

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/23/3235

Re: Property at Little Idoch, Turiff, Aberdeenshire ("the Property")

Title Number: ABN96693

The Parties:

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

Mrs Elizabeth Stephen, Burnside of Idoch, Turriff, Aberdeenshire, AB53 8DY ("the Landlord")

Interested Party:

James and Jemma McDonald, residing at Little Idoch, Turiff, Aberdeenshire, AB53 8DU ("the Tenant")

Tribunal Members:

**Paul Doyle (Legal Member)
Robert Buchan (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 12 September 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:-

(a) 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

(b) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and

(c) The property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

3. 2 (b) and (c) are claims that the property does not meet the tolerable standard

3. On 13 October 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 13 October 2023.

5. No further representations were made by any party to the application

6. Tribunal members inspected the Property at 11am on 16 February 2024. The Tenant was present. Neither the Landlord nor Applicant were present nor were they represented. During the inspection on 16 February 2024, 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 Banff Sheriff Court, at 1pm on 16 February 2024. Neither the applicant, nor the tenant, nor the Landlord attended, nor was any party represented.

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?

Does the property meet the tolerable 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 Little Idoch, Turriff, Aberdeenshire, AB53 8DU ("the property"). The landlord let the property to the tenant.
- (b) The property is a detached, single storey, granite, cottage in a remote location to which access is given by a long muddy farm track.
- (c) The property does not have a mains gas supply.
- (d) On 13 October 2023, the tribunal directed the landlord to produce an up to date Electrical Installation Condition Report (EICR). No EICR has been produced. The electric consumer box is located in a cupboard in the kitchen of the property. It is of some age. It is likely that it has been inspected recently by an electrician, but no certification of the condition of the electrical installation is available.
- (e) The landlord has not provided any portable electrical appliances. All of the portable electrical appliances in the property belong to the tenants.
- (f) There is a carbon monoxide detector in the kitchen. It is passed its useful life. It had a seven-year life and was manufactured in 2014. Since 2021 the property has not had a carbon monoxide detector which complies with current regulations.
- (g) There are battery operated smoke detectors throughout the property. The property does not have smoke and heat detectors which comply with current regulations.

Reasons for the decision

10. (a) Tribunal members inspected this property at 10:00am on 16 February 2024. It was a damp winter's morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.
- (b) The tenant told us that he enjoys a good relationship with the landlord and praised their positive qualities.
 - (c) The tenant confirmed tribunal members observations when he volunteered that the property does not have a supply of gas. The property depends on a supply of oil for heating.
 - (d) When asked, the tenant told tribunal members that the landlord has not provided any portable electrical appliances. All of the portable electrical appliances in the property belong to the tenant.
 - (e) There is no need for a gas safety certificate not is there a need for portable appliance test certification.

(f) Tribunal members entered the property through the kitchen. The tenant exhibited a carbon monoxide detector. Tribunal members could see that the carbon monoxide detector passed its useful life in 2021.

(g) On the ceilings in the living room, the hallway, and the master bedroom, there are battery-operated smoke detectors. The battery-operated smoke detectors are not tamperproof. They might be interlinked but they are not mains powered. It was obvious from tribunal members observations that the smoke detectors do not comply with current regulations.

(h) Whilst in the kitchen, the tenant handed tribunal members what he believed to be a heat detector, which had been fixed to the ceiling in the kitchen. The tenant had removed it and switched it off because (he said) the detector was so sensitive it went off when he was cooking, and set off the smoke detectors throughout the property.

(i) The history of the smoke detectors in the living room, hallway, and master bedroom being activated by a detector in the kitchen indicates that what the tenant thought was a heat detector is, in fact, an interlinked smoke detector. The property does not have a heat detector.

(j) 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.

(k) 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 property is occupied by the tenants and their 6 month old baby.

(l) The Landlord should take immediate steps to install interlinked smoke and heat detectors within the Property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(m) Since 2015, Landlords are under a duty to arrange for an Electrical Installation Condition Report (EICR) to be prepared by a suitably qualified contractor and the installation must be re-inspected every 5 years or less. A

copy must be given to the tenant. No such EICR has been exhibited by the landlord despite the Tribunal Direction.

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

(a) Install interlinked smoke and heat detectors, and carbon monoxide detectors within the property, ensuring that they are fully functional and located and powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(b) Instruct a suitably qualified SELECT, NICEIC or NAPIT registered electrician to carry out a certified Electrical Installation Condition Report (EICR) of the entire electrical installation in the property (and any electrical appliances and equipment supplied by the landlord) and carry out all necessary remedial works to rectify any identified C1 and C2 categorised areas, and certify that the smoke heat and CO detectors installed in the property comply with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.

(c) Thereafter to provide the First-tier Tribunal for Scotland (HPC) with a satisfactory EICR prepared by a suitably qualified SELECT, NICEIC or NAPIT registered contractor.

