



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

Chamber Reference number: FTS/HPC/RP/23/3367

Re: Property at 33 Market Square, Coldstream TD12 4BH (“the Property”)

Title No: BER2996

The Parties:

Miss Caroline Gilroy, sometime 33 Market Square, Coldstream TD12 4BH (“the Applicant”)

Mr Christopher Paul Edwin Hanson, 38 Market Square, Coldstream TD12 4BH (“the Landlord”)

**Tribunal Members: George Clark, Legal Member
Greig Adams, Ordinary (Surveyor) Member**

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber, 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) of the Housing (Scotland) Act 2006 determined that the Landlord has not failed to comply with that duty. The Tribunal did not make a Repairing Standard Enforcement Order in respect of the Property.

Background

1. By application, dated 14 December 2023, the Third-Party Applicants applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland (“the Tribunal”) for a determination of whether the Landlords had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. By application, dated 18 September 2023, the Applicant sought a determination that the Property failed to comply with the Repairing Standard in that it was not

wind and watertight. In particular, the flat roof of the “lobby” was allowing rainwater to flow down the internal wall over the kitchen window and the kitchen door. She wanted the roof to be inspected by a suitably qualified professional and repairs to be conducted in a timely fashion.

3. The Tenant provided various documents in support of her application, including a copy of her Tenancy Agreement, a letter from the local authority regarding the condition of the Property and a large number of photographs.
4. An Inspection, scheduled for 22 January 2024 was postponed on the day, due to serious adverse weather which prevented the Tribunal Members from travelling to Coldstream.
5. The Tribunal received confirmation from the Tenant that she had vacated the Property, and accordingly, under Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006 (“The Act”), the Tenant was treated as having withdrawn the application under Section 22(1) of the Act. The Tribunal decided, however, on 15 March 2023, that the defects alleged by the Tenant, if established, would constitute a potential risk to the health and safety of future tenants of the Property and that it should continue to determine the application.

The Inspection

6. The Tribunal Members inspected the Property on the morning of 3 June 2024 and were admitted by the present tenant. The Tenant, no longer being a Party to the application, was not present. The Landlord was present. A Schedule of Photographs, taken at the Inspection, is attached to and forms part of this Statement of Decision. The following six paragraphs set out the methodology and findings of the Inspection and are findings of fact:
 7. *“A basic “qualitative assessment” utilising a Moisture Profiling technique providing a sub-surface/at depth moisture reading to the separating wall between the Kitchen and “Coal Bunker” was undertaken to review the water ingress/dampness complaint. The internal moisture sensor detects moisture to a depth of approximately 19mm (0.75”). The actual depth will vary depending upon the amount of moisture, the material under test, surface roughness, and other factors. Pinless measurement readings are ‘relative’ scaled (0~1000) whilst the LED display provides a traffic light colour dependant on the reading obtained with readings of most concern provided with a red coloured backscreen colour. Elevated moisture readings were evident across the separating wall at high level.*
 8. *“A limited “quantitative assessment” was also undertaken utilising the pin-mode of the moisture meter to the timber runner abutting the separating wall. Such meters are calibrated to timber and provide the true moisture content of any timbers tested. Elevated readings were recorded.*
 9. *“Infra-red images were also recorded utilising a Thermal Camera. Such Infra-red Images contain an array of colours. The Thermal Imaging System deployed on site detects Infra-red Radiation, which in basic terms means that heat is being observed*

instead of light. The Thermal Imaging System then automatically allocates a colour palette to the different temperatures which are detected. Colder temperatures were recorded at high level to the wall which combined with the elevated moisture readings would give the impression of moisture retention within the wall. On the balance of probability, it appears that dampness is resultant from the gutter blockages previously reported whilst the masonry walls will require sometime to dry and reach a suitable moisture equilibrium.

10. *“A review of the external configuration between the roofs evidenced a rather ad hoc infilled flat roof construction which has been poorly configured at the junction with the kitchen single storey outshot. The felt has been turned into the cast iron half round gutter and such part in essence are now incorporated as a valley gutter. A flat roof abutting a pitched roof in this scenario would typically incorporate a box section gutter to allow the bitumen felt to provide a continuous membrane whilst also extending approx. 300mm or so up the slated pitch (to the underside of the slates) to ensure that there is a minimum 150mm height achieved above the flat roof level.*
11. *“The existing poor configuration has resulted in a reduction in available volume of the original cast iron gutter (due to the bitumen felt dressed detail) whilst of more concern is that the detail is not able to effectively discharge any excess rainwater without such water being able to track back into the building.*
12. *“There are various other issues evident such as lead cover flashings and pipework penetrations not formed in accordance with good practice over the common flat roof area. In addition, there was noted to be various cracks to the render finish over the rear elevation coupled with a poor skew detail at the junction between the rear elevation at first floor and the slatework.”*

