

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 25(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RT/19/2149

Title no: BNF5872

1 Institution Street, Macduff, Aberdeenshire, AB44 1UT ('The Property')

The Parties:-

Graham Earle and Adele Earle residing at 3 Tannery Street, Banff, Aberdeenshire, AB45 1ER ('the Landlord').

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

Mark Lee and Ruth Lee residing at 1 Institution Street, Macduff, Aberdeenshire, AB44 1UT ('the former Tenants').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Angus Anderson (Ordinary Member).

#### Background

1. The Tribunal issued a Repairing Standard Enforcement Order dated 16<sup>th</sup> October 2019 ('RSEO') in respect of the Property which required the Landlord to:-

1. *'Carry out such repairs as are necessary to render the electrical installation in a reasonable state of repair and exhibit a valid and compliant EICR Certificate.*

2. *Install:*

2.1 *One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.*

2.2 *One functioning smoke alarm in every circulation space, such as hallways and landings.*

2.3 *One heat alarm in every kitchen and*

2.4 *All alarms should be interlinked and the installation should comply with the regulations.*

3. *Replace the carbon monoxide alarm in compliance with the regulations.*

4. *Repair or replace the front door to render it in a reasonable state of repair and proper working order.*
5. *Reinstate and repair or replace the hall carpet to render it in a reasonable state of repair.*
6. *Resolve the source of damp penetration to the Property, (including the walls in the sitting room, gas meter cupboard, lower hall, upper bedrooms, bathroom and landing) and carry out such repairs as are necessary to prevent further damp ingress followed by remedial works to damp-damaged finishes and decorations.*
7. *Repair or replace the gas meter cupboard door to render it in proper working order.*
8. *Repair or replace the defective floor in the bedroom next to the sitting room to render it in a reasonable state of repair.*
9. *Repair the tiles around the bath.*
10. *Repair or replace the back door to render it in a reasonable state of repair and proper working order.*
11. *Repair or replace the cupboard door in the first floor bedroom right to render it in a reasonable state of repair and proper working order.*
12. *Repair or replace the door of the landing cupboard to render it in a reasonable state of repair and proper working order.*
13. *Repair or replace the door of the external store to render it in a reasonable state of repair and proper working order.'*

2. The Tribunal ordered that the works specified in the RSEO must be carried out and completed by 15<sup>th</sup> January 2020.

3. The Ordinary Member of the Tribunal carried out a re-inspection of the Property on 28<sup>th</sup> January 2020. The re-inspection report dated 29<sup>th</sup> January 2020 confirmed that items 2, 5 and 11 of the RSEO had been completed. The other items had not been completed. On 17<sup>th</sup> April 2020 the Tribunal varied the RSEO by extending the date for compliance to 28<sup>th</sup> May, 2020. Due to the ongoing Covid pandemic, there were delays to Tribunal Casework during 2020. Following a telephone Case Management Discussion on 11<sup>th</sup> January 2021, attended by Mr Earle and Mrs Bain, the Tribunal determined that items 2,5 and 11 of the RSEO had been completed and deleted these items from the RSEO. The Tribunal also extended the date for completion of the outstanding works to 24<sup>th</sup> January 2021.

4. The former Tenants had vacated the Property in March 2020.

5. On 26<sup>th</sup> October 2021 the Ordinary Member and Legal Member of the Tribunal carried out an inspection of the Property for the purpose of ascertaining whether the outstanding repairs required by the RSEO had been completed. The Landlord Graham Earle and the third party representative, Emma Bain, were present at the reinspection. The re-inspection report dated 31<sup>st</sup> October 2021 and relative photographs taken at the reinspection are annexed and executed as relative hereto.

6. The Landlords were sent a copy of the re-inspection report on 2<sup>nd</sup> November 2021 and they were invited to make representations to the Tribunal but no such representations were received.

7. A hearing was held by conference call at 10am on 14<sup>th</sup> February 2022. Mrs Bain attended on behalf of the Third Party. The Landlords did not attend and were not represented. The Tribunal administration had sent the Landlords notification of the hearing by email on 31<sup>st</sup> January 2022. The Tribunal were satisfied that the requirements of Tribunal Rule 24(1) had been complied with and proceeded with the hearing.

Mrs Bain advised that she had had no further contact with the Landlords since the re-inspection on 26<sup>th</sup> October 2021. She also confirmed that she was satisfied that the re-inspection report dated 31<sup>st</sup> October 2021 was accurate.