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

23 February 2024

Chamber reference number **FTS/HPC/RT/23/3235**



Front



Kitchen

Chamber reference number



No heat detector in the kitchen



Battery powered smoke detector

Chamber reference number

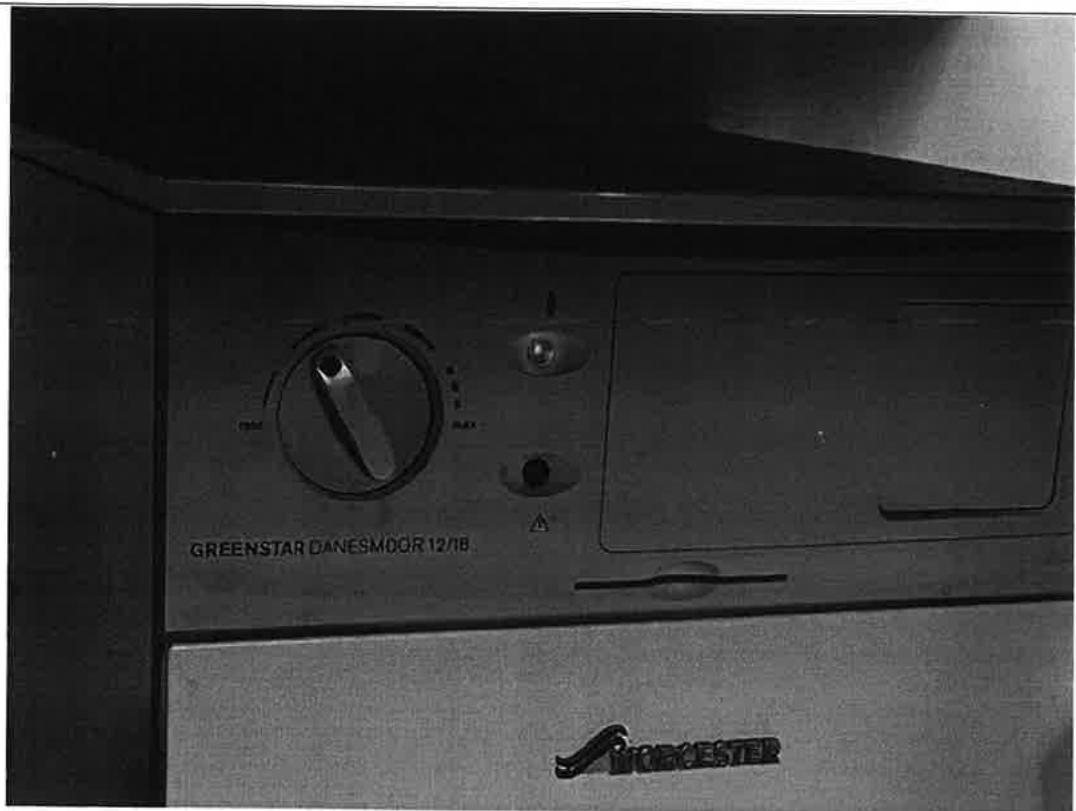


Carbon monoxide detector

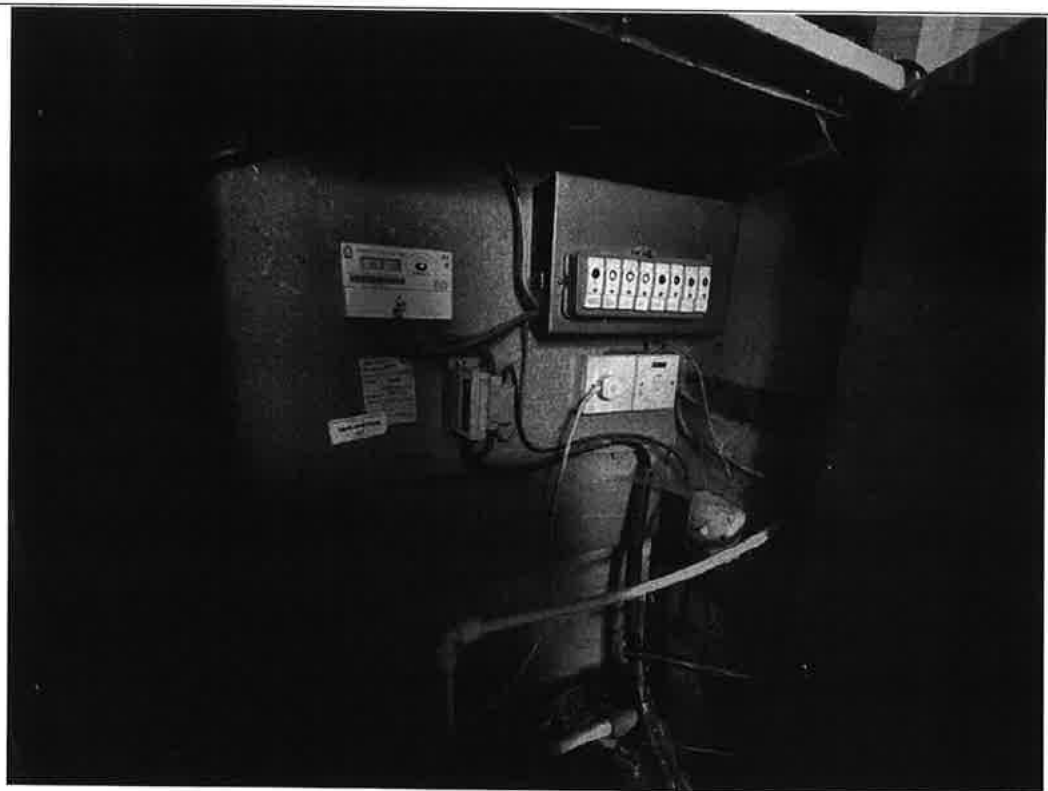


Detail

Chamber reference number



Oil fired boiler



Electricity meter and consumer unit