

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Re: 48 Buchan Road, Troon, KA10 7BT (“the House”)

Title number: AYR 15272

Chamber Ref: FTS/HPC/RP/23/4027

Miss Vikki Malcolm and Mr Robert Ward, residing at the House (“the Tenant”)

Ms Kathryn Lydon, 18 Benton Street, Hadleigh, IP7 5AT (“the Landlord”)

Tribunal Members:

Nicola Weir (Legal Member) and Donald Wooley (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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 14 November 2023, the Tenant applied to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues

affecting the House. The repairs issues identified in the application and which had been notified by the Tenant to the Landlord by email in advance of submitting the application to the Tribunal, were as follows:-

- The flat is not wind and watertight due to the front door seal being broken so it does not fully close which creates a whistling noise and a draft
- All of the windows with the exception of the living room have broken catches (one window is completely broken) so if opened they will not close properly again which mean the wind and rain get in
- A hole in the roof at the back bedroom/bathroom which is creating black mould on the ceiling and throughout the bathroom
- There is inadequate ventilation in the property as the extractor fan is clogged so is ineffective and also because the windows cannot be opened
- The guttering at the front of the property is also broken
- The shower is leaking
- Gas Safety Check will need done after 14 November 2023.

The application paperwork advised that these repairs were outstanding, despite having been notified to the Landlord's letting agent and, following their withdrawal from acting for the Landlord, to the Landlord herself. Supporting documentation was submitted with the application, including a copy of the tenancy agreement (Private Residential Tenancy commencing 29 July 2022), some photographs of the property and some copy email correspondence with the Landlord's former letting agent, The Property Box, and with the Landlord herself.

The Tribunal obtained a copy of the title deed and Landlord Registration details in respect of the House and it was noted that both are in the name of the Landlord and appeared to be in order.

2. On 14 December 2023, a Legal Member of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal, Inspection and Hearing was issued to the parties on 29 January 2024, requesting that any written representations should be lodged with the Tribunal by 19 February 2024. Notification to the Landlord was by the Royal Mail Recorded Delivery/'signed for' service. A 'track and trace' delivery receipt (reference KD130567910GB) was obtained by the Tribunal Administration from Royal Mail indicating that delivery was made on 1 February 2024 and signed for.
3. No written representations were lodged by or on behalf of the Landlord. On 6 February 2024, the Tenant lodged some further documentation, being copy email correspondence between herself and the Landlord's former letting agent November 2023, spanning the period 26 September 2022 to 28 June 2023. Some of the later emails had also been copied to

the Landlord direct and to the local authority, South Ayrshire Council (Environmental Health and Landlord Registration).

4. The Tribunal Members inspected the House on 15 March 2024 at 10am. The Tenant, Miss Vikki Malcolm, was in attendance.

Findings on Inspection

5. A Schedule of Photographs taken during the Inspection by the Ordinary (Surveyor) Member and dated 18 March 2024 is attached to this Statement of Decision. Site observations were as follows:-

Description

A top floor purpose built flat in a three-storey building. Access is taken via a common entry stairwell shared with five other occupiers.

Site Observations

With the exception of the living room which has double glazed windows, the remainder of the windows in the flat are of single glazed PVC construction. Weather conditions at the date of the inspection were relatively cold and damp and throughout the property all of the windows, with the exception of the living room were running with condensation.

The kitchen window catch/handle is very difficult to operate or open.

At the window in "bedroom one" (front of the House), there is a significant gap of approximately one inch around the bottom left corner when in the closed position. Screws have been fitted to mitigate the effects of the gap although these were removed for the benefit of the Tribunal's inspection. The screw holes remain visible. Significant condensation and mould has also affected the windows in bedrooms two and three with water lying in the channel at the base of the window panes. The windows are difficult to operate.

Significant mould, damp and condensation is particularly evident in "bedroom three" (back of the House) affecting the outer wall and ceiling. This area also coincides with an external hole in the eaves of the roof. The plaster adjacent to the window, where there is significant mould, has "bubbled" and this area appears to have been previously treated with an "anti-fungal" paint.

