

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

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**First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)**

**STATEMENT OF DECISION: Housing (Scotland) Act 2006, Section 24(1)**

**Chamber Ref: FTS/HPC/RP/24/0102**

**8/1 Grove Street, Edinburgh, EH3 8BB (Title number MID236791) (“the Property”)**

**The Parties:-**

**Mr Steinar Loekling and Dr Michelle May, 8/1 Grove Street, Edinburgh, EH3 8BB  
 (“the Applicants”)**

**Mairi Ann McKaig, 35 Hamilton Avenue, Glasgow, G41 4JE (“the Respondent”)**

**Sandstone, 14 Coates Crescent, Edinburgh, EH3 7AF  
 (“the Respondent’s Representative”)**

**Tribunal members**

**Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair**

**Mr. Greig Adams, Ordinary Member**

**DECISION**

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’), having made such enquiries as are fit for the purposes of determining whether the Respondent has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (hereinafter “the 2006 Act”) in relation to the Property, and taking account of the written documentation included with the Application and the parties' written and oral representations, determined that the Respondent has failed to comply with the duty imposed by section 14(1)(b) of the 2006 Act.

2. The tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the 2006 Act.
3. The decision of the tribunal was unanimous.

## **Procedure**

1. On 9 January 2024, the Applicants, who are tenants of the Respondent in the Property, made an application to the tribunal in terms of Section 22(1) of the Housing (Scotland) Act 2006, alleging that the Property does not meet the repairing standard (“the Application”).
2. The Applicants alleged that the elements of the Repairing Standard with which the Respondent has not complied are:
  - “(a) The house is wind and watertight and in all other respects reasonably fit for human habitation;*
  - (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; ...*
  - (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; ...*
  - (h) The house does not meet the tolerable standard.”*
3. The Applicants listed allegations as to how he considered that the Respondent has failed to meet the repairing standard in a paper apart:

### *“Description of Issue with Damp / Mouldy Walls.*

*At least 2 walls in both bedrooms are covered in damp and mould for over 6 weeks due to non-functioning gutter system. We have repeatedly requested for this to be fixed. We were finally given a date of today (08/01/2024), however we have heard nothing from the agency or service provider and no works have been started. Despite trying to contact the letting agency today we have again had no response.*

*We are now at the stage that we are concerned for our health as we have been living in these conditions for some time. We do not believe that the flat is in accordance with the Repairing Standard due to other guttering leading to significant wet patches (exceeding around 4 x 1.5 metres wide) in both bedrooms resulting in dark spots and smell,*

*obviously mould on and within the walls, where we both sleep and work from home. ...”*

4. The Applicant alleged that the nature of the work which needs to be done was as follows:

*“Reference is made to attached quote from the contractor Probuild Contracts. This quote includes a list of tasks to be done to get the flat up to the Repairing Standard”.*
5. The former tenant lodged documents with the Application:
  - 5.1. Quote from Probuild Contracts (undated);
  - 5.2. Private Residential Tenancy Agreement; and
  - 5.3. Copy of the notification to the landlord’s agent of the work required.
6. The quote from Probuild Contracts (undated) included a list of 8 items:
  - “1. Re fix loose and slipped cast iron downpipe lengths to back elevation of Property with new cast iron fast hold brackets sealing all joints with putty.*
  - 2. Lift sagging guttering brackets to left hand back elevation so water can run free and seal guttering joints with new putty and bolts.*
  - 3. Remove all moss, debris and loose pointing from back elevation affected masonry then repoint all required sandstone joints with lime mortar.*
  - 4. Remove all ivy growth from extension roof area.*
  - 5. Apply façade 400 lime render coat to left and right had skews of roof area.*
  - 6. Torch on 1 layer of 4.5mm Polyglass Modibond black mineral felt to full length of flashing to roof top over coping and down on to slates.*
  - 7. Remove all affected areas of plaster inside property and reinstate with new board and smooth plaster finish.*
  - 8. Decorate required walls with colour to match existing”.*
7. On 15 January 2024, the Application was accepted for determination by the tribunal.
8. A Property inspection and hearing were fixed for 8 April 2024 at 1000h and 1145h respectively. Both parties were notified of the date, time and arrangements for attendance. The Respondent was notified by letter dated 21 February 2024 that any written representations she wished to make or a request to make oral representations had to be returned to the tribunal’s offices by 13 March 2024.
9. Directions were issued to parties on 23 March 2024.

