

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

**Property:** 7 Prior Avenue, Canonbie, Dumfries and Galloway DG14 0UT  
("the Property"/ "the house")

**Sasine Description:** ALL and WHOLE that plot or area of ground with the dwellinghouse and others erected thereon known as 7 Prior Avenue, Eskdale, Canonbie, in the County of Dumfries, being the subjects more particularly described in Disposition by Annandale and Eskdale District Council in favour of Marion Graham dated 22 April and recorded in the Division of the General Register of Sasines applicable the County of Dumfries 14 May, both dates in the year 1992

**Chamber Reference:** FTS/HPC/RT/19/3345 and FTS/HPC/RP/2577

#### **Parties:**

Miss Ruth Robson, sometime 7 Prior Avenue, Canonbie, Dumfries and Galloway GG14 0UT ("the Tenant")

Dumfries & Galloway Council, Strategic Housing Services, Council Offices, Buccleuch Street, Dumfries DG1 2AD ("Third Party Applicant")

Mr John Kerr, 1 King Garth, Cargo, Carlisle CA6 4AU ("the Landlord")

**Tribunal Members** – George Clark (Legal Member/Chairperson) and Donald Wooley (Ordinary Member/Surveyor)

#### **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"), determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should be made in relation to application FTS/HPC/RT/19/3345. No Order was made in relation to application FTS/HPC/RP/19/2577.

## Background

1. By application, received by the Tribunal on 16 August 2019 and by further application, received by the Tribunal on 18 October 2019, the Tenant (in the first application) and the Third Party Applicant (in the second application) applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The first application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, and that the Landlord had not ensured the house meets the tolerable standard. The Tenant referred to the back door being draughty, tiling on the kitchen worktop needing to be grouted in places, missing tiles from behind the cooker, a gap beside an electrical socket in the kitchen and damp in the kitchen cupboards beside the sink, with rusting hinges. There was also damp above the window and above the sink. A leaking pipe in the bathroom had been repaired but there was significant damp in the walls of the corridor, where damp was coming through the carpet, in the porch and in the largest and smallest bedrooms, with slight damp in the middle-sized bedroom. All of these rooms had mould on the wooden window sills. Significant damp was coming through the carpet in the living room and there was slight damp in the far corner of the room. Externally, there were cracks in the wall at the sides of some windows and the patio door, with gaps between the brickwork and the windows and doors. All the windows had considerable condensation in winter and the sills were mouldy. The front door and the patio doors were wet with condensation from top to bottom. The garden fence was broken, the gate was rotted and paving slabs were broken.
3. The second application stated that the Third Party Applicant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, that any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The application included all the items mentioned in the Tenant's application and highlighted the mould growth over a significant area of the internal walls, areas around the doors and windows externally that had no sealant, and cracks in external roughcast and around the chimney which might allow wind and rain to penetrate the

fabric of the building. There was no mechanical extractor vent in the kitchen, the mechanical vent recently installed in the bathroom was in the wrong location to be of use and there was no interlinked smoke detector in the living room.

4. On 23 October 2019, the President of the Housing and Property Chamber intimated a decision to refer the Tenant's application under Section 22 (1) of the Act to a tribunal, gave Notice of Referral and of the date set for an inspection and Hearing and on 12 November 2019, the same intimation was given in respect of the Third Party application.
5. The Tribunal was advised that the Tenant had vacated the Property. This meant that the Tenant was deemed to have withdrawn the application, but the Tribunal decided, in terms of Paragraph 7(3) of Schedule 2 to the Act, to continue to determine the application as the matters complained of, if substantiated, could constitute a significant health and safety risk for any future tenants.
6. The Tribunal inspected the Property on the morning of 4 December 2019 and was admitted by the Landlord. The Third Party Applicant was represented by Mr Robert Rome, HMO Licensing & Landlord Registration Office and by Mr Adam Black, HMO Licensing & Private Landlord Registration Manager, Dumfries & Galloway Council. The Tenant, having vacated the Property was no longer a Part to proceedings, so was not present or represented at the inspection or the subsequent Hearing.
7. The Tribunal comprised George Clark (Legal Member/Chairperson) and Donald Wooley (Ordinary Member/surveyor).
8. A Schedule of Photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.

### **The Hearing**

9. Following the inspection, the Tribunal held a Hearing at Lochvale House, Georgetown Road, Dumfries. Mr Rome and Mr Black attended the Hearing. The Landlord was present at the Hearing.
10. Mr Rome, on behalf of the Third Party Applicant told the Tribunal that there was little to add to the written representations and the evidence the Tribunal had seen for itself at the Inspection. The Landlord told the Tribunal that he had been waiting for the bathroom to dry out before carrying out repairs to the adjacent walls. He added that he might remove the garden gate.
11. The Parties then left the hearing and the Tribunal considered all the evidence before it, including written submissions, oral evidence given at the hearing and the matters it had noted at the inspection.