The bathroom walls and ceiling are covered in mould particularly around the bath, shower attachment, wc and wash hand basin. The paint, previously covering the wall tiles is flaking and peeling as a result of the extremely high levels of damp and condensation. The electrical ventilator in the bathroom ceiling is operational, when the light switch is on, although is not fully functional as it has become "clogged" and ineffective. The bathroom window is capable of opening although relatively stiff and difficult to operate.

There is an electric “Triton” shower fitting above the bath. It is in need of repair as there is a significant escape of water from the base of the electrical fitting when in operation.

At the front wall of the living room towards the north-west corner of the building, there is significant evidence of mould, condensation and defective wall plaster at an area where there are a number of “random loose wires”.

The front door appears functional, there was no evidence of any draughts at the time of inspection and when in the closed/locked position the triple lock mechanism was functioning satisfactorily.

There is evidence of birds nesting in the roof space immediately above the flat, with a relatively large hole in the eaves being the likely point of entry. Viewed externally there is a large section of missing fascia and soffit boarding in the eaves/roof at this area. A missing ridge tile is also evident although this is not immediately above the flat.

The eaves guttering on the front elevation is broken and leaking.

The Tenant was unable to exhibit a valid and satisfactory gas safety certificate or a valid and satisfactory Electrical Installation Condition Report (EICR).

Evidential Hearing

6. Following the Inspection of the House, the Tribunal held an in-person Hearing at 12.15pm at Russell House, King Street, Ayr, KA8 0BQ. The Tenant, Miss Vikki Malcolm, was in attendance. The commencement of the Hearing was delayed by 5 minutes to give the Landlord an opportunity to attend late but she did not do so.
7. Following introductions and introductory comments from the Legal Member, a summary of what had been noted by the Tribunal at the Inspection of the House earlier was presented by the Ordinary Member and Miss Malcolm commented on same and provided further background information in respect of the various issues affecting the House and her communications with the Landlord’s former letting agents and, more recently, the Landlord herself.
8. Miss Malcolm confirmed that the tenancy commenced on 29 July 2022, at which point The Property Box, the Landlord’s letting agents handled everything and was her point of contact in respect of repairs. She lives at the House with her partner who is a joint tenant and her two children. She first reported issues with the House, in particular, the windows, in September 2022 and made reference to the copy email correspondence she has lodged with the Tribunal from which it was noted that the earliest email lodged was to The Property Box dated 26 September 2022. The Property Box stated that they were appointing tradesmen to attend at the

House but nothing happened, which led to Miss Malcolm contacting the letting agent several further times by email during October and November 2022. She updated them on further issues that had arisen with the windows and by then, also with the roof, the bathroom light, and black mould. She included some photographs with her emails. Tradesmen appointed by The Property Box did come out a few times from around November/December 2022. She was provided with a new oven. They applied some anti-mould paint here and there and screwed one of the bedroom windows shut as it had blown in during a storm. Other than that, The Property Box said that they had reported matters to the Landlord and were awaiting authority from her before they could do anything else. Miss Malcolm sent further emails from April 2023 onwards. Some issues were recurring such as the issue with the bathroom light and the black mould and additional issues had also arisen by then with the windows and birds nesting in the loft.

9. As nothing was rectified, Miss Malcolm became frustrated and sought advice from her local authority, South Ayrshire Council, and from around June 2023, she copied their Environmental Health and Landlord Registration departments into her emails to The Property Box, as well as the Landlord. Miss Malcolm informed them of the delays and failures in rectifying the various issues and also her concerns about the effects of the cold, damp and mould on the health of her family members, particularly her partner who was suffering from asthma. Representatives from both local authority departments visited the House in June 2023 and were thereafter in contact with the Landlord. Miss Malcolm advised that she was subsequently told by The Property Box that they were no longer acting for the Landlord and that she would require to contact the Landlord direct. She was also informed that the Landlord's Landlord Registration had expired (although she is aware from the Tribunal enquiries made when she applied that there is now a Landlord Registration in place). Miss Malcolm notified the Landlord by email of all the issues affecting the House prior to submitting her Tribunal application in November 2023. She did not hear anything in response from the Landlord but on 21 November 2023, South Ayrshire Council contacted her to advise that works would be undertaken by them, as property factor, to repair the roof following the storm damage, as this is a common repair. Miss Malcolm thinks that, of the 6 flats in her block, 2 are Council owned and the others are owner-occupied or private lets. She was told that the works would be undertaken in January 2024 but, when the contractors came out, she was told that, due to the birds nesting in the roof, the works would be delayed until the birds were gone.
10. Miss Malcolm confirmed that, out of the blue, she had been copied in to an email from the Landlord last week which had been an email addressed to the Tribunal in which the Landlord had stated that the roof had been fixed. A check was made by the Tribunal Clerk and there was no sign of any email having been received from the Landlord. Miss Malcolm advised that she had replied to the Landlord to tell her this was not the case. Miss Malcolm had also tried to copy in the Tribunal in her