10. The Applicants responded and lodged written representations and documents, including videos of the Property, taken when it was raining.

11. The Respondent responded and lodged written representations and documents.

### **Inspection of the Property – 8 April 2024**

12. The tribunal inspected the Property on 8 April 2024, as a fact finding exercise and the carried out a visual inspection and non disruptive qualitative and quantitative testing of the areas which were alleged to be affected by penetrating damp. The ordinary member took photographs during the inspection and testing.

13. The Applicants, Respondent and Respondent's Representative were present during the inspection.

14. A Report on the Inspection was prepared, which includes an Appendix with photographs taken during the inspection and testing. The Report and Appendix is attached to and forms part of the Statement of Reasons for this Decision.

### **Hearing – 8 April 2024, George House, 1145h**

15. A hearing took place on 8 April 2024, after the Property inspection.

16. The Applicants, the Respondent and two members of staff from the Respondent's Representative attended the hearing.

17. We heard oral representations from the Applicants, the Respondent and the members of staff from the Respondent's Representative.

18. During the hearing, the Respondent's Representative admitted that the Property does not meet the repairing standard because of the state of disrepair of the external guttering and downpipe, causing the Property not to be watertight; and admitted that the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair. The Respondent's Representative also admitted that the Property does not meet the tolerable standard in relation to the penetrating damp and internal disrepair in bedroom 1. The Respondent's Representative did not admit that the Property fails to meet the Repairing Standard in relation to the alleged damp and disrepair in Bedroom 2 and this matter remained in dispute.

19. The Respondent's Representative said that external and internal repairs would be instructed with a different contractor from the one who had recently been instructed by them and had attended and done some repair work.
20. The Applicants made various complaints about the previous contractor and stated that the contractor had applied flashband to the downpipe in a number of places. The Respondent's Representative said that they had been unaware of this.
21. The ordinary member made reference to the fact finding and testing which was carried out during the earlier inspection, including the visual indications of dampness and test readings in Bedroom 2 and we invited representations from both parties about Bedroom 2.
22. The Applicants submitted that the Property does not meet the repairing standard in Bedroom 2 as a result of the damp and disrepair, that it is not watertight and does not meet the tolerable standard. The Applicants also said that the carpets, which are a landlord's fitting, are not in a reasonable state of repair.
23. The Respondent's Representative did not make any further admissions or concessions about dampness or disrepair in Bedroom 2; or the carpets.
24. Other matters were raised by both parties which were not directly relevant to the Application and the parties agreed to discuss these matters at a future date with a view to reaching a resolution and avoiding the need for a potential separate application to the tribunal.
25. The tribunal adjourned to reach a determination on the Application on the basis of all the information before it.

### **Summary of the Issue to be determined by the tribunal**

26. The issue to be determined is whether the Property meets the repairing standard as specified in section 13 of the 2006 Act and whether the Landlord has complied with the duty imposed by section 14(1)(b) of the 2006 Act.
27. All repairs in the Application were notified to the Respondent's representative by the Applicants. The Respondent / her representative had a reasonable period within which to effect necessary repairs and redecoration.

### **The tribunal made the following findings-in-fact:**

28. The Respondent is the registered proprietor of the Property.

29. The Applicants were the Respondent's tenants in the Property at the time the Application was made on 9 January 2024 and continue to reside in the Property.
30. The Respondent's Representative was notified by the Applicant of all the repairs issues in the Application prior to the Application being made.
31. The downpipe on the rear elevation of the Property has become detached from the guttering.
32. The flashband (temporary waterproof tape) which has been applied to the downpipe in a number of places, including the point at which a pipe serving the upstairs neighbouring Property has been removed, is not fit for purpose and does not prevent water from entering the Property.
33. The Property is not watertight in Bedroom 1, or Bedroom 2.
34. There is penetrating damp in Bedroom 1 and Bedroom 2 at the Property.
35. The Respondent's representative instructed some works with an independent contractor following notification of the repairs issues but these have not resolved the outstanding repairs issues with water penetration into the Property.
36. The internal decoration in Bedroom 1 and Bedroom 2 is not in a reasonable state of repair as a result of penetrating dampness.
37. The carpets in the Property are in a reasonable state of repair.

