

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **Repairing Standard Enforcement Order Ordered by the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**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 Tenants').**

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

#### **NOTICE TO The said Graham Earle and Adele Earle**

Whereas in terms of their decision dated 16th October 2019 the Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlord has failed to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and proper working order; the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order; the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health and the Property meets the tolerable standard.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires 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.

The Tribunal orders that these works must be carried out and completed by 15<sup>th</sup> January 2020.

**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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes and landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a RSEO has effect in relation to the house.**

**This is in terms of section 28(5) of the Act:** IN WITNESS WHEREOF these presents typewritten on this and the preceding page are subscribed at Glasgow on 16<sup>th</sup> October 2019 by Jacqui Taylor, chairperson of the Tribunal, in the presence of the witness Helen Butler, 20 York Street, Glasgow.

J Taylor

Signed.....

Chairperson

H Butler

.....witness



# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (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 Landlords').**

**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 Tenants').**

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

### **Decision**

**The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

### **Background**

1. The Tenant leases the Property from the Landlords in terms of the lease between the parties, which had been produced. The Third Party applied to the Tribunal for a determination of whether the Landlords have failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act').

2. The application stated that they considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order; 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 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; the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health and the Property does not meet the tolerable standard.

In particular the application stated :-

- 2.1 No evidence of EICR supplied.
- 2.2 No evidence of Gas Safety Certificate.
- 2.3 No Energy Performance Certificate has been provided to the Tenant.
- 2.4 The fire detection system does not meet the current standard for rented property.
- 2.5 No Carbon monoxide monitor has been provided.
- 2.6 Front Door — The wooden door is in poor condition and when locked the door is held in a position where the door is extremely draughty. The Tenant also feels the door is not adequately secure.
- 2.7 Hallway (front door) - The carpet is dangerous and is a trip hazard. There is tape securing 2 bits of overlapping carpet and the carpet is poorly fitted, going up the wall at skirting level. There is an electrical cable running along the door threshold between the hall and sitting room.
- 2.8 Internal walls (throughout the property) - various patches feel damp which is affecting the paintwork and wooden boarding. The Tenant advised that the Landlords have sent out a contractor and he advised that a damp specialist would be required to investigate this further. Mushrooms have now started to grow on the walls in the sitting room.
- 2.9 Sitting room - The gas meter cupboard in the sitting room is damp and the door is poorly fitted.
- 2.10 Bedroom (off the sitting room) - The bedroom also has a problem with rotten floorboards.
- 2.11. Kitchen - The corner wall units in the kitchen are affected by dampness, any food which is stored in them goes damp. There is also evidence of dampness affecting the roof above the corner wall units. On investigation, the affected wall which backs onto the kitchen, is an external storeroom, which currently has no external door and is open to the elements. There does not appear to be adequate insulation in the wall partition behind the kitchen wall units. The storeroom is also full of previous tenants' items/rubbish.
- 2.12 Kitchen -The floor under the Tenant's freezer is rotten/soft and there are holes between the floor and the wall joint where slugs and woodlice come into the kitchen daily.
- 2.13 Back Door - The wooden door has a window fitted which cannot be locked (currently flapping open), meaning the door is insecure. This door also cannot be shut properly due to the door catch not working unless the door is locked.
- 2.14 1<sup>st</sup> floor Bedroom right - The small cupboard door has been removed and is causing a draft from the attic.
- 2.15 1<sup>st</sup> floor Bathroom The walls around the bath have been damaged due to a prior roof leak, this has also affected the wall surfaces/tiling around the bath,
- 2.16 1<sup>st</sup> floor Landing cupboard - the door has come off the runners (like this at start of tenancy).

The application was accompanied by photographs of the matters detailed in the application.

3. Maurice O'Carrol, as Convenor of the First- tier Tribunal (Housing and Property Chamber), having considered the application, comprising documents received on 10<sup>th</sup> July 2019, referred the application under Section 22 (1) of the Act to a Tribunal.

3. On 7<sup>th</sup> August 2019 the President of The Housing and Property Chamber served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Third Party, the Landlords and the Tenants.

4. The Tribunal attended at the Property on 17<sup>th</sup> September 2019. The Tenants were present at the inspection together with Emma Bain, a Private Rented Sector Housing Officer, and Nicola Murray, a team leader of the Private Sector Housing Department, both with Aberdeenshire Council. The Landlords were not present and were not represented. The Tribunal Administration sent the Landlords notification of the inspection and the hearing by recorded delivery letter, which they signed for on 4<sup>th</sup> September 2019.