response to the Landlord but she got an error message back, so wondered whether there may have been an error in the email address for the Tribunal which the Landlord had used. Miss Malcolm did not have a copy of the email with her. The Legal Member requested that she email these email communications to the Tribunal, following the Hearing, and Miss Malcolm confirmed she would do so. Miss Malcolm confirmed that the Landlord had not stated anything in her email regarding any of the other repair issues included in the application.

11. It was also noted from Miss Malcolm that, further to her application, a tradesman did attend at the House to carry out a Gas Safety Inspection on 22 February 2024. However, she was not provided with a copy of the report. Miss Malcolm was asked whether, in connection with the bathroom light issue, or the issues with the electric shower, an Electrical Installation Compliance Report (“EICR”) had been carried out, or if she had been provided with a copy of the current EICR at any time, but she stated she had not.

12. Miss Malcolm was asked about any impacts the various repairs issues have on herself and her family. She confirmed that she does try to ventilate the house to help with the condensation and mould issues by opening the window vents. She tends not to open the windows, other than the living room window, very often due to the difficulties opening and closing them again. She is often unable to close the windows properly herself and her partner works away sometimes, meaning that she has to wait until he comes home to get the windows closed. She cannot open the window in her daughter’s bedroom at all now as the tradesman who came to look at the window after it blew in completely during a bad storm said it needed replaced but screwed it shut as a temporary fix. Miss Malcolm said that there are drafts from all the windows and at the front door when it is windy and that this makes the house very difficult to heat. She stated that she had to apply tape around the loft hatch in the hall because, when it is windy, due to the hole in the roof, the hatch would constantly lift and bang shut. She was also concerned that the birds nesting in the roof might be able to access the house with the loft hatch lifting. The birds accessing the roofspace through the hole in the roof make a lot of noise which is a nuisance. Miss Malcolm states that she constantly tries to clean off the mould but that it just comes straight back. In the bathroom, the non-washable paint on the walls is coming off due to the condensation and lack of ventilation. She has towels sitting on all the windowsills to soak up the condensation. Although the living room window is better, because the living room is open plan to the kitchen and the kitchen windows are not good, the living room is cold too. The broken gutter is above the living room window so there is a constant drip in front of the window when it is raining, as had been witnessed by the Tribunal Members at the Inspection. The leak from the bottom of the shower unit when the shower is on is a nuisance as it is quite a bad leak and the water pours everywhere. It is also concerning as it is an electric shower and there have also been repeat issues with the bathroom light not working, although it currently is. Miss

Malcolm confirmed that the electrical tradesman who fixed the bathroom light did not carry out a full inspection of the electrics or other appliances in the house and she confirmed that she has never been provided with a copy of an EICR. Miss Malcolm is frustrated at the considerable time they have been waiting to get these issues fixed and is worried that the damp and mould may be adversely affecting her family's health. Her partner suffers from asthma which she knows can be worsened by damp and mould. He has lost a lot of weight through being unwell. She feels her daughter gets unwell a lot and seems to stay unwell for longer. Miss Malcolm herself has an underactive thyroid and wonders if the condition of the property exacerbates that. She confirmed that she would just like these things fixed so that they can have a more comfortable, pleasant home to live in.

