

# 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 Sections 26, 27 & 28

Chamber Ref: FTS/HPC/RT/24/1221

Property at South Blackbog, Oldmeldrum, Inverurie, AB51 0AG recorded in the General Register of Sasines for the County of Aberdeen, Search Sheet 14050, being part of the Farm of South Blackbog aforesaid  
("the Property")

The Parties:-

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

Mr Roger Packer and Mrs Frances Packer, South Blackbog, Oldmeldrum, Inverurie, AB51 0AG ("the Former Tenants")

Simmers Ardmadden Limited, Ardmadden Farmhouse, Oldmeldrum, Inverurie, AB51 0AG ("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 Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that (i) the Landlord has failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the Act"), and (ii) a Notice of Failure to Comply with the RSEO should be served on the relevant local authority within which the Property is situated.

**Background**

1. Reference is made to the determination of the tribunal dated 25 August 2025 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b)

of the Act in that it had failed to ensure that the Property met the Repairing Standard. The works required by the RSEO were: -

- (i) To engage a suitably qualified and registered SELECT or NICEIC electrical contractor or suitably skilled electrician to carry out a condition check on the electrical installations of the Property and thereafter to undertake all works required to ensure that the entire system is safe and in proper working order and thereafter to prepare an electrical installation condition report (EICR).
- (ii) On completion of the works referred to in 6(i) above to provide to the tribunal a copy of the (EICR) which describes the system overall as satisfactory with no items marked as Category 1 or Category 2.

The RSEO gave the Landlord 28 days from the date of service of the RSEO to carry out the works. The RSEO was served on 1 September 2025.

2. By email dated 21 February 2026, the Former Tenants advised the tribunal that they had vacated the Property in March 2025.
3. On 3 April 2026 Mr Andrew Simmers, Director of the Landlord, emailed the tribunal in response to the tribunal intimating a telephone conference Hearing on 17 March 2026 stating:-

*"Afternoon*

*I have spoken to your department a number of times regarding this property.*

*1. It is empty and has no tenant.*

*2. We are involved in a dispute of ownership regarding the property that is ongoing between my brother and myself who are both directors of Simmers (Ardmedden) Ltd.*

*3. Simmers (Ardmedden)Ltd has occupied and leased the property out for over 30 years as the owner but now (last couple of years) Edwin Simmers is claiming ownership as his name is on the title deeds. You already know his name is on the deeds because you told me this in previous correspondence. You had carried out a property search.*

*4. Obviously if Edwin is claiming title I do not want wish to incur further personal expense.*

*5. Last correspondence (phone call) it was agreed under the current situation this was the end of the matter so I'm surprised to receive this. We have no intention of renting this property out again until this matter is resolved.*

*Can you confirm we do not have to be involved in this call.*

*Thank you*

*Andrew Simmers*

*Sent from my iPad"*

## **Hearing**

4. On 17 March 2026 the tribunal held a Hearing which took place by telephone conference. None of the parties attended or were represented. The Third Party was represented by Ms Cheryl Greig. The Landlord was represented by Mr Andrew Simmers and he had authorised Maureen Elrick to attend and make representations on the Landlord's behalf.
5. In response to questions from the tribunal Ms Elrick stated:-
  - i. The Property is empty.
  - ii. There is a legal dispute with Mr Edwin Simmers (also a Director of the Landlord) as to ownership of the Property with both parties having employed solicitors to deal with the dispute.

- iii. Ms Elrick had previously contacted the Third Party and was advised that a search had been done as to ownership of the Property and it was ascertained that title to the Property is held in Mr Edwin Simmers' name.
  - iv. The Landlord is not prepared to expend further sums on the Property until the issue of ownership is resolved.
  - v. The dispute between the parties will not resolve itself in a couple of months.
  - vi. The Landlord has been upkeeping another 10 properties.
  - vii. The fact ownership is in the name of Mr Edwin Simmers was not known to Mr Andrew Simmers.
  - viii. There is a wider dispute now between Mr Andrew Simmers and Mr Edwin Simmers. Ms Elrick described the dispute as a "divorce".
  - ix. The Third Party is aware of the position even if the tribunal had not been made aware.
  - x. It had been difficult to follow the tribunal process.
6. Ms Grieg for the Third Party made no submissions.

### **Reasons for Decision**

7. In terms of Section 26(1) of the Act it is for the tribunal to decide whether a landlord has complied with an RSEO. In terms of sub-section (2), where the tribunal determines that a landlord has failed to comply with an RSEO, the tribunal must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
8. The Landlord has not done the works required by the RSEO and the documentation that requires to be produced to the tribunal in terms of the RSEO is outstanding. At the Hearing it was explained that the failure to undertake the works is as a result of a dispute between the two Directors of the Landlord as to ownership of the Property and other matters.
9. The Tribunal considered whether it would be appropriate to vary the RSEO to allow the Landlord further time to comply with it. In light of the position explained no such variation is appropriate meantime.
10. The tribunal determined that the Landlord has failed to comply with the RSEO. Accordingly the tribunal is obliged to serve notice of the failure on the local authority and resolved to do so.
11. As the Former Tenants have removed from the Property and the Property is now empty no RRO is required.
12. The tribunal also considered the terms of Section 28 of the Act which states:-

#### ***"28 The repairing standard: offences***

- (1) A landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence.*
- (2) For the purposes of subsection (1), a landlord has reasonable excuse for failing to comply with a repairing standard enforcement order if—*
  - (a) the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*
  - (b) the work required by the order is likely to endanger any person.*
- (3) Subsection (2) does not affect the generality of the defence of reasonable excuse.*
- (4) A landlord cannot be guilty of an offence under subsection (1) unless the First-tier Tribunal has decided that the landlord has failed to comply with it (but such a decision*

*does not establish a presumption that the landlord has committed an offence under subsection (1)).*

- (5) A landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect in relation to the house.*
- (6) A landlord does not commit an offence under subsection (5) if the First-tier Tribunal has consented to the landlord entering into the tenancy or occupancy arrangement.*
- (7) A landlord who is guilty of an offence under subsection (1) or (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale."*

Sub-section (1) specifies that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord has offered a substantive explanation as to its failure to complete the works required by the RSEO involving a dispute between the two Directors of the Landlord, Mr Andrew Simmers and Mr Edwin Simmers, as to ownership of the Property and other matters which is in the hands of their respective legal advisers. As a consequence of that dispute there is an understandable reluctance for the Landlord to expend sums on the Property relative to repairs especially when the Property is empty with no intention of being re-let meantime. The dispute will not resolve itself quickly.

Accordingly, in the circumstances, the tribunal is of the view that Section 28(3) had been established and did not consider any offence to have been committed at this time.

13. This application was first made to the tribunal due to the Property not complying with the Repairing Standard which is a legal requirement at the outset of and throughout the period of a residential tenancy (with some limited exceptions which do not apply here). The Property still does not comply with the Repairing Standard and cannot be re-let. The Tribunal determined that the RSEO gives sufficient protection against re-letting the Property until the works required in terms of the RSEO are eventually undertaken.

### **Decision**

14. The tribunal determined that in terms of the Act the Landlord has failed to comply with the RSEO and determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property is situated.
15. The decision of the tribunal was unanimous.

**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.**

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.