The Property, 1 Institution Street, Macduff, AB44 1UT is a mid terraced cottage which dates from circa 1900 with ground and attic accommodation. The accommodation comprises 3 bedrooms, sitting room, lounge, kitchen and bathroom. The Property has been extended to the rear to form the kitchen and external store. There are flat roofs over the kitchen and bathroom dormer.

The Tribunal inspected the alleged defects and found as follows:-

4.1 No evidence of EICR supplied.

No EIRC had been supplied to the Tenant or the Tribunal. The Tribunal were particularly concerned with the following electrical installations in the Property:

- (i) The external light at the rear of the Property above the kitchen window is hanging by a cable.
- (ii) There are exposed wires and conductors at the socket for an extractor fan located above the kitchen units.
- (iii) The electrical socket in the outhouse is open to the elements.

4.2 No evidence of Gas Safety Certificate.

The Tenants confirmed that a Gas Safety Certificate had been provided and agreed to bring it to the hearing.

4.3 No Energy Performance Certificate has been provided to the Tenant.

The Tribunal advised the representatives from Aberdeenshire Council and the Tenants that the obligation to provide the Tenants with an Energy Performance Certificate was not part of the Repairing Standard.

4.4 The fire detection system does not meet the current standard for rented property.

Non interconnected battery smoke alarms had been fitted by the fire service in June 2019. The Tribunal noted that there was an old hard wired smoke alarm system in

the ground floor hallway and attic floor landing only, but it was not working. The base units were in place but no alarms were fitted to them.

4.5 No Carbon monoxide monitor has been provided.

There was a battery operated carbon monoxide monitor fitted to the ceiling of the landing but it did not work.

4.6 Front Door — The wooden door is in poor condition and when locked the door is held in a position where the door is extremely draughty. The tenant also feels the door is not adequately secure.

The Tribunal inspected the wooden front door. The door keep and latch had been damaged which means that the door does not close properly and it is not secure. Daylight could be seen between the door and the door frame.

4.7 Hallway (front door) - The carpet is dangerous and is a trip hazard. There is tape securing 2 bits of overlapping carpet and the carpet is poorly fitted, going up the wall at skirting level. There is an electrical cable running along the door threshold between the hall and sitting room.

The Tenants advised that they had removed the carpet that was in the hall as it was poorly fitted and it was a tripping hazard. There was a TV aerial cable crossing the threshold of the sitting room door.

4.8 Internal walls (throughout the property) - various patches feel damp which is affecting the paintwork and wooden boarding. The tenant advised that the landlords have sent out a contractor and he advised that a damp specialist would be required to investigate this further. Mushrooms have now started to grow on the walls in the sitting room.

The Tribunal inspected the dampness to the internal walls of the Property testing areas with a Protimeter Moisture meter, and found as follows:

- (i) Kitchen: There was evidence of damp staining to the ceiling of the kitchen but it was dry at the inspection.
- (ii) Sitting Room: Damp treatment works had been carried out to the gable wall to a height of some two metres and to the front external wall to a height of around one metre. The areas that had been repaired were dry at the inspection. However the higher areas of the gable wall and the external wall to the left of the window (looking out of the window from inside the sitting room) were damp showing levels of 80% plus on the damp meter. There was also an area of high dampness in the wall dividing the sitting room from the bedroom.
- (iii) Lower Hall: The ingos of the front door had visible damp patches and were very damp showing levels of 80% plus on the damp meter.
- (iv) Downstairs bedroom: There was no evidence of dampness to the walls.
- (v) Front lounge: There was a small area of isolated dampness at head height on the wall near to the door.
- (vi) 1<sup>st</sup> Floor Bedroom Right: There were marks in the decoration on both sides of the dormer window. The areas were very damp showing levels of 80% plus on the damp meter. The sloping roof at the back of the bedroom was also damp showing levels of 80% plus on the damp meter.



- (vii) The Bathroom: Damp was detected beneath the surface of the tiled area and at the head of the bath and around the bath. The damp meter showed levels of 80% plus. Also there was an area of damp to the left side of the bathroom window and damp around the top of the bathroom window between the window and the ceiling.
- (viii) The Landing: The wall of the landing adjacent the head of the bath was damp. The damp meter showed levels of 80% plus.
- (ix) 1<sup>st</sup> Floor Bedroom Left: The wall linings adjacent to the dormer window on the right hand side (looking out of the window) were damp. The adjacent comb ceiling to the right of the dormer (looking out of the window) was also damp.