The Hearing

13. A Hearing was held by way of a telephone conference call on the afternoon of 3 June 2023. The Landlord was in attendance. The Tenant, no longer being a Party to the application, was not present.
14. The Ordinary Member of the Tribunal explained to the Landlord the findings of the Inspection, namely that the kitchen wall and surrounding area are affected by penetrating damp which appears to come from the gutter between the flat roof and the roof of the kitchen single storey outshot. When the gutter backs up through being blocked or inundated with rainwater, the water has nowhere to go, apart from down the wall of the kitchen, the former exterior wall of the Property.
15. The Landlord explained that the infilled flat roof construction is shared with the neighbouring property and that he has limited control over it and cannot, for example, simply remove it.

Reasons for Decision

16. The Tribunal noted that the gutter in question is presently clear of leaves and other debris and that the kitchen wall will, in due course, dry out, provided the gutter is not allowed to overflow again. The responsibility for keeping the gutter clear lies firmly with the Landlord. It is for him to ensure that it is regularly inspected. The gutter arrangement is far from ideal, but the Tribunal recognised that a more permanent solution, namely the removal of the flat roof or the replacement of the existing gutter with a box section gutter, was not within the control of the Landlord.

Decision

17. Having considered carefully all the evidence before it, the Tribunal made a finding that the Landlord had not failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act and decided not to make a Repairing Standard Enforcement Order.

18. The Tribunal's Decision was unanimous.

G Clark

Legal Member

3 June 2024
Date



**33 Market Square, Coldstream,
TD12 4BH
“the Property”/ “the House”)**

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SCHEDULE OF PHOTOGRAPHS



1 Aerial image taken over rear roofing areas.



2 Closer aerial view over rear outshoots.



3 View within Kitchen towards separating wall to "coal bunker" area.



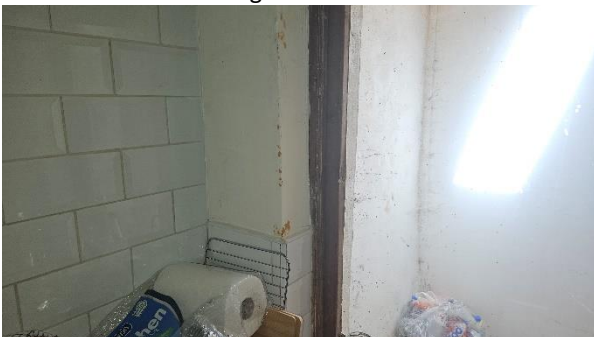
4 Separating wall within Kitchen to "coal bunker" area.



5 View of visual staining around Kitchen window.



6 View of visual staining around Kitchen window.



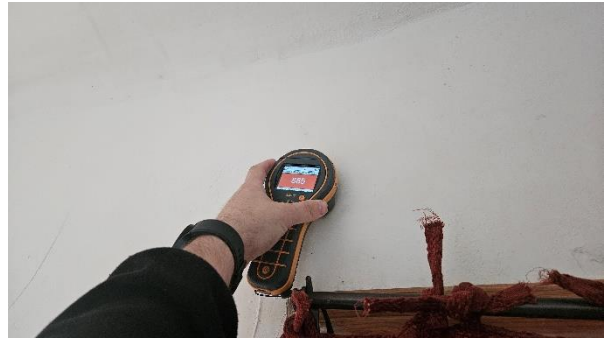
7 View of visual staining around Kitchen window.



8 Wall area above "coal bunker" door.



9 Elevated qualitative moisture meter readings above "coal bunker" door.



10 Elevated qualitative moisture meter readings above "coal bunker" door.



11 Elevated qualitative moisture meter readings above "coal bunker" door.



12 Elevated qualitative moisture meter readings above "coal bunker" door.



13 Elevated qualitative moisture meter readings adjacent to kitchen window.



14 "Coal bunker" skylight.



15 Kitchen sink waste, buckets set on floor.



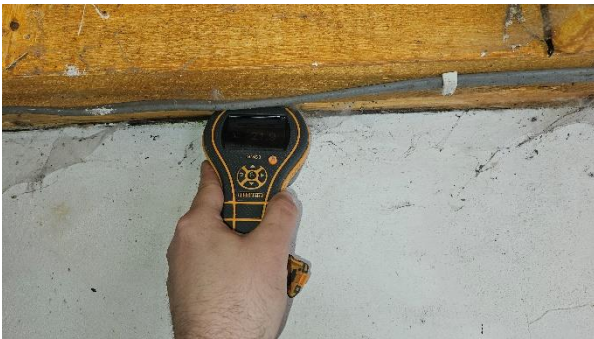
16 Soil and drainage pipework within "coal bunker".