## Findings of fact

12. The Tribunal makes the following findings of fact (references to Photographs are to the Schedule of Photographs taken at the inspection).

- The Property comprises a single storey semi-detached bungalow, originally built by and on behalf of the local authority, situated within an established residential area of similar properties. The property, unoccupied at the time of inspection, is of traditional brick cavity construction under a pitched roof clad with slates. The accommodation comprises entrance porch, entrance hall, living room, three bedrooms, kitchen and bathroom. It is double glazed and benefits from oil fired central heating.
- Internally, there are areas of mould affecting plasterwork specifically at the bathroom, hallway, entrance porch and kitchen particularly the area around the kitchen sink unit. In recent months a significant leak was identified in a water supply pipe in the bathroom. Remedial action was completed and the pipe now appears in good working order (Photograph 2).
- Within the bathroom, the "PVC wet wall lining" on the mutual wall with the hall has been damaged and there is a visible tear in the material (Photograph 3). The lining is therefore no longer protecting the surrounding wall plaster from water damage at this area.
- Moisture readings taken throughout the property specifically at those areas where mould was evident ranged from a negligible level of 11% to a maximum level of 23% (Photographs 4-9). Historically there have been two major sources of damp within the property. The defective plumbing in the bathroom, since repaired, and the defective wet wall lining within the bathroom. The shower is understood to have been in operation since the repair to the plumbing was completed and the defective wall lining continued, therefore, to be a source of damp until the property became vacant. Mould was also evident at the entrance porch adjacent to the entry door (Photographs 12 – 13). Readings taken at these areas identified no significant damp and there was no evidence of water ingress around the door.
- Supporting documents supplied with the application includes a "damp report" dated 29 July 2019 provided by Ian Gibson Associates Ltd. Throughout the report it highlights levels of moisture content at 22 – 25% affecting much of the concrete floor slab. Varying levels of dampness affecting floor coverings throughout the property and significant condensation affecting windows / sills, doors and door handles were also highlighted by the former Tenant in the first application. It is understood that the repair to the plumbing was completed shortly before the Ian Gibson report was commissioned.
- The property had, prior to the inspection been vacant for several weeks during which period the shower was not in use. There was no smell of damp within the property and there was no sign of damp affecting the carpets or floor slab where tested. Moisture readings obtained are localised and almost certainly the result of residual damp stemming

from a previous defect in the plumbing combined with a defect in the wet wall lining. Residual staining resulting from previous condensation, currently dry, was evident affecting a number of sills, windows and door frames (Photographs 14-17).

- There is a wall mounted electrical ventilator in the bathroom and natural ventilation is also provided at the window. Its location on the outer wall is satisfactory. Within the kitchen there is, with the exception of a "filter cooker hood", no mechanical ventilation although as ventilation is provided from the windows there is no legal requirement for additional ventilation.
- Within the kitchen there is a gap next to an electrical wall socket which is surrounded by ceramic tiles (Photograph 10) and wiring is clearly visible through the gap behind the facing of the socket. The high levels of historic damp within the property, notably in the hall, may also have come into contact with and had an effect on the electrical wiring.
- Around the worktop area at the sink unit there are localised areas of defective grouting at the ceramic tile finish (Photograph 11)
- There are hard wired interlinked smoke and heat detectors within the hall and kitchen although, in contravention of current Scottish Government guidelines, there is no smoke detector within the living room.
- Externally, around the base of the patio doors and projecting sills there are significant areas of defective and missing pointing (Photographs 18 – 19). Although there is no corresponding evidence of damp internally at these areas, they do represent a defect in the building and a latent source of future damp penetration.
- There are cracked and broken paving slabs at the footpath in the rear garden which represent a health and safety issue (Photograph 21). At the chimney head the rendering and concrete coping is badly cracked and in need of repair (Photograph 20).
- The timber gate leading to the rear garden is damaged and in need of repair. Due to a missing section of timber on the gate there are several exposed and projecting nails. The closing mechanism is also defective (Photographs 22 & 23).
- There is, on the rear wall in particular, clear evidence of cracking above the windows and specifically around the concealed lintels (Photograph 24). This is almost certainly as a direct result of old localised movement within the property and is relatively common in properties of this age and design. There is no evidence of corresponding water ingress when viewed or tested internally. The rendering on the external walls, and, in particular, on the rear elevation, displays evidence of significant wear although this appears to be commensurate with a building of this age and design and not of a serious nature (Photograph 25).
- The first application to the Tribunal submitted by the Tenant, who has since vacated the property and is no longer an interested party, included most of the items raised in the subsequent Third Party application. Specifically, it also included reference to a broken fence at the garden and missing wall tiles behind the cooker. The garden fence is broken and in need of repair (Photograph 26). There are no wall-

tiles at the location where the cooker would be positioned although this is not unusual (Photograph 27).