### **Decision and Reasons**

8. Given the terms of the said re-inspection report dated 31<sup>st</sup> October 2021 and the fact that the Landlords have not provided the Tribunal with any representations in relation to the said reinspection report, the Tribunal Determine:-

8.1 That items 1,3,4,6,7,8,9,10,11 of the RSEO which required:

*1. "Carry out such repairs as are necessary to render the electrical installation in a reasonable state of repair and exhibit a valid and compliant EICR Certificate.*

*3. Replace the carbon monoxide alarm in compliance with the regulations.*

*4. Repair or replace the front door to render it in a reasonable state of repair and proper working order.*

*6. Resolve the source of damp penetration to the Property, (including the walls in the sitting room, gas meter cupboard, lower hall, upper bedrooms, bathroom and landing) and carry out such repairs as are necessary to prevent further damp ingress followed by remedial works to damp-damaged finishes and decorations.*

*7. Repair or replace the gas meter cupboard door to render it in proper working order..*

*8. Repair or replace the defective floor in the bedroom next to the sitting room to render it in a reasonable state of repair.*

9. *Repair the tiles around the bath.*

10. *Repair or replace the back door to render it in a reasonable state of repair and proper working order.*

12. *Repair or replace the door of the landing cupboard to render it in a reasonable state of repair and proper working order.*

13. *Repair or replace the door of the external store to render it in a reasonable state of repair and proper working order.'*

**have not been satisfactorily completed** as the required works have not been carried out.

Consequently, the Tribunal, having made such enquiries as is fit for the purposes of determining whether the Landlords have complied with the Repairing Standard Enforcement Order in relation to the Property determined that the said Graham Earle and Adele Earle have failed to fully comply with the RSEO in terms of section 26(1) of the Housing (Scotland) Act 2006 and that a notice of the failure be served on the Local Authority in which the Property is situated.

9. As there is no tenant in the Property the Tribunal did not proceed to consider if a Rent Relief Order should be made.

10. The decision of the Tribunal was unanimous.

### **Appeals**

**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.**

# J.Taylor

Signed..... Date 14<sup>th</sup> February 2022  
Chairperson



# Housing and Property Chamber First-tier Tribunal for Scotland



**Housing  
(Scotland) Act 2006: Re-inspection Report**

**Property: 1 Institution Street, Macduff, Aberdeenshire AB44 1UT**

**Chamber Reference : FTS/HPC/RT/19/2149**

**Re-inspection Date: 26/10/2021 - 11.30am**

**Weather conditions: Cold and wet, with similar weather over the preceding seven days.**

**In attendance: Mr Earl, Joint Landlord, Mrs Emma Bain, Aberdeenshire Council, Third Party Applicant.**

**Tribunal Members: Angus Anderson (Ordinary) Jacqui Taylor (Legal)**



**Front Elevation.**

## **Works required by the Repairing Standard Enforcement Order (RSEO):**

1. Carry out such repairs as are necessary to render the electrical installation in a reasonable state of repair and exhibit a valid and compliant EICR.
2. Install:
  - 2.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
  - 2.2 One functioning smoke alarm in every circulation space, such as hallways and landings.
  - 2.3 One heat alarm in every kitchen and
  - 2.4 All alarms should be interlinked and the installation should comply with the regulations.
3. Replace the carbon monoxide alarm in compliance with the regulations.
4. Repair or replace the front door to render it in a reasonable state of repair and proper working order.
5. Reinstall and repair or replace the hall carpet to render it in a reasonable state of repair.
6. Resolve the source of damp penetration to the Property, (including the walls in the sitting room, gas meter cupboard, lower hall, upper bedrooms, bathroom and landing) and carry out such repairs as are necessary to prevent further damp ingress followed by remedial works to damp-damaged finishes and decorations.
7. Repair or replace the gas meter cupboard door to render it in proper working order.
8. Repair or replace the defective floor in the bedroom next to the sitting room to render it in a reasonable state of repair.
9. Repair the tiles around the bath.
10. Repair or replace the back door to render it in a reasonable state of repair and proper working order.
11. Repair or replace the cupboard door in the first floor bedroom right to render it in a reasonable state of repair and proper working order.
12. Repair or replace the door of the landing cupboard to render it in a reasonable state of repair and proper working order.

13. Repair or replace the door of the external store to render it in a reasonable state of repair and proper working order.