4.9 Sitting room - The gas meter cupboard in the sitting room is damp and the door is poorly fitted.

The door to the gas meter cupboard is a section of wood made to fit the access hole in the plaster board. There are no hinges and no door handle to enable the door to be opened. The inside of the cupboard was unlined/bare stone and damp.

4.10 Bedroom (off the sitting room) - The bedroom also has a problem with rotten floorboards.

The floorboards in front of the radiator bow and deflect when stood on. There were fitted carpets in place and it was not possible to examine the floorboards below the carpet.

4.11 Kitchen - The corner wall units in the kitchen are affected by dampness, any food which is stored in them goes damp. There is also evidence of dampness affecting the roof above the corner wall units. On investigation, the affected wall which backs onto the kitchen, is an external storeroom, which currently has no external door and is open to the elements. There does not appear to be adequate insulation in the wall partition behind the kitchen wall units. The storeroom is also full of previous tenants' items/rubbish.

The interior of the corner cupboard, adjacent wall and ceiling surfaces and accessible parts of the tiled wall were tested for damp but only normal readings (below 20%) were observed. Attached to the kitchen is an external outhouse. The door of the outhouse is missing. Visible parts of the wall between the kitchen and the outhouse was constructed of breeze block. The outhouse was full of discarded items and it was not possible to see to the back of the outhouse or the details of the condition of the wall.

4.12 Kitchen -The floor under the tenant's freezer is rotten/soft and there are holes between the floor and the wall joint where slugs and woodlice come into the kitchen daily.

The Tenants moved the freezer in the kitchen and the Tribunal examined the area of floor below the freezer. New plywood flooring had been installed. The Tribunal noted that there were no gaps between the plasterboard wall behind the freezer and the floor, albeit that the skirting board was rotten in part.

4.13 Back Door - The wooden door has a window fitted which cannot be locked (currently flapping open), meaning the door is insecure. This door also cannot be shut properly due to the door catch not working unless the door is locked.

There was a glass panel in the back door. The catch and inner glass were missing from the glass panel.

The latch of the locking mechanism of the door is bound in place and does not release which means that the door cannot be kept shut without using the key.

4.14 1<sup>st</sup> floor Bedroom right - The small cupboard door has been removed and is causing a draft from attic.

The door to the small attic cupboard is detached and there are no hinges to hold it in its correct position.

4.15 1<sup>st</sup> floor Bathroom The walls around the bath have been damaged due to a prior roof leak, this has also affected the wall surfaces/tiling around the bath.

Some of the tiling around the bath had been replaced. The tiles fitted to the upper parts of the wall around the bath have not been grouted. Sections of the small tile edging around the bath are missing.

4.16 1<sup>st</sup> floor Landing cupboard - the door has come off the runners (like this at start of tenancy).

The door to the landing cupboard is a sliding door. The floor guide/ track to locate the door in position is missing in part and consequently the door does not operate correctly.

5. Photographs were taken during the inspection and are attached as a Schedule to this report.

6. Following the inspection of the Property the Tribunal held a hearing at Banff Sheriff Court.

The Landlords did not attend the hearing. The Tenants did attend the hearing. Emma Bain, Housing Officer, on behalf of Aberdeenshire Council (the Third Party Applicant) attended the hearing accompanied by Nicola Murray, a Private Sector Housing Manager who was observing the hearing.

In respect of the matters in the application Emma Bain and the Tenants advised as follows:

6.1 No evidence of EICR supplied.

Mark Lee advised that the Landlords have not provided them with an EICR certificate.

6.2 No evidence of Gas Safety Certificate.

The Tenants showed the Tribunal the Gas Safety Certificate dated 5<sup>th</sup> August 2019 signed by H J Lorimer, Eden H.L.S. The Certificate confirmed that the gas installations in the Property are safe.

6.3 No Energy Performance Certificate has been provided to the Tenant.

The Tribunal clarified that the Repairing Standard does not oblige the Landlords to provide an Energy Performance Certificate.

6.4 The fire detection system does not meet the current standard for rented property.  
The Tenants explained that the fire service had installed battery operated smoke alarms in the lounge and the hall in June 2019.

