

# 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 under section 24(1) of the Housing (Scotland) Act 2006 ("the 2006 Act")**

Chamber Reference: FTS/HPC/RP/20/2549

Sasines Description: ALL and WHOLE that plot or area of ground extending to 0.095 hectares or thereby with house Doune Shagarry, Shagarry, Struan, Isle of Skye in the County of Inverness being the subjects more particularly described in Feu Disposition by Murdo MacPhie and Jeanella MacLean MacLeod or MacPhie to Jeanella MacLean MacLeod or MacPhie recorded in the Division of the General Register of Sasines for the County of Inverness on 25<sup>th</sup> August 1999.

House address: Doune, Balmeanach, Struan, Isle of Skye, IV56 8FH ('the House')

### The Parties

Miss Melanie Newman, Doune, Balmeanach, Struan, Isle of Skye, IV56 8FH ('the Tenant')

Mrs Jeanella MacPhie, The Flat, Doune, Balmeanach, Struan, Isle of Skye, IV56 8FH ('the Landlord')

### Tribunal Members

Ms H Forbes (Legal Member)

Ms C Jones (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 House, determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.**

## Background

1. By application dated 3<sup>rd</sup> December 2020, made under section 22 of the Housing (Scotland) Act 2006 ('the Act'), the Tenant applied to the First Tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').
2. The Tenant considered that the Landlord has failed to comply with their duty to ensure that the House meets the repairing standard, in 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; the House does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and the House does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. The Tenant stated the following:
  - *Annual gas safety check has not been carried out since start of tenancy on 15.09.12*
  - *Only two smoke alarms in the hallway*
  - *No carbon monoxide alarm has been provided*
  - *No Electrical Installation Certificate ("EICR" and "PAT") has been provided*
  - *No EPC has been provided*
4. The Tenant notified the Landlord of the defects by email dated 7<sup>th</sup> December 2020.
5. By email dated 26<sup>th</sup> January 2021, the Landlord's representative lodged written representations, together with a Gas Safety Certificate dated 8<sup>th</sup> January 2021, an invoice for installation of smoke and carbon monoxide alarms dated 12<sup>th</sup> December 2020, and an EPC confirmation of instructions letter dated 18<sup>th</sup> January 2021.
6. By email dated 3<sup>rd</sup> February 2021, the Landlord's representative lodged a PAT certificate dated 31<sup>st</sup> January 2021, and an EICR dated 31<sup>st</sup> January 2021.
7. By email dated 4<sup>th</sup> February 2021, the Tenant informed the Housing and Property Chamber ("HPC") that she was withdrawing the application.
8. The Tribunal considered whether or not to continue with consideration of the application. The Tribunal decided to continue with consideration of the application due to health and safety issues. The Tribunal issued a Minute of Continuation dated 5<sup>th</sup> February 2021.

9. A Case Management Discussion (“CMD”) took place by telephone conference on 8<sup>th</sup> February 2021. Ms Gemma Thomson, Solicitor, attended on behalf of the Landlord. Ms Thomson said that the Landlord was keen to have all the necessary electrical repairs carried out, but the electrician is unable to carry out the work immediately and is due to provide the Landlord with available dates.

10. There was some discussion about the concerns of the Tribunal which were:

- a. The significant number of C3 items on the EICR;
- b. Electrical works recommended as follows: *Domestic + Off-Peak circuits require RCD protection to meet current .4s disconnection times. All Downlights to be replaced for Fire-rated type fittings;*
- c. Hob gas pipe not bonded;
- d. The appliances tested for the PAT certificate are not listed;
- e. It is not clear if the smoke/heat alarms are in proper working order and meet the current regulations, particularly whether or not the battery smoke/heat alarms have the necessary lithium batteries.
- f. It is not clear how the smoke/heat alarms are linked;
- g. It is not clear where the smoke/heat alarms are situated;
- h. Only one smoke alarm has been tested on the EICR;
- i. There is no information before the Tribunal to indicate where the carbon monoxide detector is situated and whether its situation and positioning meets with current requirements;
- j. The requirement for an electrical re-inspection in 12 months is concerning.

11. The Tribunal decided to continue matters to a further CMD to allow Ms Thomson to take instructions on these matters.

12. By email dated 3rd March 2021, Ms Thomson submitted further representations and productions, including the following information:

***The significant number of C3 items on the EICR***

*Following the recent CMD, the landlords informed us that they had instructed Mr Murray to return to the property to make the repair of all of the items noted on the EICR. Mr Murray noted that the number of C3 issues was partly due to the age of installation of the appliances. He also noted that due to the layout and the detail of the EICR, you can*

*find that there are a number of C3's noted on the Certificate for one issue. For example, there being no RCD protection covers a number of different regulations. He also explained that the EICR is a fairly detailed certificate so older properties tend to have more C3 issues arising.*

***Electrical works recommended as follows: Domestic + Off-Peak circuits require RCD protection to meet current .4s disconnection times. All Downlights to be replaced for Fire-rated type fittings***

*Mr Murray has been instructed to return to the property to make these repairs as soon as possible. He was asked by the landlord to return to the property immediately but he told her that due to the coronavirus pandemic he was only attending to urgent repairs, and he did not consider the c3 repairs to be urgent. He told the landlord that he hopes to attend to make these repairs by the 10th of March. The landlord has purchased new downlights ready to be installed as soon as Mr Murray is able to attend the property.*