17 Exposed hopper head adjacent to kitchen door within "coal bunker".



18 Inspection chamber to underground drainage – note: toilet paper debris.



19 High (21.9%) quantitative moisture readings to timber abutting separating wall to kitchen.



20 High qualitative moisture readings to separating wall between "coal bunker" and kitchen.



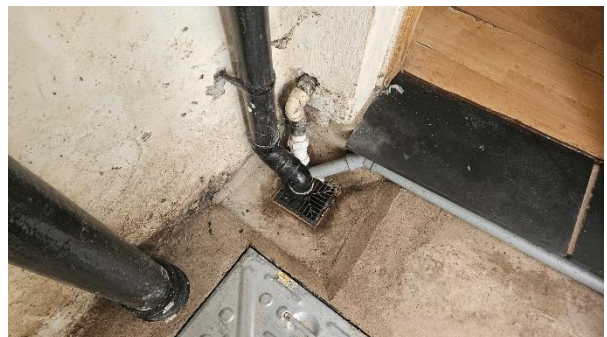
21 Condensation assessment – "coal bunker" walls 1.7°C above dewpoint at time of inspection.



22 Psychrometrics readings recorded.



23 Elevated qualitative moisture readings over kitchen door at lintel soffit.



24 Drainage gulley and branch pipework.



25 View from first floor to rear outshoot roofs.



26 Poor condition of render to rear elevation at first floor level and poor skew detail to junction with slatework.



27 View towards gable of adjoining property.



28 Rooflight over "coal bunker".



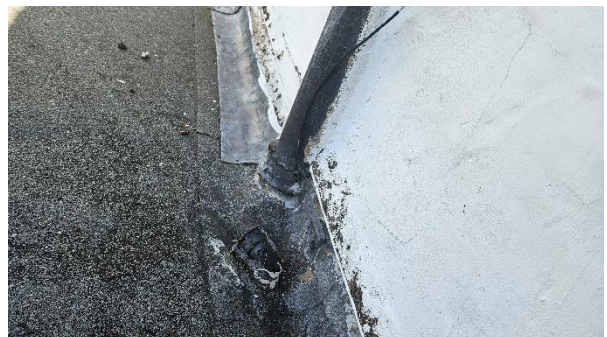
29 Poor skew detailing extending into gutter and over stop end, presence of moss growth at cracks indicating moisture retention.



30 Poor skew detailing, presence of moss growth at cracks indicating moisture retention.



31 Poor skew detailing, presence of moss growth at cracks indicating moisture retention.



32 Pipework penetration detail and lead cover flashings not installed in accordance with good practice.



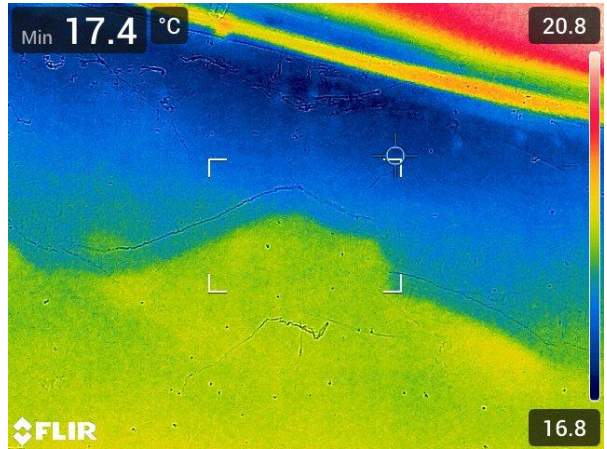
33 Front Elevation.



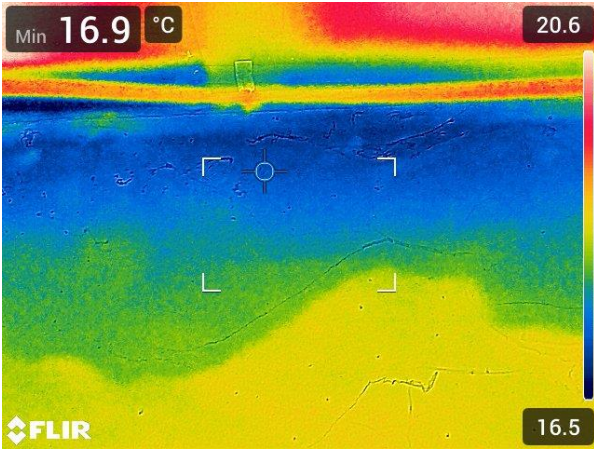
34 Rear Elevation.



35 Roof over Kitchen.



36 Thermographic image – top of separating wall (“coal bunker” side).



37 Thermographic image – top of separating wall (“coal bunker” side).



38 Close view of gutter detail.