6.5 No Carbon monoxide monitor has been provided.

The Tenants advised that the carbon monoxide alarm fixed to the ceiling of the upper landing does not work.

6.6 Front Door — The wooden door is in poor condition and when locked the door is held in a position where the door is extremely draughty. The tenant also feels the door is not adequately secure.

The Tenants advised that the front door is in a very poor condition and you can see daylight through the gap between the door and the door frame.

6.7 Hallway (front door) - The carpet is dangerous and is a trip hazard. There is tape securing 2 bits of overlapping carpet and the carpet is poorly fitted, going up the wall at skirting level. There is an electrical cable running along the door threshold between the hall and sitting room.

The Tenants explained that there was a hall carpet fitted at the start of the tenancy but as it was torn it was a tripping hazard. They referred the Tribunal to the photograph of the torn carpet provided with their application. As the carpet was torn they had removed it. The wire that runs along the opening of the door at floor level is a TV aerial cable. The cable starts in the back of their TV and runs along the threshold of the door and out through the living room window.

6.8 Internal walls (throughout the property) - various patches feel damp which is affecting the paintwork and wooden boarding. The tenant advised that the landlords have sent out a contractor and he advised that a damp specialist would be required to investigate this further. Mushrooms have now started to grow on the walls in the sitting room.

At the hearing Mr Anderson, the Ordinary Member of the Tribunal gave a summary of all of the areas of damp he had located at the inspection. He explained that there were high levels of damp in the sitting room, the two upper floor bedrooms, the bathroom, the hall and the landing. The Tenants explained that the Landlords had carried out some works to remedy some of the dampness in the Property. In the sitting room the builder had taken down the old plasterboard and exposed the stonework. The wall had then been treated with a damp proofing product and the plasterboard had been replaced. The redecoration works in the sitting room had only recently been finished.

6.9 Sitting room - The gas meter cupboard in the sitting room is damp and the door is poorly fitted.

The Tenants advised that the door of the gas meter cupboard is not secure and inside the cupboard there are undecorated stone walls, which are damp.

6.10 Bedroom (off the sitting room) - The bedroom also has a problem with rotten floorboards.

The Tenants advised that the floor in front of the radiator in the bedroom off the sitting room is bowed.

6.11. Kitchen - The corner wall units in the kitchen are affected by dampness, any food which is stored in them goes damp. There is also evidence of dampness affecting the roof above the corner wall units. On investigation, the affected wall which backs onto the kitchen, is an external storeroom, which currently has no external door and is open to the elements. There does not appear to be adequate insulation in the wall partition behind the kitchen wall units. The storeroom is also full of previous tenants' items/rubbish.

The Tenants explained that the outside store room is next to the kitchen. The far end of the internal storeroom wall has not been finished properly and is simply made of timber framing and plasterboard.

6.12 Kitchen. The floor under the tenant's freezer is rotten/soft and there are holes between the floor and the wall joint where slugs and woodlice come into the kitchen daily.

The Tenants explained that when they moved into the Property there was a radiator installed on the internal wall between the kitchen and the living room. The Landlords removed the radiator and carried out repairs to the wall.

6.13 Back Door. The wooden door has a window fitted which cannot be locked (currently flapping open), meaning the door is insecure. This door also cannot be shut properly due to the door catch not working unless the door is locked.

The Tenants advised that the poor condition of the back door means that the door is not secure.

6.14 1<sup>st</sup> floor Bedroom right. The small cupboard door has been removed and is causing a draft from attic.

The Tenants explained that the door of the small cupboard in the right hand first floor bedroom is not secure as it is off its hinges.

6.15 1<sup>st</sup> floor Bathroom. The walls around the bath have been damaged due to a prior roof leak, this has also affected the wall surfaces/tiling around the bath.

The Tenants explained that there had been a leak from the roof which had caused dampness in the bathroom as there had been water running down the bathroom tiles. They do not consider that the repair has been properly carried out as the walls around the bath are still damp.

6.16 1<sup>st</sup> floor Landing cupboard - the door has come off the runners (like this at start of tenancy).

The Tenants explained that the door to the landing cupboard does not work as it should as it does not slide properly. It should slide easily along floor runners, which are damaged.

