

# Housing and Property Chamber First-tier Tribunal for Scotland

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**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/RT/24/1081**

**15 Mackie Avenue, Tarves, Ellon AB41 7LA being the subjects registered in the Land Register of Scotland under Title Number ABN68905 (“the Property”)**

**The Parties:-**

**Abredeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51 3WA (“the Third Party Applicant”)**

**Garry Milne, Crimondhill Workshop, Manse Road, Methlick, Ellon, Aberdeenshire AB41 7EH (“the Landlord” and “the Respondent”)**

**Laura Murray, 15 Mackie Avenue, Tarves, Ellon AB41 7LA (“the Tenant”)**

**Tribunal Members:**

**Martin McAllister, Solicitor (Legal Member) and David Godfrey, Chartered Surveyor (Ordinary Member) (“the tribunal”)**

**Decision**

**The tribunal determined to make a repairing standard order (RSEO) in terms of Section 24 (2) of the Housing (Scotland) Act 2006 (“the 2006 Act.”)**

**Background**

1. By application dated 5 March 2024, 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 has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act. The application is in terms of Section 22 (1) (B) of that Act.
2. The Tenant and Respondent are parties to a tenancy in respect of the Property which was entered into on 12 July 2022. The document signed by both parties which extends to one page refers to a date of entry of 2 July 2022. Since the tenancy was entered into after 1 December 2017, it is deemed to be a private

residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.

3. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that the house is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, that the installations in the house 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 that the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
4. Specifically, the application states that the Property does not meet the repairing standard in a number of aspects:
  - 4.1 The roof and attic are not wind and watertight and several of the roof tiles have slipped and are missing.
  - 4.2 The Landlord has failed to provide a copy of the current Electrical Installation Condition Report (EICR) containing no category C1 or C2 items of disrepair.
  - 4.3 The oil tank is in poor condition showing at least three cracks, numerous microcracks and cracking of the tank surface, especially around the shoulder. The tank sits on wooden pallets which does not comply with regulations.
  - 4.4 The oil boiler which is situated in the garden does not comply with regulations .
  - 4.5 There is no carbon monoxide monitor in the sitting room where there is a log burning stove.
  - 4.6 A window in the sitting room does not operate properly.
  - 4.7 The window in the front facing bedroom is draughty.
5. The application was accepted for determination on 19 March 2024.
6. A Notice of Direction in terms of Rule 16 of the Housing and Property Chamber Rules of Procedure was issued on 19 March 2024. The Landlord was required to provide an EICR and evidence of a carbon monoxide alarm in the Property which complied with statutory guidance. The Landlord was instructed to comply with the Direction no later than 12 April 2024.
7. The Landlord has not complied with the Notice of Direction.

## **Inspection**

8. The tribunal inspected the Property on 21 August 2024. The Third Party Applicant was represented by Mrs Emma Bain, an employee of Aberdeenshire Council. The Tenant was present. The Landlord was not present.

9. A copy of a pre-hearing summary and schedule of photographs prepared by the Ordinary Member is attached to this Decision and is referred to for its terms.

### **Findings on Inspection**

10. The property comprises a mid terraced single dwelling house comprising sitting room, two bedrooms, kitchen and bathroom which extends to two storeys with dormer projections.
11. Weather conditions at the time of inspection were dry with moderate wind.
12. There are air vents in the roof which are situated over dormer window projections. There are a small number of broken roof tiles to the front elevation and a small number of slipped or broken tiles to the rear elevation.
13. There was no evidence of water ingress to the upper floor of the Property.
14. The oil storage tank is situated on timber pallets.
15. The oil fired boiler is situated within a cabinet located in the rear garden of the Property. It has a flue situated at the rear of the cabinet. There was evidence of a fuel leak emanating from the boiler.
16. There is a solid fuel stove in the sitting room. A carbon monoxide detector is wall mounted to the right of the stove. The installation instructions were provided and copies of the relevant sections are included in the Ordinary Member's report attached to this Decision. The position of the detector does not comply with the installation instructions.
17. A window in the sitting room does not operate correctly. The opening mechanism is faulty.
18. The window in the principal bedroom had draught proofing which has been applied by the Tenant.

19. An additional oil tank has been installed in the rear garden which is not connected to the heating system.

## **The Hearing**

20. A Hearing was held on 21 August 2024 at 2 pm by teleconferencing.

21. The Respondent and the Tenant were not in attendance. The Third Party Applicant was represented by Mrs Bain.

22. Mrs Bain said that she had spoken to the Landlord about the EICR and he had advised that an electrician had been at the house but was not able to provide an EICR because he was not appropriately registered to provide it. She said that there is still a faulty light switch in the Property.

23. Mrs Bain said that the boiler smelt strongly of fuel. She said that the Landlord had installed a replacement oil tank which did not look new. She confirmed that it had not been connected to the heating system.

24. Mrs Bain said the Tenant said that her bedroom was draughty and Mrs Bain said that she had concerns that there are loose and missing slates which may be causing this.

25. The evidence of Mrs Bain was that she had been in regular contact with the Landlord in an attempt to have repairs issues resolved but that he had not done so.

## **26. Findings in Fact**

26.1 An EICR has not been provided.

26.2 There are some broken and missing roof tiles.

26.3 The oil storage tank is inappropriately installed on top of timber pallets.

26.4 There is evidence of fuel leaking from the boiler.

26.5 The carbon monoxide detector has been inappropriately installed.

26.6 The rear sitting room window has a defective opening mechanism.

26.7 There is no evidence of draughts from the windows of the principal bedroom.

## **Reasons**

27. The tribunal had inspected the Property and the schedule of photographs is referred to. It relied on what it had found at the inspection and the failure of the Landlord to comply with the Direction issued on 19 March 2024.

## **Disposal**

28. The tribunal determined to make a repairing standard enforcement order in the following terms:

The Landlord is required to

28.1 repair or replace the sitting room window so that it is capable of being opened and closed fully as designed and without any significant impairment;

28.2 carry out works to the roof to ensure that there are no loose or broken tiles;

28.3 ensure that the oil fired central heating system is working efficiently and safely in compliance with current regulations including proper installation of the oil tank and a system free from fuel leaks. The Respondent is to provide certification from a technician qualified to install and inspect oil fired boilers and oil storage tanks and registered with the Oil Firing Technical Association (OFTEC) that the heating system meets these requirements;

28.4 ensure that a properly installed carbon monoxide detector is installed in the sitting room;

28.5 provide an up to date electrical inspection condition report (EICR) on the house by a competent electrician on the working order and condition of the installation in the house for the supply of electricity and the report should also address the state of repair and working order of the electrical fittings and appliances provided by the Respondent in the house (PAT test certificate). The report should contain no items of Category C1 or C2 faults. The provisions relating to competent electricians are contained in the Scottish Government Statutory Guidance on Electrical Installations and Appliances in Private Rented Property. This information is available on the Chamber website at [https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%20REVISED%20NOV%202016\\_0.pdf](https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%20REVISED%20NOV%202016_0.pdf)

The tribunal determined that the RSEO requires to be complied with by 11 October 2024.

**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.**

## M McAllister

M J. McAllister,

Legal Member  
26 August 2024