**Discussion regarding the issues and the repairing standard, paragraphs (1)(a), (b), (d) and (h)**

38. The Applicants complained that the Property fails to meet the repairing standard, section 13(1)(a), (b), (d) and (h), in respect of the repairs issues. The Respondent's Representative admitted that the Property does not meet the repairing standard as discussed above, and that the following elements are not complied with: 13(1)(a), (b) and (h).
39. The only two factual and legal matters in dispute by the time of the hearing were whether the alleged repairs issues in Bedroom 2, namely penetrating dampness, amount to an additional failure to meet the repairing standard; and whether the carpets are in a reasonable state of repair or whether there is a failure to meet the repairing standard.

40. Section 13(1) of the Housing (Scotland) Act 2006 provides:

*“(1) A house meets the repairing standard if—*  
*(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,*  
*(b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,*  
*...*  
*(d) 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*  
*(h) the house meets the tolerable standard.”*

41. The definition of a house meeting the tolerable standard, as referred to in Section 13(1)(h) of the 2006 Act, is defined in Section 86 of the Housing (Scotland) Act 2007, as follows:

*“(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—*  
*(a) is structurally stable;*  
*(b) is substantially free from rising or penetrating damp;*  
*(c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;*  
*(ca) has satisfactory thermal insulation;*  
*(d) has an adequate piped supply of wholesome water available within the house;*  
*(e) has a sink provided with a satisfactory supply of both hot and cold water within the house;*  
*(f) has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;*  
*(fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;*  
*(g) has an effective system for the drainage and disposal of foul and surface water;*  
*(ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply; “the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances; “the relevant requirements” are that the electrical installation is adequate and safe to use;*  
*(h) has satisfactory facilities for the cooking of food within the house;*  
*(i) has satisfactory access to all external doors and outbuildings;*

*and any reference to a house not meeting the tolerable standard or being brought up to the tolerable standard shall be construed accordingly.”*

42. The tribunal was satisfied on the evidence that there is penetrating damp in both bedrooms, as a result of the admitted disrepair of the guttering and downpipe on the rear elevation, which is causing water ingress to the Property. As such the tribunal was satisfied that the Property is not watertight in either bedroom; and that it does not meet the tolerable standard in either bedroom as a result of penetrating damp.

43. The tribunal was satisfied that the carpets in the Property are in a reasonable state of repair and there is no failure to meet the repairing standard paragraph (1)(d) in respect of the carpets.

### **Repairing Standard Enforcement Order (RSEO)**

44. Because the tribunal determined that the Respondent has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act in respect of the items listed, it must require the Respondent to carry out the works necessary for meeting the repairing standard and has therefore made a Repairing Standard Enforcement Order (“RSEO”) in terms of Section 24(2) of the 2006 Act.

45. Having decided to make a RSEO, the tribunal considered the length of time which should be provided for compliance. The tribunal elected to impose a period until 8 June 2024, having regard to the length of time for which repairs have been outstanding, the nature of the repairs and the likely length of time to instruct and carry out the required works and provide supporting evidence of the same.

### **Right of Appeal**

**46. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

### **Effect of section 63**

47. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.



S Tanner

Signed .....

Ms. Susanne L M Tanner, K.C.

Legal Member / Chair of the tribunal

Date 6 May 2024

**Inspection Report (attached)**

# Housing and Property Chamber

## First-tier Tribunal for Scotland



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

**Inspection Report**

**Chamber Ref: FTS/HPC/RP/24/0102**



**Property: 8/1 GROVE STREET, EDINBURGH, EH3 8BB (“The Property/The House”)**

Title No: MID236791

### **THE PARTIES:**

Mrs Mairi Ann McKaig, residing at 35 Hamilton Avenue, Glasgow, G41 4JE.  
 (“the Landlord”)

Sandstone Property Management UK Ltd, having a place of business at 14 Coates Crescent, Edinburgh, EH3 7AF (“The Landlord’s Representative)

Mr Steinar Loekling and Dr Michelle May residing together at 8/1 Grove Street, Edinburgh, EH3 8BB (“the Tenant”)

### **THE TRIBUNAL:**

Tribunal members: Susanne Tanner (Legal Member/Chair) and Greig Adams (Ordinary/surveyor Member)

### **Background:**

On 9 January 2024 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the Repairing Standard and the Tolerable Standard.

