Property fails to meet the tolerable standard. There is an immediate risk to the Tenant in the event of fire. The Tenant is a disabled person and is vulnerable. The Tribunal expects that the Landlord will take immediate steps to rectify the matter. Had the Applicant included this matter within the application, this Tribunal would have had no hesitation in including this within a Repairing Standards Enforcement Order.

(h) Tribunal members observations tell the tribunal that the property fails to meet the repairing standard. We therefore make a Repairing Standard Enforcement Order requiring the landlord to

- (a) Instruct a suitably qualified Gas Safe registered engineer to inspect and carry out all works necessary to leave the gas central heating boiler and gas hob in good working order. Thereafter to provide the First-tier Tribunal for Scotland (HPC) with an up-to-date and satisfactory Gas Safety Record from a suitably qualified and Gas Safe registered heating engineer on the safety of the gas central heating system and all other gas appliances in the property.

All within 42 days.

Decision

11. The tribunal accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

12. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

13. The decision of the tribunal was unanimous.

Right of Appeal

14. 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

15. 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.

P Doyle

Signed

Legal Member

7 November 2023

Housing and Property Chamber First-tier Tribunal for Scotland



Housing (Scotland) Act 2006

41 Ugie Street, Peterhead, AB42 1NX

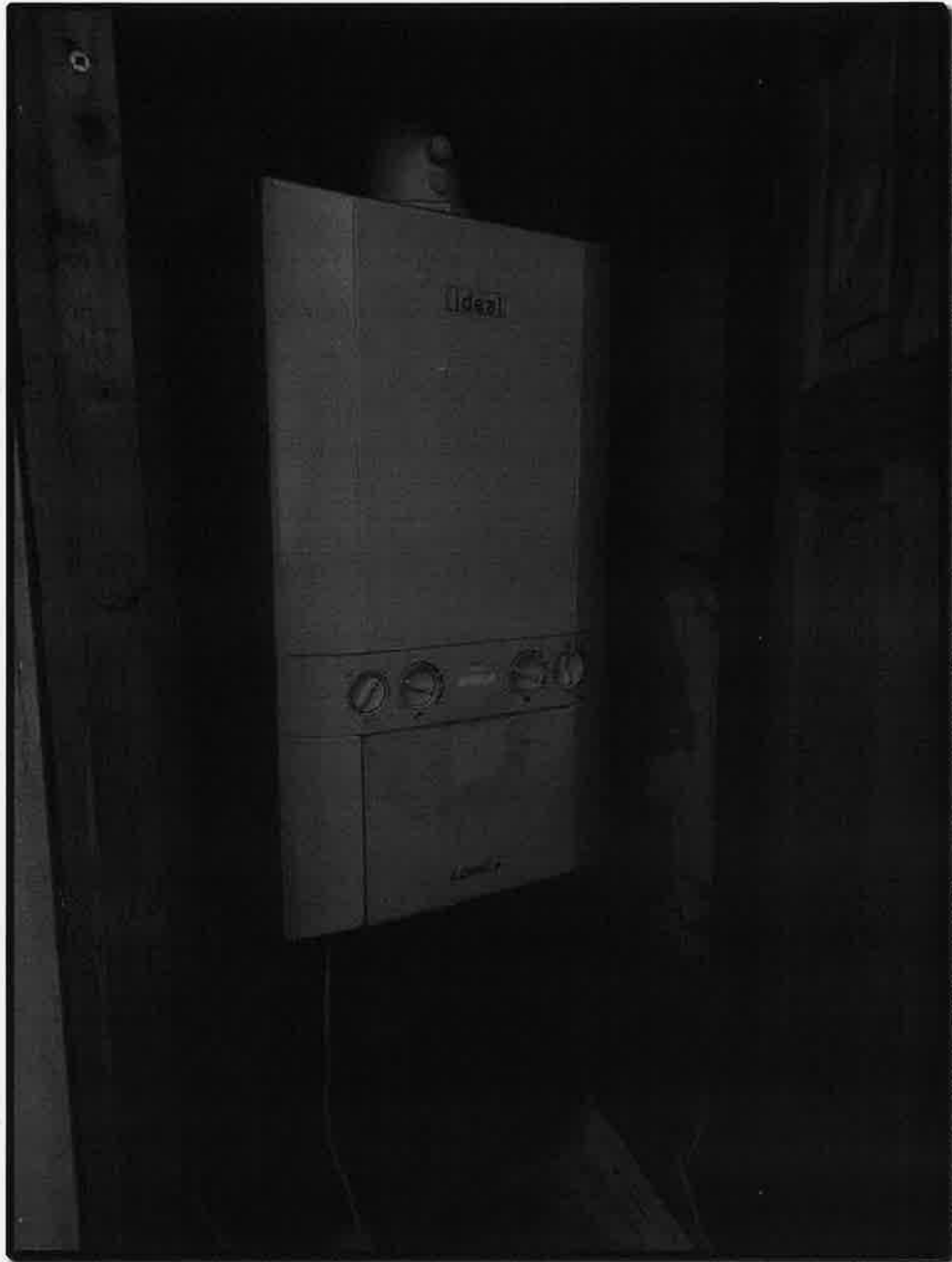
Chamber Reference: FTS/HPC/RT/23/1945

Initial Inspection: Schedule of Photographs

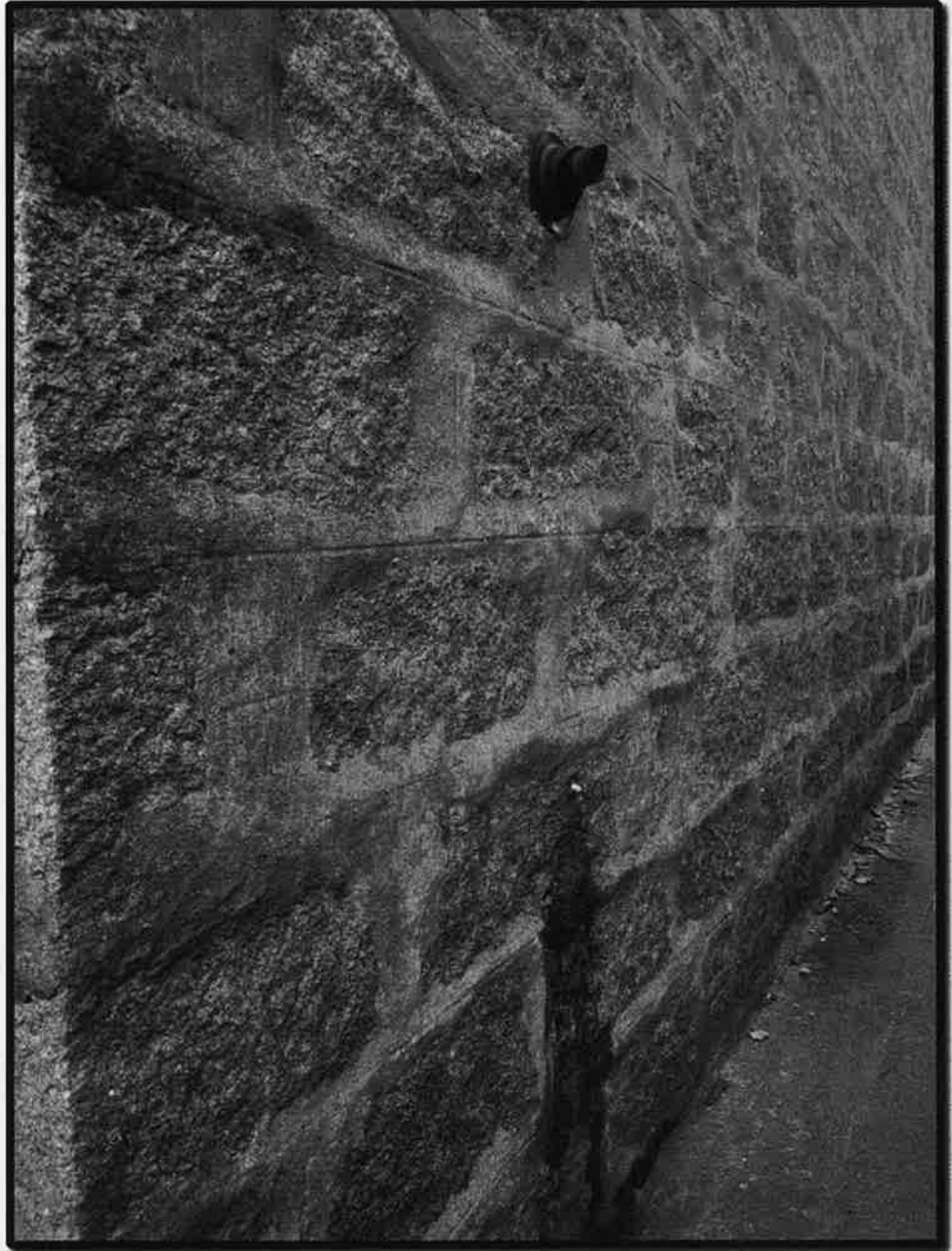
Inspection Date: 06/11/2023



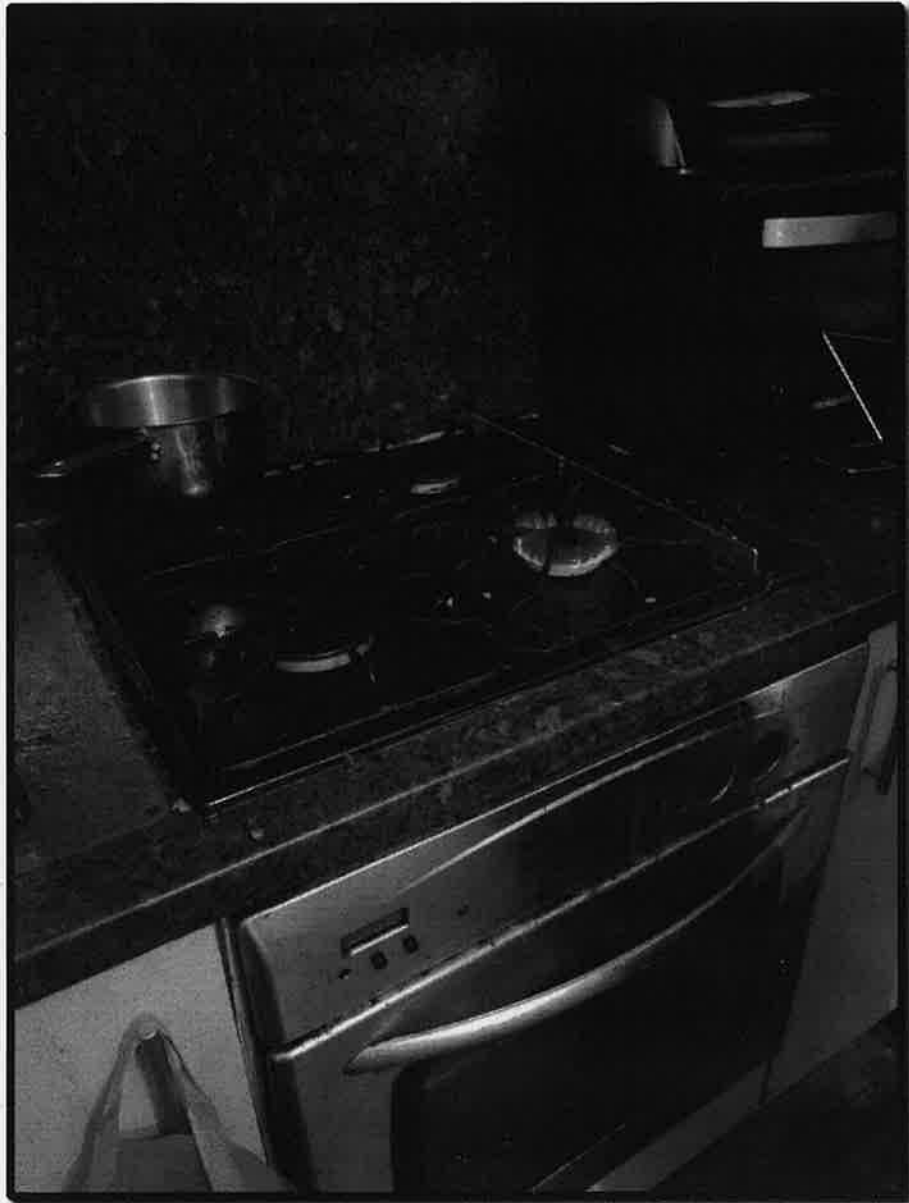
Photograph 1 Front (South-West) Elevation.



Photograph 2 Central heating boiler – leak at pipework below boiler



Photograph 3 Central heating flue and pressure release outlet – Water discharging.



Photograph 4 Gas hob – Functional, but spark ignition faulty.



Photograph 5 Rear Elevation.