#### **Works in the RSEO undertaken:**

1. The outlet in the external store has been replaced with an external type fitting and the wiring to the cooker hood has been altered to utilise a normal socket outlet. There were no exposed wires seen. No EICR was exhibited.

2.1 A smoke alarm has been fitted to the ceiling of the sitting room.

2.2 Smoke alarms have been fitted to the ceiling of the ground floor hallway and first floor landing.

2.3 A heat alarm has been fitted to the ceiling of the kitchen. It was tested and found to be operational.

2.4 All smoke and heat alarms appeared to be interlinked and the installation appeared to comply with the regulations.

3 A "First Alert" carbon monoxide alarm was found resting on top of the boiler. The position of the alarm does not comply with the manufacturer's guidance. The position was such that the alarm could easily be knocked to the floor. The alarm had no installation date in the space left for this information.

4 The overall state of the front door is the same as at the initial inspection and previous re-inspection. The door latch, lock and keep are damaged. Daylight was visible around the door when it was in the closed position.

5. The hall carpet has been replaced. At the previous re-inspection, the tenant stated that they had replaced the carpet. The carpet was found to be in a reasonable state of repair.

6. Overall, the state of the dampness was very similar to what was found at the initial inspection. The exceptions were the rear wall of the bathroom, where the meter readings showed normal moisture content. It was not clear from the inspection what, if any repairs had been taken to the exterior. Further dampness was noted to the gable wall of the right hand bedroom.

7. The gas meter cupboard door is unchanged from the initial inspection.

8. The floor of the ground floor bedroom, previously obscured by the fitted carpet, was seen to have new flooring timbers. However, weight testing indicated that there is movement to the floor structure, as found at the initial inspection.

9. The walls around the bath have been re-lined with "Aquapanel", proprietary waterproof linings. Moisture meter readings around the bath areas showed amber or green, normal levels of moisture.

10. The latch of the rear door was operating normally at the re-inspection and a handle has been fitted to the glazed panel. However, the inner pane of the panel remains broken, with fragments of glass trapped in the seal.
11. New hinges have been fitted to the cupboard door in the first floor bedroom right and the door operated normally.
12. The landing cupboard door is stiff in operation and does not fully open.
13. The door of the external store is missing, as found at the initial inspection.

**Observations/comment:**

This property was previously re-inspected on 28th January, 2020. This is the second re-inspection, which had been delayed on account of the Covid pandemic.

The landlord stated that he is now living in the property with another individual. The property appeared to be currently occupied.

No invoices or other evidence of rectification or investigatory works have been submitted by the landlords prior to the re-inspection.

This report will be distributed to the parties and their representatives for their comment. The report and comments received will be referred to the Tribunal for consideration and further action.

**Photographs were taken on the day of inspection and are attached.**

Angus Anderson, MRICS; Date of report: 31/10/2021.