### **Access:**

The inspection was undertaken at 10am on 8 April 2024 by the Tribunal Members. The inspection extended to an inspection of the various items of complaint comprising part of the Application.

### **Brief Description of Property:**

The Property comprises of a Grade “B” Listed ground floor, 3-bay residential flat within a two-storey traditional stone construction property dating from 1822 and incorporating later alterations. The front elevation incorporates V-jointed polished sandstone ashlar rustication at ground floor; polished sandstone ashlar band between ground and 1st floors; droved sandstone ashlar at 1st floor; cill course at 1st floor; cornice and blocking course at eaves. The rear elevation is of random rubble stone construction.

### **Purpose of Inspection:**

The purpose of the inspection was to allow the Tribunal members to review the tenant’s disrepair complaint prior to the forthcoming Hearing scheduled for 11.45am on 8 April 2024.

### **The inspection:**

The numbered items contained below provide a brief summary of each of the individual items of complaint contained within the Application pertaining to disrepair. Below each of the numbered items are commentary of the inspection undertaken with regards to each item:

#### **1. Internal Dampness affecting Bedrooms 1 and 2**

The first area of complaint reviewed was predominantly the rear elevation wall within Bedroom 2/Guest Bedroom before the second area of complaint was reviewed within Bedroom 1 (Master Bedroom) affecting the reveal and separating wall to Bedroom 2 adjacent to the external pedestrian door.

A visual assessment was undertaken and there was considered to be visual indicators of dampness present within both Bedrooms with evidence of staining patterns noticeable. Bedroom 2 was considered to be more heavily affected and there was evidence of eruption of finishes (plaster and paint) in addition to dampness staining present within that bedroom.



A “qualitative assessment” utilizing a Moisture Profiling technique which provides a sub-surface/at depth moisture reading was undertaken to the areas of concern within both bedrooms. The use of qualitative assessment is a non-disruptive technique and does not provide the true moisture content, rather the relative measurement compared to the other readings. Adverse readings were obtained to suggest that there was dampness affecting i) the

rear elevation wall within Bedroom 2 and ii) the separating wall between Bedroom 1 and Bedroom 2 adjacent to the external pedestrian door.

Aquant	Display	Indication	Progress bar
<60	---.-		
≥60 but <170	Aquant value	DRY	Green
≥170 but <200	Aquant value	RISK	Yellow
≥200 but <999	Aquant value	WET	Red
≥999	999	WET	Red



A more limited “quantitative assessment” utilizing a Moisture Profiling technique with the pin-mode of a moisture meter was undertaken at the architrave of the Bedroom 2 window. Such meters are calibrated to timber and provide the true moisture content of any timbers tested with the meter providing a colour coded backscreen on a traffic light warning system. This method of moisture assessment is to be preferred over “qualitative” assessment given that it provides the true moisture content. The readings obtained confirmed that there were elevated moisture present to the timbers.