13. The Tribunal drew the Hearing to a close and confirmed that parties would be advised of the Tribunal's decision in writing as to whether the Tribunal decided to make a Repairing Standard Enforcement Order ("RSEO") in respect of the House and, if they did so, what repairs were required and the timescale for these to be carried out. Miss Malcolm was thanked for her attendance at the Inspection and Hearing.
14. Subsequent to the Hearing, on 15 March 2024, the Tenant submitted to the Tribunal by email the email correspondence with the Landlord that she had referred to at the Hearing. This has since been circulated to the Landlord. The Tribunal noted that there was an email dated 4 March 2024 which the Landlord appeared to have tried to submit to the Tribunal but had addressed it to "HMCAAdmin" as opposed to "HPCAdmin" which was likely the reason it had not been received by the Tribunal. The Landlord had quoted the case reference number in her email, so must have safely received the original papers from the Tribunal, in accordance with the 'track and trace' delivery receipt mentioned above. The Landlord had copied the Tenant in and stated in this email *"I am writing to let you know that work to the roof of above property was carried out by the local authority and should now be completed. This will alleviate the moisture issues."*
15. As had been stated by the Tenant at the Hearing, the Tribunal noted that she had responded to the Landlord on that same date to advise that the works to the roof had not been done. There followed several other emails whereby the Landlord advised the Tenant that she was surprised at this as her understanding from South Ayrshire Council was that the works were commencing in December or January. The Landlord copied the Tenant in on her subsequent emails with South Ayrshire Council dated between 8 and 13 March 2024 in which she asked for an update on the works; South Ayrshire Council explained the reasons for the delays (including an extension of time sought by the Landlord and another owner to obtain alternative quotes which were not then produced); South Ayrshire Council originally stated that the works were due to commence in the first week in April 2024, then amended this to a later unspecified date due to the existence of nesting birds in the roof.

Findings in Fact

1. The tenancy in respect of the House between the parties commenced on or around 29 July 2022 (tenancy agreement not produced).
2. The Tenant had notified the Landlord of repair issues outstanding prior to submitting this application to the Tribunal.
3. The Landlord had previously had The Property Box, letting agents, acting for her in the management of this tenancy.
4. The Tenant first reported repair issues to the Landlord's letting agent in September 2022.
5. The Tenant had to repeatedly report issues to the Landlord's letting agent before anything was done.
6. Tradesmen instructed by the letting agent eventually attended at the House in or around November or December 2022 and carried out some minor repairs and works.
7. Some of the issues recurred and further issues arose and were again reported by the Tenant to the letting agent.
8. The letting agent advised the Tenant that they were awaiting authority from the Landlord before instructing any further repairs.
9. No further repairs were carried out.
10. In June 2023, the Tenant sought advice from South Ayrshire Council and representatives from their Environmental Health and Landlord Registration sections inspected the House.
11. The Landlord's letting agents subsequently withdrew from acting for her.
12. The Tenant and South Ayrshire Council thereafter contacted the Landlord directly about the outstanding repairs.
13. The Tenant received no communication from the Landlord.
14. The Tenant submitted the Tribunal application on 14 November 2023.
15. Notification of the application and the details of the Inspection and Hearing fixed for 15 March 2024 were sent to the Landlord by Recorded Delivery post on 29 January 2024 and delivered/signed for on 1 February 2024.

16. No written representations were submitted by the Landlord in response to the application, the last date for representations being 19 February 2024.
17. The Tenant was copied in to an email from the Landlord dated 4 March 2024 which was addressed to the Tribunal but at an incorrect email address.
18. The Tenant had replied to the Landlord by email on 4 March 2024 and copied the Tribunal in but at the same incorrect email address.
19. The Tribunal did not receive either email of 4 March 2024 prior to the Inspection and Hearing.
20. The Landlord did not attend the Inspection or Hearing.
21. Reference is made to the Tribunal's Findings on Inspection, which took place on 15 March 2024.
22. The only issue included in the application which had been attended to prior to the Inspection was that a Gas Safety Check was carried out on 22 February 2024, although the Tenant had not been provided with a copy of the report.
23. Other repair issues included in the application were still outstanding at the time of Inspection.
24. The House does not meet the Repairing Standard in several respects.
25. At the Tribunal's request, following the Hearing, the Tenant submitted the two emails dated 4 March 2024, together with subsequent emails between herself, the Landlord and South Ayrshire Council.
26. The email correspondence referred to above deals only with the required roof repair which is still outstanding.