## **7. Decision**

7.1 The issues to be determined are:-

7.1.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the presence of dampness, the condition of the internal walls of the Property, the gas meter cupboard in the sitting room, the kitchen corner units, the

kitchen walls, the kitchen roof and the walls in the bathroom results in them not being wind and water tight and in all other respects reasonably fit for human habitation.

7.1.2 The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1) (b) of The Housing (Scotland) Act 2006).

Whether the condition of the floor boards in the bedroom off the sitting room, the kitchen floor under the Tenant's freezer, the front and back doors and the absence of a door to the external store results in them not being in a reasonable state of repair and proper working order.

7.1.3 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 proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

Regulation 36 of the Gas Safety (Installation and Use) Regulations 1988 requires landlords to have a Gas Safety Certificate carried out for all gas installations within their rental properties annually.

The Housing (Scotland) Act 2014 introduced the requirement for landlords to have an Electrical Installation Condition Report (EICR) carried out on all electrical installations, fixtures and fittings within their rental properties. All tenancies must have a valid EICR, a copy of which must be provided to the tenant. The EICR lasts for 5 years and must include Portable Appliance Tests (PAT) for all electrical appliances within the tenancy supplied by the landlords.

Therefore the Tribunal have to consider if valid Gas Safety Certificates and EICR certificates been provided and furthermore, notwithstanding the presence of the required certification, to consider if the apparent condition of the installations give cause for concern sufficient to render these not in a reasonable state of repair and in proper working order

7.1.4 The fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and proper working order (Section 13(1) (d) of The Housing (Scotland) Act 2006).

Whether the condition of the hallway carpet, the TV cable in the sitting room, the door to the gas meter cupboard, the small cupboard door in the first floor bedroom right, the wall surfaces/ tiling around the bath, the kitchen cupboards and the first floor landing cupboard door result in them not being in a reasonable state of repair and proper working order.

7.1.5 The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1) (f) of The Housing (Scotland) Act 2006).

The Tribunal acknowledged that the statutory guidance requires:

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

- One functioning smoke alarm in every circulation space, such as hallways and landings.
- One heat alarm in every kitchen.
- All alarms should be interlinked.

The Tribunal must determine if the heat and smoke detectors in the Property comply with the statutory guidance.

7.1.6 The house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1) (g) of The Housing (Scotland) Act 2006).

The Tribunal must determine if the carbon monoxide detectors in the Property comply with the statutory requirements.

7.1.7 The house does not meet the tolerable standard.

Whether the insulation in the wall partition behind the kitchen wall and the presence of damp generally results in the Property failing to comply with the tolerable standard.

## **7.2 Determinations:**

7.2.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1) (a) of The Housing (Scotland) Act 2006).

The Tribunal determine that:

- The damp penetration to the attic bedrooms and bathroom.
- The dampness identified in the internal walls of the Property.
- The dampness in the gas meter cupboard in the sitting room.
- The dampness to the walls around the bath.

results in these items not being wind and water tight or reasonably fit for human habitation.

The Tribunal also determine that as there was no evidence of dampness in the kitchen cupboards, the kitchen roof and the kitchen walls at the time of the inspection.

7.2.2 The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1) (b) of The Housing (Scotland) Act 2006).

The Tribunal determine that:

- The deflection to the floor boards in the bedroom off the sitting room.
- The insecure front door and the fact that daylight could be seen between the door and the door frame.
- The insecure back door and the fact that the catch and missing inner glass panel of the back door and

- The absence of a door to the external store.  
results in these items not being wind and water tight or reasonably fit for human habitation and not in a reasonable state of repair and proper working order.

The Tribunal determine that there was no evidence that the kitchen floor under the Tenant's freezer is not in a reasonable state of repair and proper working order at the inspection and the stored items within the external store are not a matter that falls within the Repairing Standard.

7.2.3 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 proper working order (Section 13(1) (c) of The Housing (Scotland) Act 2006).

The Tribunal determine that the Gas Safety Certificate was a valid certificate.

The Tribunal determine that no EICR certificate has been provided by the Landlords as required.

The Tribunal determine that the visible defects to the electrical installation and the absence of a valid EICR results in the electrical installation not being in a reasonable state of repair.

7.2.4 The fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and proper working order (Section 13(1) (d) of The Housing (Scotland) Act 2006).

The Tribunal accept the photographs of the hall carpet provided. They note that the photographs show that the carpet was poorly fitted and was consequently a tripping hazard. Therefore the Tribunal determine that the hall carpet was not in a reasonable state of repair.