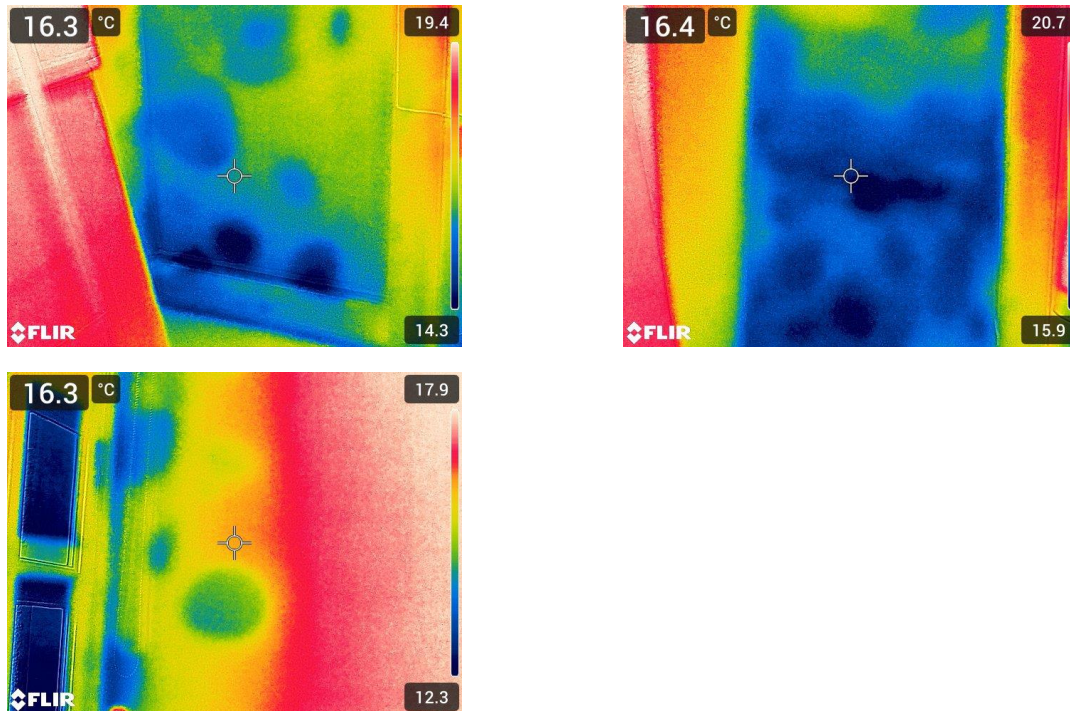
MC%WME	Display	Indication	Progress bar
<6	---.-		
≥6 but <17	MC%WME value	DRY	Green
≥17 but <20	MC%WME value	RISK	Yellow
≥20	MC%WME value	WET	Red



Infra-red images were also recorded utilizing 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. Under normal conditions a Thermal Image will display the hottest colour detected as being white and the coldest colour will be represented in black. Everything in-between will be represented with the constituent colours of the visible spectrum of light (i.e., the colours of the rainbow).



Various anomalies were evidenced from this thermal imaging exercise undertaken which was considered to be consistent with a penetrating dampness issue:



In summary, there was considered to be elevated moisture present within both Bedrooms as a result of penetrating dampness.

## 2. External Disrepair

The Tribunal had reviewed the Tenant's video evidence prior to inspection showing water escape from the circular cast iron downpipe located centrally over the rear elevation.

A ground level brief inspection was undertaken and it was noted that the downpipe was dislodged at the gutter outlet connection with a breach in watertightness noted at this point.



In addition, it was noted that a branch pipe has at sometime been removed from the upper residential neighbouring property with the single socket branch connector section provided with a "flashband" (self-adhesive flexible bitumen



strip) overlay capping. Such a tape repair relies upon adhesion however, ensuring long-term adhesion to a gloss painted cast iron downpipe is difficult especially given the contours and mouldings being overclad. It was also noted that the edges of the tape at the socket were noted to be uplifting and loose. It is unknown whether there is any blanking end cap provided below the tape.



The external disrepair pertaining to the rainwater goods was considered to be the most likely source of the penetrating dampness issues recorded.

G Adams

Greig Adams BSc (Hons) FRICS C. Build E FCABE LETAPAEWE  
Surveyor Member  
**First-tier Tribunal for Scotland (Housing and Property Chamber)**





