

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

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

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

**Chamber Ref: FTS/HPC/RT/23/4450**

**Property at Troup Lodge, Gamrie, Banff, Aberdeenshire, AB45 3JN  
("the Property")**

**The Parties:-**

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie, Aberdeenshire, AB51  
3WA  
("the Third Party")**

**Mr Carl Pettett, Troup Lodge, Gamrie, Banff, Aberdeenshire, AB45 3JN ("the Tenant")**

**Mr Mark Baxter, Troup Home Farm Bungalow, Gamrie, Banff, Aberdeenshire, AB45 3JN  
("the Landlord")**

**Tribunal Members:**

Gillian Buchanan (Chair) and Angus Anderson (Ordinary 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 Property determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

**Background**

1. Reference is made to the Hearing Note of the Tribunal dated 29 August 2024 in terms of which, following a Hearing on the application that day, the Tribunal resolved to issue a Direction under Rule 16 of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 and adjourn the Hearing pending the Third Party producing the documentation and evidence required in terms of the Direction.

2. A Direction was subsequently issued by the Tribunal and intimated to the parties on 12 September 2024.
3. By email to the Tribunal dated 20 September 2024 Mrs Emma Bain representing the Third Party stated:-

*"I can confirm I spoke to the tenant, Carl Pettett, on 18/09/24, and he confirmed:-*

- *The fire detection was upgraded by an electrician this year. A heat detector is installed in the kitchen; smoke detectors are fitted in the sitting room, hallway, and one of the bedrooms. They are all interlinked, so when one alarm goes off, they all go off.*
- *The property is heated by a Rayburn Stove, which heats radiators. He confirmed there was a Carbon Monoxide monitor installed close to the stove at the same time as the fire detection upgrade.*
- *He has never had a copy of an electrical safety certificate.*
- *The tenant was asked to provide a copy of his tenancy agreement and agreed to visit an Aberdeenshire Council Office so that a copy could be made. Today, I received a phone call informing me that he had visited the office, but unfortunately, the photocopier had been removed that morning in preparation for a new copier contract starting next week. I have asked the tenant to try to take photos of the tenancy agreement and email them to me. He is unsure how to do this, but hopefully, he will get it done today. If he is unable to do so, I will arrange to meet him next week to obtain a copy of the tenancy agreement. I hope this solution is acceptable, and I apologise for the delay."*

4. By further emails from Mrs Bain dated 20 September 2024 she produced to the Tribunal :-
  - A copy of the Tenancy Agreement between the Landlord and the Tenant dated 29 November 2013 with Form AT5 attached.
  - Various photographs showing the carbon monoxide detector, and heat and smoke detectors installed.

Mrs Bain also confirmed that the Property was rented by the Landlord to the Tenant without any appliances therefore a PAT Certificate is not required.

### **Summary of Issues to be Determined**

5. Having regard to the foregoing evidence provided by Mrs Bain and considering the scope of the application as submitted to the Tribunal as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"), the outstanding issues for determination are:-
  - (a) Whether the installations in the house for the supply of water, gas and, electricity and (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are in a reasonable state of repair and in proper working order; and
  - (b) Whether the house meets the tolerable standard.

In particular in determining whether a house meets the standards of repair mentioned above regard is to be had to any guidance issued by the Scottish Ministers in relation to—

- electrical safety standards in relation to—

- (i) installations for the supply of electricity, and
  - (ii) electrical fixtures, fittings and appliances,
  - equipment for detecting fire and for giving warning of fire or suspected fire,
  - equipment for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health.
6. As stated in the Tribunal's Decision of 29 August 2024 the Tribunal previously received the following written representations:-
- i. Email from the Landlord dated 8 January 2024 with attachment being an Electrical Installation Condition Report ("EICR") dated 8 January 2024 signed by Mr Stephen Woods of William Logan Electrical Contractors, Turriff.
  - ii. Email dated 1 March 2024 from Mr Stephen Woods stating "...we are no longer Select, NICEIC or NAPIT registered".
7. On the Tribunal issued an email to the parties stating:-
- "In light of the Third Party's response to the Direction dated 29 August 2024 and the additional documentation and information provided the Tribunal considers this application can be determined without a further Hearing. If any of the parties wish to object to the Tribunal making a determination of the application without a Hearing then they should intimate their objection and their reasons for that objection no later than 5pm on Monday 11 November 2024. In the absence of any substantive objections the Tribunal will thereafter proceed to determine the application and you will receive intimation the decision reached."*
8. The Tribunal received no objections from the parties and has therefore proceeded to determine the application without a further Hearing.

### **Findings of Fact**

9. The tribunal finds the following facts to be established:-
- (a) The Landlord is the heritable proprietor of the Property.
  - (b) The Property has been leased by the Landlord to the Tenant since around 29 November 2013. The tenancy is a Short Assured Tenancy.
  - (c) It is the Landlord's responsibility to ensure that the Property meets the Repairing Standard under the Housing (Scotland) Act 2006.
  - (d) No EICR has been provided by the Landlord to the Tenant.
  - (e) The EICR provided by the Landlord to the Tribunal is not in satisfactory terms not having been prepared by a Select, NICEIC or NAPIT registered contractor, or by a person who has confirmed that they are a suitably skilled electrician by signing the checklist provided within the statutory guidance.
  - (f) The Landlord has installed a carbon monoxide detector within the kitchen.
  - (g) The Landlord has installed heat and smoke detectors within the Property.

- (c) In the absence of an EICR prepared by a suitably qualified contractor or skilled electrician, the Tribunal does not have evidence that the Property meets the Repairing Standard or the tolerable standard. The Tribunal also cannot be satisfied that the equipment installed within the Property for detecting fires and for giving warning in the event of fire or suspected fire and for giving warning if carbon monoxide is present in a concentration that is hazardous to health is satisfactory.

### Reasons for the decision

10. No EICR has been provided by the Landlord to the Tenant. The EICR provided by the Landlord to the Tribunal is not in satisfactory terms not having been prepared by a Select, NICEIC or NAPIT registered contractor or skilled electrician. The Tribunal is not therefore satisfied that the installations for the supply of electricity are in a reasonable state of repair and in proper working order. In addition the Tribunal is not satisfied that equipment for detecting fire and for giving warning of fire or suspected fire and for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health is satisfactory and conforms to guidance issued by the Scottish Ministers.

### Decision

11. The Tribunal accordingly determined that the Landlord had 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 (RSEO) as required by section 24(1).
13. The decision of the tribunal was unanimous.

### Right of Appeal

- 14. 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 tribunal. That party must seek permission to appeal 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 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 Buchanan

Date : 16 December 2024

Legal Member and Chairperson