# Housing and Property Chamber First-tier Tribunal for Scotland

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Housing (Scotland) Act 2006

1 Institution Street, Macduff, Aberdeenshire, AB44 1UT

Chamber Reference : FTS/HPC/RT/19/2149

Re- Inspection : Schedule of Photographs

Inspection Date: 26/10/2021



Photograph 1 Front Elevation

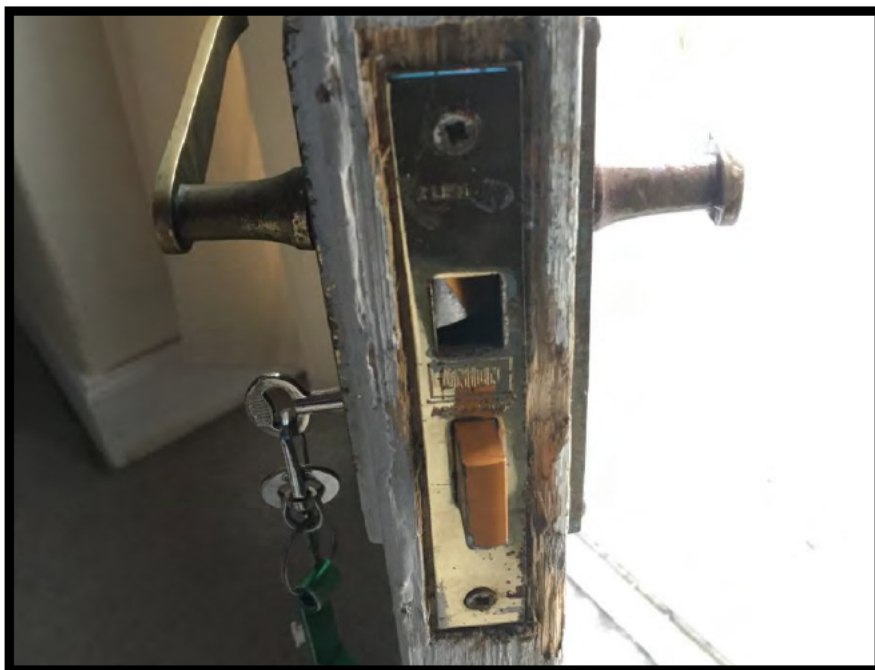


Photograph 2 Ground floor - Kitchen - Example hard wired alarm, alarm system tested at inspection.



Photograph 3 Overview of front door - no significant change.





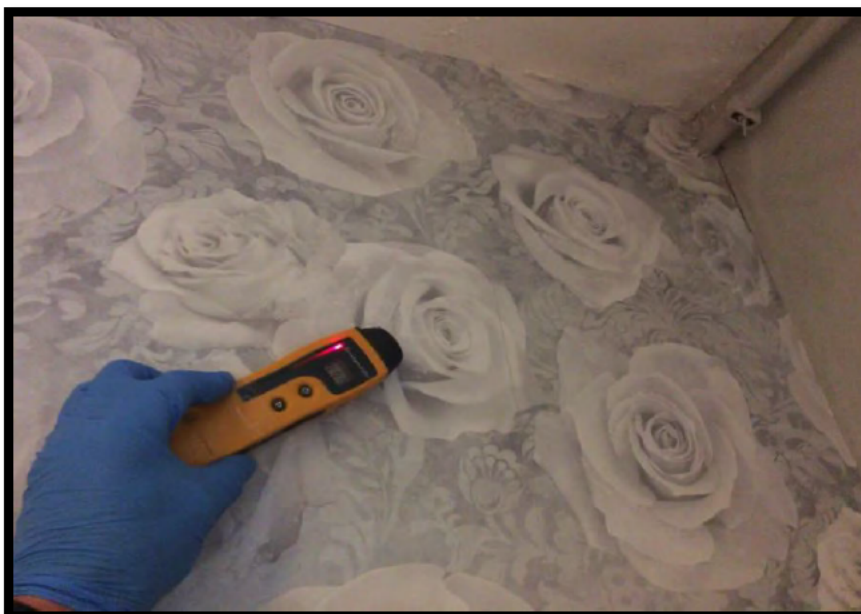
Photograph 4 Damaged sash lock - unchanged.



Photograph 5 Damaged lock keep - unchanged.



Photograph 6- Ground floor entrance - new carpet fitted by tenant.



Photograph 7 Meter reading red (99%) to gable wall in sitting room, near ceiling - no significant change.





Photograph 8 Moisture meter reading red (96% localised spot) to front wall of sitting room - unchanged.



Photograph 9 - Moisture meter reading red (99%) to front wall at ground floor entrance. Both sides of door affected - unchanged.



Photograph 10 - Moisture meter reading red (99%) to side of window dormer, right hand bedroom - unchanged.



Photograph 11 - Moisture meter reading red (89%) to rear roof slope, right hand bedroom, previously green, 9%.



Photograph 12 - Moisture meter reading red (99%, three areas) to side of window dormer, left hand bedroom, unchanged



Photograph 11 - Gas meter cover, sitting room - unchanged.



Photograph 12 - Gas meter cupboard - internal - unchanged.



Photograph 13 External store attached to kitchen. Door missing, as before. Exposed electrical switch replaced with exterior style fitting.





Photograph 14 External store outside view.



Photograph 15 Rear door window - catch replaced, glazing inner panel broken/missing.



Photograph 16 Rear door latch serviceable at re-inspection.



Photograph 17 - Moisture meter reading green (8%) to tiling at bath - was 99%.



Photograph 18 - Bathroom - new waterproof linings around bath.



Photograph 19 - Moisture meter reading amber (21%) to landing wall left side of bathroom door, was 99%.



Photograph 20 - Sliding door to boiler cupboard at first floor landing - strip affixed to floor as guide rail.



Photograph 21 - Central heating boiler with CO alarm resting on edge, unchanged.