### Appendix A – Photographic Record



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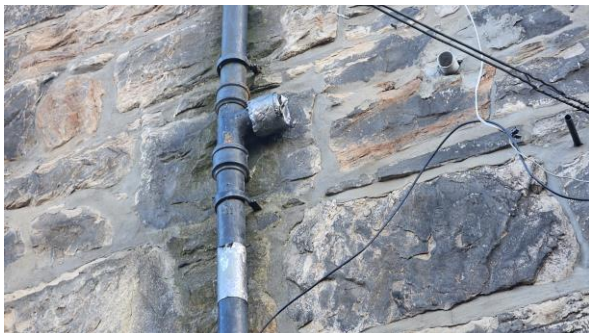
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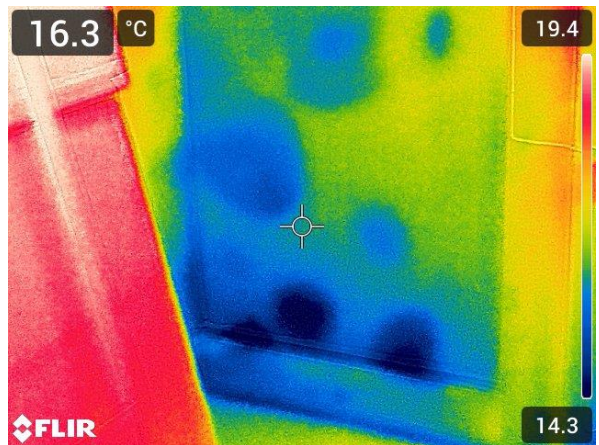
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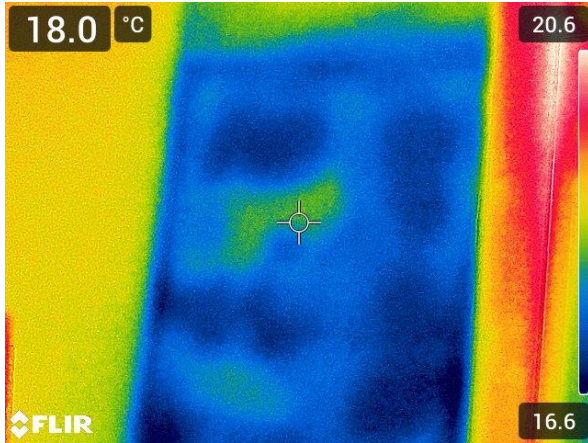


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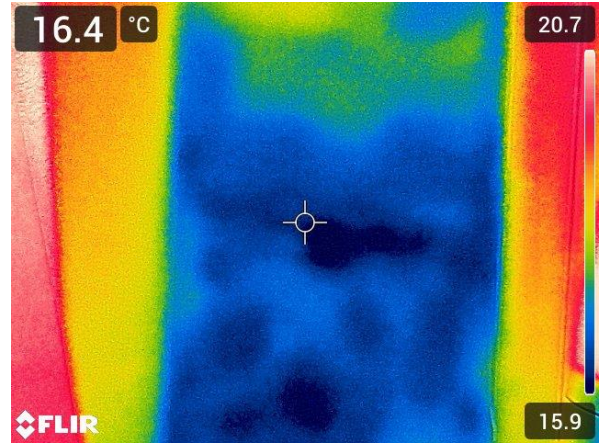


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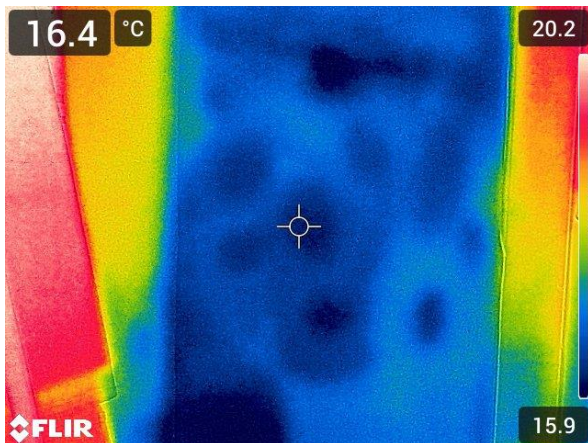