Reasons for decision

1. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection, the supporting documentation submitted by the Tenant and the oral evidence heard from the Tenant at the Hearing.
2. The Tribunal was satisfied from the information before it that the Tenant had been complaining of repairs issues affecting the House since September 2022 and had notified the Landlord of the alleged repairs issues and works required in advance of the Tribunal application being made, all in terms of Section 14(3) of the 2006 Act. The Tribunal was also satisfied from the evidence heard that the Landlord had not carried out the works required within a reasonable period of time, in terms of

Section 14(4) of the 2006 Act. Some minor works had been carried out in November or December 2022 but these did not resolve the issues. The only repair issue raised in the application which had been attended to was that a Gas Safety check which was overdue had recently been carried out. However, the Tenant had not been provided with a copy of the Gas Safety Certificate.

3. Given the present condition of the House, the Tribunal was satisfied that repairs and remedial works were required in order for the House to meet the Repairing Standard in all respects, in terms of the issues raised in the application.
4. The Tribunal was satisfied that the single glazed windows throughout the House (other than the living room window which is double-glazed) are not wind and watertight and not in a reasonable state of repair or proper working order. They are ill-fitting, some allow drafts in and all were affected badly by condensation. The windows do not open or close easily. They are stiff and the opening/closing mechanism does not work properly or easily. The Tenant had towels placed on the window sills to soak up the condensation. There was mould affecting the décor around the windows, damp staining and damaged paintwork and decor, particularly evident in the bathroom and "bedroom three". There was a significant gap at the bottom of the window in "bedroom one", letting in a draft, and that window had been nailed/screwed shut by a tradesman acting on behalf of the Landlord. Other areas of the House were also affected by mould. The Tribunal was satisfied from visual inspection, damp meter readings and actively testing the opening/closing mechanism of the windows that both Sections 13(1)(a) and (d) of the Repairing Standard were not met in these respects.
5. The Tribunal was satisfied from visual inspection from outside and inside the House, including from within the roofspace that there was a sizeable hole in the roof and that area was also affected by missing/broken fascias and soffit boards. There was evidence of birds in the roofspace and the Tribunal was satisfied that the visible hole in the roof was their likely point of entry. The Tribunal was also satisfied that the location of the hole in the roof (above "bedroom three") was likely to be contributing to the damp and mould which affected both the walls and ceiling in that bedroom. Again, from visual inspection of the guttering situated above the living room window, both from inside and outside the House, it was evident that the guttering was broken and leaking. The Tribunal was satisfied that Sections 13(1)(a) and (b) of the Repairing Standard were not met in these respects.
6. The Tribunal was satisfied, from visual inspection of both the extractor fan and the electric shower in the bathroom, whilst both were operating, that the extractor fan was clogged with debris and not functioning properly and that the shower was leaking badly from the bottom of the shower unit. The Tribunal had concerns regarding the shower leak, particularly as it was an electric shower and the Tenant had indicated

previous issues with the bathroom light (although the bathroom light was not an issue included in the application). The Tribunal also considered that both the escape of water from the shower unit and the issues with the extractor fan were likely contributing to water damage, condensation and mould affecting the bathroom. The Tribunal was accordingly satisfied that neither Sections 13(1)(c) nor (d) of the Repairing Standard had been met in these respects.

7. The Tribunal was not satisfied that Sections 13(1)(c) of the Repairing Standard had been met in that neither the Tenant, nor the Tribunal had had sight of a Gas Safety Record, following the recent gas safety check which the Tenant advised had taken place.
8. The Tribunal did not see any evidence from their Inspection that the front door did not meet the Repairing Standard, so made no order in this respect.
9. Although the missing ridge roof tile was clearly visible from outside the House, this was not included in the application and was not directly above the House itself so is not included in the order. However, as a general observation, the Tribunal hoped that this would be drawn to the attention of the local authority or any contractor involved in subsequent roof repairs so that it could be rectified at the same time.
10. The Tribunal is accordingly of the view that it requires to make a Repairing Standard Enforcement Order ("RSEO") in respect of the outstanding matters specified in paragraphs 4,5,6 and 7 directly above. Given the nature of the required works, the Tribunal is of the view that a period of 12 weeks is an adequate and reasonable timescale for these works to be completed.

