

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

Chamber Ref: FTS/HPC/RT/25/2703

Property: 10 Gardiner Place, Dalkeith, Newtongrange EH22 4RT ('The House')

The Parties: -

Scott McVey, 6 Burdiehouse Terrace, Edinburgh EH17 8AQ ("the landlord')

Bryan Colbecki, 10 Gardiner Place, Dalkeith, Newtongrange H22 4RT ("the tenant")

Midlothian Council, Public Health and Environmental Protection Team, Fairfield House, Lothian Rd, Dalkeith EH22 3AA ("the third party")

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as are fit for the purpose of determining whether the landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (the "Act") in relation to the house concerned determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The decision was unanimous.

The Tribunal consisted of: -

Mary-Claire Kelly, Chairing and Legal Member

David Godfrey, Ordinary Member (surveyor)

Background

1. By application accepted on 2 September 2025, the third party applied to the First-tier Tribunal (Housing and Property Chamber) for a determination of whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.
2. The application stated the landlord had failed to comply with the duty to ensure that the house meets the repairing standard and that the landlord had failed to ensure compliance with the section 13(1) of the Act.
3. The application contained copy email correspondence between the third party and the landlord which specified that the said failure was established as the following work needed to be carried out:
 - *Provide a copy of the current Electrical Installation Condition Report*
 - *If applicable provide a copy of the current Gas Safety Certificate from a registered Gas Safe Engineer*
 - *If applicable.. provide a copy of the current Portable Appliance Test certificate*
 - *Confirm whether the property has a carbon monoxide detector*
 - *Confirm whether the property has a smoke alarm in rooms used for daily living and every circulation space (e.g. hallway, landings) plus also a heat detector in the kitchen*
4. On 4 September 2025 the Tribunal issued a Direction under rule 16 of the Tribunal rules requiring the landlord to provide:
 - i. An up to date electrical installation condition report (“EICR”) in accordance with Scottish Government guidance (including a PAT test certificate)
 - ii. An up to date Gas Safety Certificate from a registered Gas Safe Engineer which should also address whether there is a carbon monoxide alarm which complies with statutory guidance in the house.
 - iii. Evidence of interlinked fire detection devices and a heat alarm in accordance with Scottish Government guidance

5. Notices of Referral to a Tribunal under section 23(1) of the Act were sent to parties on 14 March 2026.
6. Prior to the inspection/hearing the landlord submitted a Gas Safety certificate dated 18 July 2025, a private residential tenancy agreement and residential landlord insurance policy schedule.

Hearing and Inspection

7. The Tribunal inspected the house on the morning of 5 May 2026. The tenant was not present. Access was provided by a friend of the tenant who remained in the property during the inspection. He did not provide his details. Photographs were taken by the Tribunal during the inspection. Copies of the photographs are attached as a schedule to this statement of decision.
8. A hearing took place via teleconference at 2pm on 5 May 2026. Ms Gunning attended on behalf of the third party. The landlord and tenant were not in attendance. The Tribunal was satisfied that both the landlord and tenant had been properly notified of the hearing in terms of rule 24.1 and proceeded with the hearing in their absence in terms of rule 29.
9. At the inspection and hearing the Tribunal considered each of the issues specified in the application.
10. EICR: It was noted at the inspection that recent electrical works appeared to have been carried out in the property, particularly in the downstairs porch. It was observed that the fuse box in the property, which was located in kitchen, showed that RCDs had been installed. However, the landlord had failed to comply with the Direction and no EICR had been submitted for consideration.
11. Smoke and heat detectors: It was observed at the inspection that the house had been fitted with individual smoke and heat detectors in the living room, upstairs hall, and kitchen. No smoke or heat detector had been installed in the downstairs hallway.

12. Carbon monoxide detector: It was observed at the inspection that the gas boiler was located in the kitchen. No carbon monoxide detector could be located within the kitchen or elsewhere in the property.
13. Portable Appliance testing: It was observed that the property had a number of kitchen and other electrical appliances. The landlord had not submitted any information to show that the property had not been rented out with the appliances included which would require a suitable PAT certificate.
14. Gas safety certificate: The Tribunal considered the gas safety certificate that had been submitted. The certificate was adequate and had been completed by a registered gas safe engineer.
15. Other information: The Tribunal heard from Ms Gunning that the third party had become aware of possible issues with the property when the landlord applied to the landlord register on 13 October 2023. The third party had first contacted the landlord to request documentation including a Gas Safety Certificate, PAT certificate and EICR in addition to confirmation that the property had interlinked smoke and heat detection and a carbon monoxide detector on 22 April 2025. The landlord failed to respond. Multiple further attempts to engage with the landlord had been unsuccessful. Ms Gunning stated that there had been no contact with the landlord since the application had been submitted.