The Tribunal determine that the fact that there is no door handle to the gas meter cupboard door results in it being not in proper working order.

The Tribunal determine that the fact that the hinges are missing from the door of the small attic cupboard in the first floor bedroom right results in it being not in proper working order.

The Tribunal determine that the fact that door cannot operate correctly results in it being not in proper working order.

The Tribunal determine that the presence of the dampness, the missing tiling around the bath and the absence of some grouting to the tiling around the bath results in them not being in a reasonable state of repair and proper working order.

The Tribunal determine that as no evidence was provided that the TV aerial wire in the sitting room is not working the were unable to determine if it is a reasonable state of repair and proper working order.

7.2.5 The house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1) (f) of The Housing (Scotland) Act 2006).

The Tribunal determined that the heat and smoke detectors in the Property do not comply with the statutory guidance.

7.2.6 The house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1) (g) of The Housing (Scotland) Act 2006).

The Tribunal determine that the carbon monoxide alarm in the Property does not work and does not comply with the statutory requirements.

7.2.7 The house does not meet the tolerable standard.

The Tribunal determine that due to the presence of significant rising and penetrating damp, the property fails to meet the Tolerable Standard.

Due to the presence of items in the external store the Tribunal were unable to examine the wall partition behind the kitchen wall units and were therefore unable to determine if the wall was sufficiently insulated such that it complied with the tolerable standard.

7.3. The Tribunal accordingly determined that the Landlords have failed to comply with the duties imposed by Sections 13 (1)(a)(b)(c)(d)(f) (g) and (h) of the Act, as stated.

8. The decision of the Tribunal was unanimous.

## **Appeal**

**9. 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**  
.....Chairperson

16<sup>th</sup> October 2019



# Housing and Property Chamber First-tier Tribunal for Scotland



Housing (Scotland) Act 2006

1 Institution Street, Macduff, Aberdeenshire, AB44 1UT

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

Initial Inspection : Schedule of Photographs

Inspection Date: 17/09/2019

16/10/19  
J Taylor



Photograph 1 Front Elevation



**Photograph 2 Ground floor entrance - Existing hard wired smoke alarm removed, temporary battery alarm present.**



**Photograph 3 First floor landing - Existing hard wired smoke alarm removed, no CO alarm present.**



Photograph 4 Overview of front door.



Photograph 5 Damaged sash lock.



Photograph 6 Damaged lock keep.



Photograph 7- Ground floor entrance - carpet now removed and cable at sitting room threshold.



Photograph 8 Moisture meter reading red (99%) to gable wall in sitting room, near ceiling.



Photograph 9 Moisture meter reading amber (16%) to gable wall in sitting room, mid height.



Photograph 10 Moisture meter reading red (99%) to front wall of sitting room.



Photograph 11 Moisture meter reading red (99%) to internal wall of sitting room near bedroom door.





Photograph 12 - Moisture meter reading red (99%) to front wall at ground floor entrance. Both sides of door affected.



Photograph 13 - Moisture meter reading red (99%) to side of window dormer, right hand bedroom.



Photograph 14 - Moisture meter reading red (99%) to rear roof slope, right hand bedroom.



Photograph 15 - Moisture meter reading red (99%) to side of window dormer, left hand bedroom.





Photograph 16 - Gas meter cover, sitting room.



Photograph 17 - Gas meter cupboard - internal.



Photograph 18 Moisture meter reading amber (20% approx) to wall above corner unit in kitchen.



Photograph 19 Moisture meter reading green (13%) to ceiling in kitchen.



Photograph 20 External store attached to kitchen. Door missing, exposed electrical switches.



Photograph 21 Kitchen flooring behind freezer.



Photograph 22 Kitchen skirting and plasterboard behind freezer.



Photograph 23 Rear door window - catches broken/missing.



Photograph 24 Rear door latch defective.



Photograph 25 Right hand first floor bedroom - cupboard door off hinges.



Photograph 26 - Moisture meter reading red (99%) to tiling at bath.



Photograph 27 - Moisture meter reading red (99%) to wall left side of bathroom window.





Photograph 28 - Moisture meter reading red (99%) to landing wall left side of bathroom door.



Photograph 29 - Sliding door to boiler cupboard at first floor landing.



Photograph 30 - Electrical connection to cooker hood in kitchen.