Decision

11. The Tribunal accordingly determined that the Landlord had failed to comply with duties imposed by Section 14(1)(a)(c) and (d) of the 2006 Act to ensure that the House meets the Repairing Standard.
12. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the 2006 Act.
13. The decision of the Tribunal was unanimous.

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.

In terms of Section 63 of the Act, 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.

N Weir

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Signed..... Date: 26 March 2024
Nicola Weir, Legal Member of the Tribunal

Schedule of Photographs
43 Buchan Road Troon KA10 7BT
FTS/HPC/RP/23/4027

Schedule of Photographs taken at the inspection on 15 March 2024



1. Front Elevation



2.

Condensation at kitchen single glazed window



3.



4.



5.



6.

Photographs 3-6 illustrate heavy condensation and mould around bedroom 1, single glazed window. Specifically **photograph 4** highlights “screw holes” used as a temporary measure to ensure window remains closed. **Photograph 6** shows ventilation feature at top rail of window.



7



8

Photographs 7 & 8 :- Condensation and mould around bedroom 2 window



9.



10.



11



12

Photographs 9 - 12:- Significant damp around bedroom 3 window



13



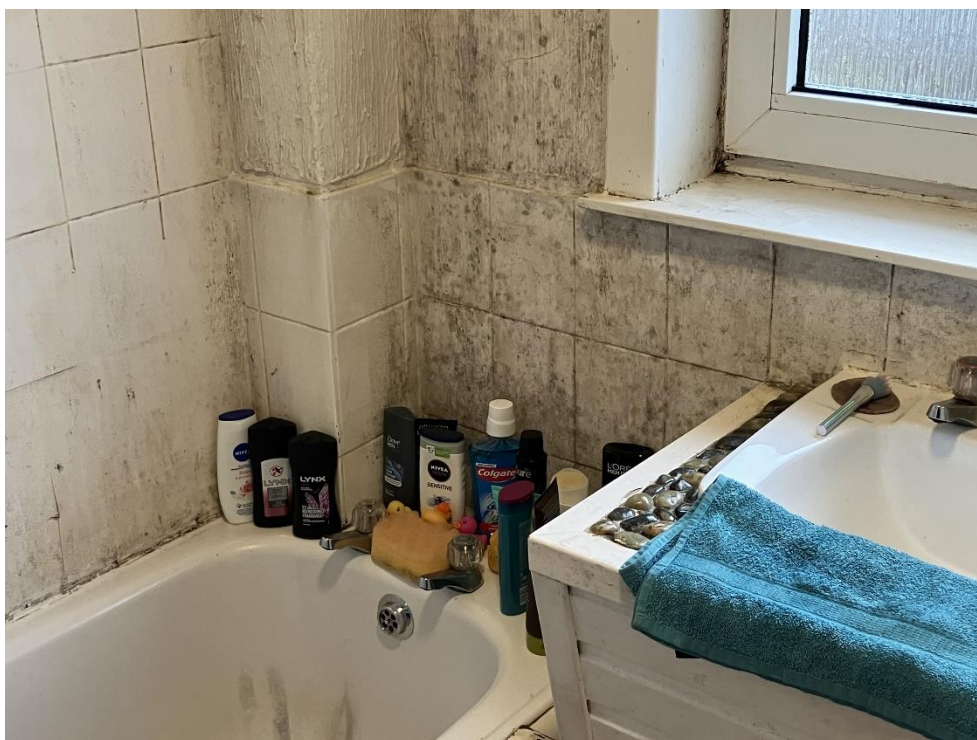
14



15

Photographs 13 & 14 :- Damp and mould at bedroom 3 ceiling

Photograph 15 :- Damp and mould towards floor level bedroom 3 corner.



16



17



18



19

Photographs 16-19:- Significant condensation and mould within the bathroom around bath, wash hand basin, wc and shower area.