### **Reasons for Decision**

13. The Tribunal determined that a Repairing Standard Enforcement Order should be made, but felt that, for ease of administration, it was not necessary to make what would be identical Orders in relation to two different applications. The Tenant had vacated the Property and was no longer a Party to proceedings and the view of the Tribunal was, therefore, that expediency suggested that the Order be made in relation to the Third Party application, with no Order being made in relation to the first application by the former Tenant.
14. It was clear to the Tribunal and accepted by the Landlord that works were required to repair or renew the damaged wet wall lining in the bathroom, in order to prevent recurring water damage. The mould on various internal walls required to be removed and work was required to the work top surrounding the kitchen sink. Adaptations were required to the smoke detection system to make it comply with current Scottish Government guidelines. In particular, a smoke detector should be fitted in the living room and interconnected with the existing smoke detector in the hall and the heat detector in the kitchen. The issue regarding the gap adjacent to the wall mounted electrical power socket in the kitchen had to be resolved and, as there was a possibility that the high levels of historic damp may have affected the electrical installation, the Order should require the landlord to provide the Tribunal with an Electrical Installation Condition Report which, in the view of the Tribunal, was satisfactory. The defective joints around the base of the patio doors should be repaired as should the defective rendering and coping at the chimney, to ensure the Property is wind and watertight. Repairs should also be carried out to the paving slabs in the rear garden and to the garden gate.
15. The Tribunal was unable to make an Order in respect of the timber fence in the rear garden, as it was not included in the Third Party application, but the Tribunal recommends that the Landlord restores it to a reasonable state of repair.

### **Decision**

16. The Tribunal, having considered all the evidence before it and the matters it had noted at the inspection, decided to make a Repairing Standard Enforcement Order in respect of the Property.
17. The decision of the tribunal was unanimous.



## **Right of Appeal**

**In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.**

**G Clark**

**Signed.**

**Date: 4 December 2019**

**Legal Member/Chairperson**

This is the Schedule of Photographs  
report & on the property State of Repair  
by the Char  
4/12/19

**7 Prior Avenue, Canonbie DG14 0UT**

**Schedule of Photographs taken at the inspection on 4<sup>th</sup> December 2019**



**(1) Front Elevation**



**(2) Repaired pipe bathroom**



**(3) Split in shower "wet wall" lining**



**(4 & 5) Positive moisture readings (23%) in wall adjacent to bath.**





**(6) Low reading (11%) bathroom**



**(7) Damp 19% reading below sink unit**



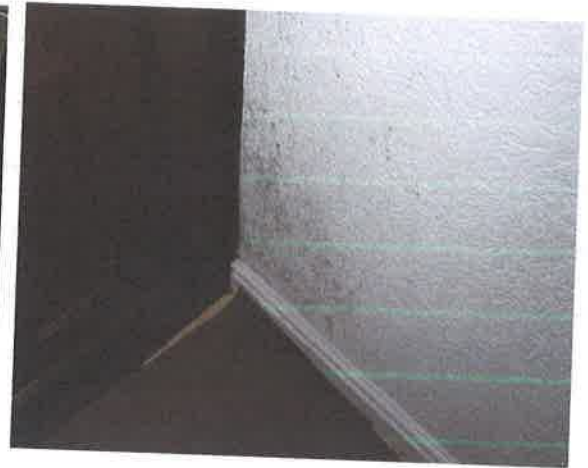
**(8 & 9) Damp staining and mould on hall wall**



**(10) Kitchen electrical socket**



**(11) Grouting at kitchen sink**



**(12 & 13) Damp staining at internal walls of entry porch**



**(14)**



**(15)**



**(16)**



**(17)**

**(14-17) Residual condensation staining at windows and patio door frames**





**(18 -19) Defective and missing pointing at patio doors**



**(20) Cracked render at chimney**



**(21) Cracked paving slab**



**(22 & 23) Projecting nails, broken spar and defective closing mechanism at garden gate.**



**(24) Cracking around window lintel**



**(25) Worn render at rear wall**



**(26) Broken fence**



**(27) "Missing" tiles at "cooker space"**