***Hob gas pipe not bonded The Tribunal were concerned that this had not been picked up on the gas safety certificate***

*The landlord has instructed Mr Murray to have this repaired as soon as possible.*

***The appliances tested for the PAT certificate are not listed***

*Mr Murray explained that he tests and labels the appliances unless the customer gives him a logbook for record keeping. If he is not given a logbook he records the test, label and number of each appliance on the test certificate itself.*

***It is not clear if the smoke/heat alarms are in proper working order and meet the current regulations, particularly whether or not the battery smoke/heat alarms have the necessary lithium batteries.***

*We note from Mr MacPhie's letter that: In the Hall, the pre-existing smoke detectors were replaced with two "AICO EI3016" smoke alarms connected to the mains and fitted with an "AICO EI3000MRF" smart link module. In the Kitchen an "AICO EI3016RF heat alarm" was fitted with lithium battery. In the lounge an "AICO EI650RF optical smoke alarm" was fitted with lithium battery.*

***It is not clear how the smoke/heat alarms are linked***

*The smoke alarms and heat alarms are all radio linked by the "AICO EI3000MRF" smart link module.*

***It is not clear where the smoke/heat alarms are situated***

*Please see above response. There are two smoke alarms in the hall, a heat alarm in the kitchen, a smoke alarm in the lounge and a CO detector in the lounge, which is ceiling mounted.*

***Only one smoke alarm has been tested on the EICR***

*Mr Murray noted that he carried out the test at the end of the circuit which was on the alarm in the hall. He did so on the basis that he believed the other new alarms to be all sealed lithium alarms. He noted that he would be happy to check this on his return when making other repairs.*

***There is no information before the Tribunal to indicate where the carbon monoxide detector is situated and whether its situation and positioning meets with current requirements***

*Mr MacPhie has confirmed that the carbon monoxide detector is located in the Lounge. It is an "AICO EI208" model and is fitted with a lithium battery. It is fitted to the ceiling as instructed by the manufacturer. The landlord has also confirmed that it is located between 1m and 3m of the multi-fuel stove.*

***The requirement for an electrical re-inspection in 12 months is concerning***

*Mr Murray noted that due to the high number of C3 issues on the EICR he felt that a 12 month reinspection period is reasonable. He stated that after any remedial work, an up to date certificate should be issued and that will take into account the RCD protection and the pipe bonding for example. The next test date will be directly connected to the condition of the installation. He gave the example that brand new electrical installations are in most cases signed off for 5 years.*

13. By email dated 10<sup>th</sup> March 2021, Ms Thomson informed the Tribunal that the electrician had been unable to attend, and hoped to attend on 15<sup>th</sup> March 2021. Ms Thomson provided a receipt for downlights purchased by the Landlord for installation at the House.

14. A CMD took place by telephone conference on 11<sup>th</sup> March 2021. Ms Gemma Thomson, Solicitor, attended on behalf of the Landlord. Ms Thomson explained the situation regarding the difficulties in getting the work completed. It was agreed that a further CMD would be necessary, and this would provide time for the works to be carried out. The Tribunal indicated that it would also be helpful to have an indication from the electrician not only that all alarms are in proper working order, but also that they have been positioned correctly and there is sufficient coverage of alarms within the House to comply with the relevant guidance. Ms Thomson said she will discuss matters with the electrician, and will clarify matters in relation to the PAT log book.

15. By email dated 13<sup>th</sup> April 2021, the Landlord's representative lodged a further EICR carried out on 12<sup>th</sup> April 2021 by an NICEIC registered electrician. This report states the overall assessment of the installation is "Satisfactory". The report indicated at Section 6, under *Observations and Recommendations for Action to be Taken* that the only concern was a loose electric meter that required to be addressed by the utility company. There was only one category C3 on the EICR, namely the loose meter. All outstanding issues appeared to have been addressed.

### **Case Management Discussion**

16. A CMD took place by telephone conference on 14<sup>th</sup> April 2021. Ms Gemma Thomson, Solicitor, attended on behalf of the Landlord.

17. Ms Thomson updated the Tribunal following discussions with the electrician that had completed the EICR. In relation to the PAT testing, the electrician confirmed that it was his usual practice to label all items tested, and he had done so in this case. He does not log the items in a log book unless the client asks him to do so and he had not been asked to do this in this case.

18. Ms Thomson said the electrician had confirmed that all alarms have been positioned correctly and there is sufficient coverage of alarms within the House to comply with the relevant guidance.

### **Reasons for Decision**

19. The Tribunal determined the application having regard to the terms of the application, the written representations and documents received and the evidence from the Landlord's solicitor. The Tribunal was satisfied having regard to all the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.

20. The Tribunal was satisfied, on the information provided, that all issues had been addressed and that the House now meets the Repairing Standard. The Tribunal requires no further action to be taken.

### **Decision**

21. The Tribunal was satisfied that the Repairing Standard was met and that no orders were necessary. The Tribunal accordingly determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

Legal Member and Chairperson  
Date: 14<sup>th</sup> April 2021