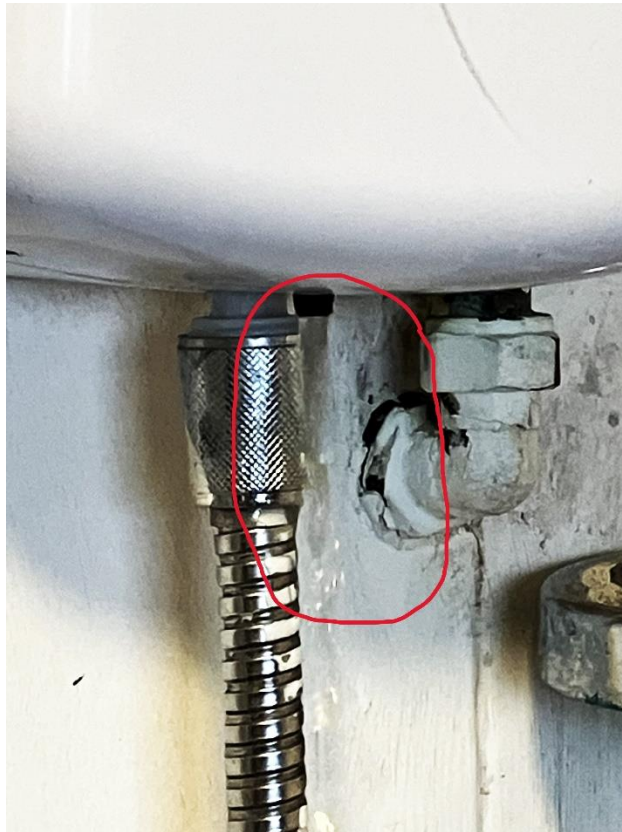
20

Photograph 20 :- Choked and ineffective electric ventilator in bathroom ceiling



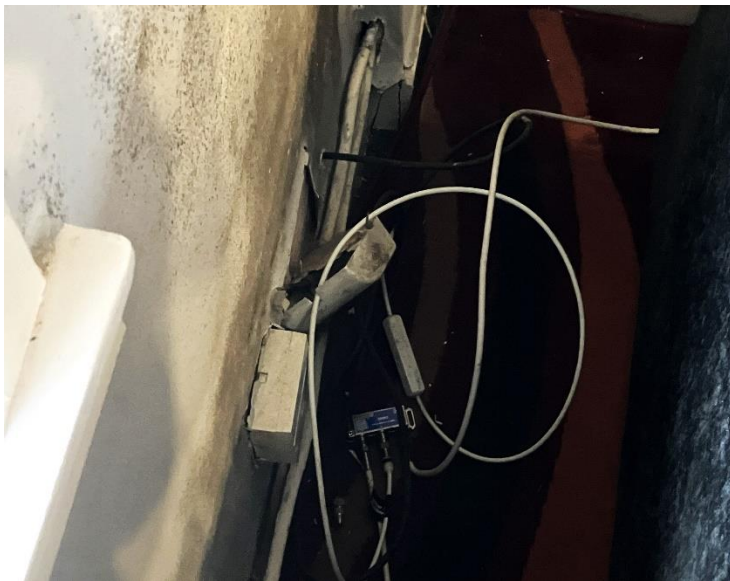
21

Photograph 21:- Significant mould and flaking paint around bath



22

Photograph 22:- Water escaping from electric “Triton Shower” when in operation.



23



24

Photographs 23 & 24:- Significant damp staining, mould and defective plaster around random wiring at front wall of living room.



25 – Front door in closed position



26

Photograph 26:- Evidence/debris from birds nesting in roof space



27

Photograph 27:- Circled area is a hole in roof/eaves, visible daylight, and is likely access for nesting birds.



28



29

Photographs 28 & 29:- External view of hole in roof/eaves on rear elevation including broken and missing fascia and soffit boarding.



30.

Photograph 30:- Missing ridge tile on roof.



31. Broken and corroded eaves front gutter, viewed from living accommodation

This schedule of photographs was taken during an inspection of the property by the First-tier Tribunal for Scotland, Housing and Property Chamber, on Thursday 15 March 2024 in connection with a Repairing Standard application under consideration.

In addition to the members of the Tribunal the tenant Ms Vikki Malcolm was in attendance during the inspection.

Donald Wooley MRICS
18 March 2024