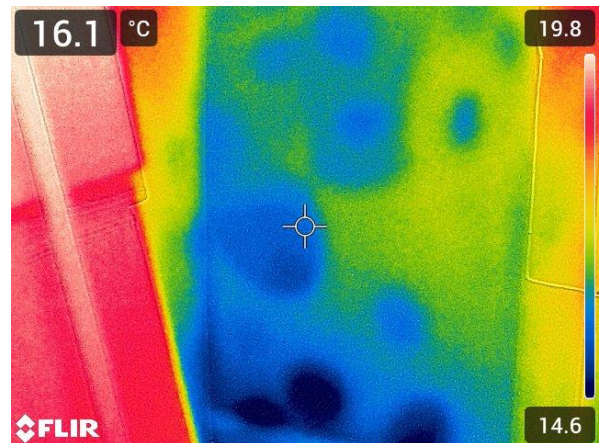
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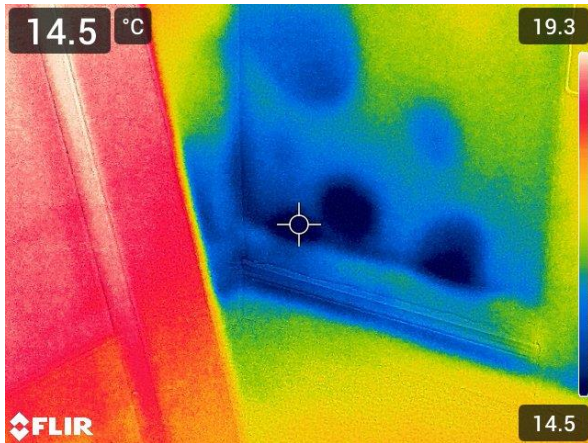
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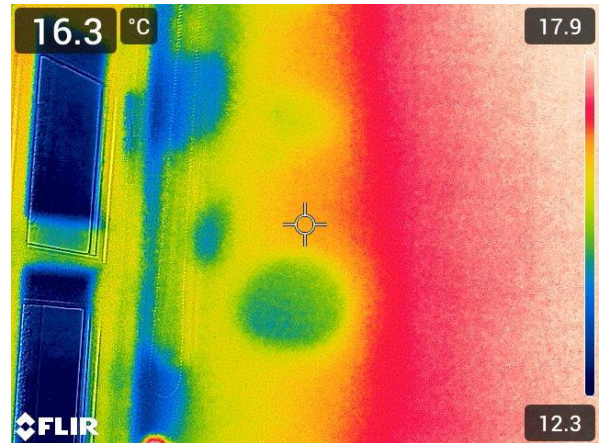
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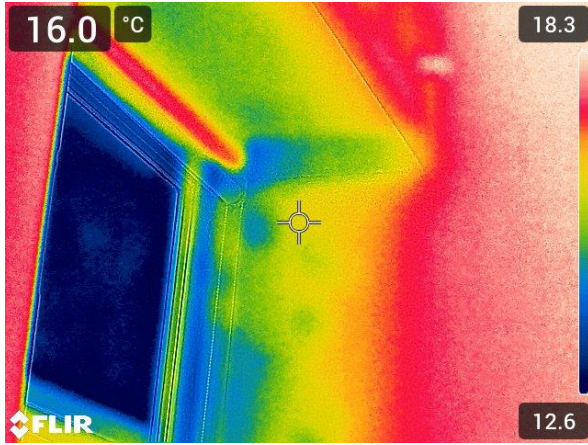


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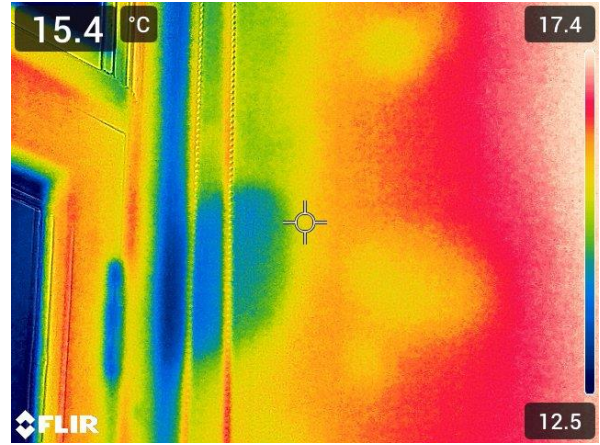


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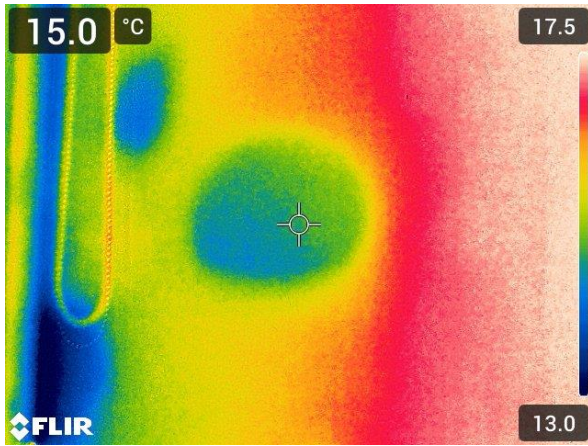




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