Summary of the issues

16. The issue to be determined is whether the house meets the repairing standard as laid down in section 14 of the Act and whether the landlord has complied with the duty imposed by sections 13(1) of the Act.

Findings in fact: -

17. The tribunal find the following facts to be established: -

- a. The landlord and tenant entered into a private residential tenancy agreement with a commencement date of 4 August 2023.
- b. The property is a 2 bedroom main door upper flat with gardens to the rear.
- c. The landlord has not produced a satisfactory Electrical Installation Condition Report for the house.
- d. A heat/smoke detector has not been installed in the downstairs hall at the property.
- e. The house does not have a carbon monoxide alarm that complies with Scottish government guidance.
- f. The landlord has produced a satisfactory gas safety certificate.
- g. There are a number of portable electrical appliances within the property. The landlord has not produced a satisfactory PAT certificate or other evidence that the appliances do not require a PAT certificate.

Reasons for the Decision

18. Section 13 of the 2006 states:

13The repairing standard

(1)A house meets the repairing standard if—

(a)the house is wind and water tight and in all other respects reasonably fit for human habitation,

(b)the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,

(c)the installations in the house for the supply of water, gas, electricity (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,

(d)any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,

(e)any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,

(f)

(g)

(h) *the house meets the tolerable standard.*

(i) *any common parts pertaining to the house can be safely accessed and used,*

(j) *the house has satisfactory provision for, and safe access to, a food storage area and a food preparation space, and*

(k) *where the house is in a tenement, common doors are secure and fitted with satisfactory emergency exit locks.*

19. The Tribunal determined the application having regard to the bundle of papers which had been available prior to the hearing, the inspection and the oral representations at the hearing.

20. The Tribunal was only able to consider those items which formed part of the intimated application. The Tribunal noted that the landlord had provided a satisfactory gas safety certificate in response to its Direction however the landlord had failed to provide the other documents requested, in particular an EICR or PAT certificate. Private landlords are required to ensure that the installations in the house for the supply of electricity and electrical fixtures and fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order. Landlords are required to ensure an electrical safety inspection is carried out by a skilled person competent in such work before the property is let for the first time, and then at intervals of no more than five years. In the absence of compliance with the Direction and taking into account the landlord's failure to attend the inspection and hearing to provide a valid EICR with Pat testing certificate the Tribunal determined that the landlord has failed to comply with the repairing standard in section 13(1)(c) of the Act.

21. It was noted at the inspection that there were smoke and heat detectors in the upper hall, kitchen and living room however no alarm had been installed in the downstairs

hallway. Scottish government guidance requires an interlinked alarm in every hallway and landing. It was also noted that there was no carbon monoxide alarm in the property. Scottish government guidance requires a carbon monoxide monitor in every space containing a fixed combustion appliance. The Tribunal determined that the landlord has failed to comply with section 13(1)(h) of the Act.

22. The Tribunal determined to make a Repairing Standard Enforcement Order requiring the landlord to comply the repairing standard. The Tribunal considered that 4 weeks was a reasonable period for the landlord to comply with the RSEO.

Decision

The tribunal determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

Right of Appeal

A landlord, tenant or third-party applicant 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.

Mary-Claire Kelly

Legal Member

Chairperson:

Date: 5 May 2026

Housing and Property Chamber First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Property: 10 GARDINER PLACE, DALKEITH, NEWTONGRANGE EH22 4RT

Ref No: FTS/HPC/RP/25/2703

Tribunal members: Ms M-C Kelly & Mr D Godfrey

Purpose of inspection

The purpose of the inspection is to prepare a photographic record of the condition of the property, specifically as it relates to the items raised in the application and subsequent correspondence and any issues arising there from.

Access

The above Tribunal Members attended the property at 10:00 on 5th May 2026.

Access to the property was provided by a representative of the Tenant, Mr Brian Colbecki. The Landlord, Mr Scott McVey was neither present nor represented.

David Godfrey MRICS
Ordinary (Surveyor) Member
First-tier Tribunal for Scotland
05/05/2026

Appendix 1

Schedule of photographs taken during the inspection on 05/05/2026.



Smoke detector on Hall ceiling.



Smoke detector on Living Room ceiling.



Smoke detector on Kitchen ceiling.



Central Heating Boiler in Kitchen.



Fusebox and electric meter in Kitchen cupboard.



Fusebox in Kitchen cupboard.