

Housing and Property Chamber First-tier Tribunal for Scotland



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

DECISION: Housing (Scotland) Act 2006 (“the 2006 Act”), Section 60

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 K.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 taken account of the findings on re-inspection and the additional evidence and submissions by both parties, determined that the Respondent has complied with the Repairing Standard Enforcement Order dated 10 May 2024, albeit outwith the specified timescale.
2. The tribunal issued a Certificate of Completion in terms of Section 60 of the Housing Scotland Act 2006 (hereinafter “the 2006 Act”).

3. The decision of the tribunal was unanimous.

STATEMENT OF REASONS

1. On 8 May 2024, the tribunal made a decision that the Respondent failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 by failing to ensure that the Property met the repairing standard in the following respects:
 - “(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, and*
 - (h) the house meets the tolerable standard.”*
2. The tribunal made a Repairing Standard Enforcement Order (RSEO), which required the Respondent to do the following no later than 8 June 2024:
 - 1. Repair or replace as necessary the external rainwater goods and downpipes to leave them in a reasonable state of repair and in proper working order without any leakage, including removal of all flashband (temporary waterproof tape) and repair leaking areas using suitable materials and refixing the downpipe at gutter connection, to make sure the Property is watertight and the structure and exterior of the house are in a reasonable state of repair and in proper working order and that the Property meets the tolerable standard.*
 - 2. Carry out plaster repairs, dry out walls, carry out any salt neutralisation required, and redecorate walls and skirting boards as required, to ensure the house is watertight and in all other respects reasonably fit for human habitation and meets the tolerable standard; and eradicate all evidence of internal dampness within both bedrooms.*
3. The Respondent submitted documentary evidence to the tribunal and submitted that there had been compliance with the orders in the RSEO, albeit outwith the specified timescale.
4. The Applicants submitted written representations to the tribunal stating that the works had not been completed in the specified timescale.
5. A re-inspection of the Property took place on 16 August 2024. A report of the re-inspection is attached and forms part of this decision.

6. A hearing took place on 16 August 2024 at George House, Edinburgh. Both Applicants attended. Mr Fullerton and another staff member from the Respondent's Representative attended.
7. The tribunal heard oral representations from both parties about compliance with the RSEO.

Applicants' submissions

8. Dr May said that the tribunal process had helped to move things forward. She noted that the works had been completed but that it had not happened until after the deadline of 8 June 2024.
9. Dr May said that there had been a subsequent issue with the roof and that the work, which was instructed by the neighbours, using the scaffolding already in place, was completed on 15 July 2024. She said that the neighbours are waiting for a response as to when the scaffolding is coming down.
10. Dr May said that she still feels that the communication from Sandstone (the Respondent's Representative) has not been good. She said that contractors turned up without notice and that due to her work she was unable to let them in. She said that situations have occurred which have created conflict and real anxiety and stress for her. She said that it has not been an easy process and that it has been going on for over ten months. She said that she would like a real and sincere apology, as well as compensation. She said that she understands any negotiation with the Respondent and her Representative is a separate process from the current proceedings, which relate to a determination about whether there has been compliance with the RSEO made by the tribunal. Dr May requested information about civil proceedings and the complaints about letting agents. The tribunal provided information about available resources on the tribunal's website and told that the Applicants that the tribunal is a judicial body and that if they require legal advice that they should instruct a solicitor or other legal adviser.

Respondent's Representative's submissions

11. Mr Fullerton said that when the downpipe was being addressed the contractors noticed a separate issue. The neighbours asked the Respondent's Representative to arrange with the contractors to leave up the scaffolding so that it could be used for the additional works. The gutter was bending down and

there was a hole in the gutter which was causing water ingress into the Property. Mr Fullerton said that the second guttering issue was unforeseen. There has been a lot of rain this year which held up works. The contractors had to wait for the wall to dry internally before any internal works could be done. The contractors then had to liaise with the Applicants for access for the internal works.

12. In relation to removal of the scaffolding, Mr Fullerton said that the neighbour has not yet told them that the works were completed. The agreement is that the scaffolding will come down once the additional roof works are completed. The contractor will also remove the weighted ladder which is lying in the garden of the Property. Mr Fullerton said that he will instruct the garden to be cleared.
13. Mr Fullerton said that he was sorry that the Applicants feel the way that they do about communication and said that he would contact them directly to discuss the question of compensation. Mr Fullerton said that he feels that he has made an active effort on communication with Mr Loekling. He said that he feels that he has been responsive to communications from the Applicants. He said that his firm asks their contractors to provide 24 or 48 hours' notice. He said that arrangements for access for external works were made with Leonardo Hotel. He accepted that there are situations in which contractors may have turned up without notice using the code provided by the hotel. He said that it is accepted that the Applicants had to pay for the electricity for the dehumidifier and that those costs will be reimbursed. He said that compensation will be considered and usually when they discuss compensation claims they wait until the end of the works.

Reasons

14. Reference is made to the terms of the report following the re-inspection on 16 August 2024, which is attached to and forms part of this decision. Taking the findings on the re-inspection report together with the documentary evidence produced and the parties' written and oral submissions, the tribunal is satisfied that the works in the RSEO have been completed, although after the specified date of 8 June 2024.
15. The tribunal therefore decided to issue a Certificate of Completion in terms of Section 60 of the 2006 Act.

Right of Appeal

16. A party 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.

17. 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

Date 1 September 2024

Housing and Property Chamber First-tier Tribunal for Scotland



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

Re-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: Ms Susanne Tanner KC (Legal Member/Chair) and Mr Greig Adams (Ordinary/surveyor Member)

Background:

On 10 May 2024, the First-tier Tribunal for Scotland Housing and Property Chamber) issued a Repairing Standard Enforcement Order (“the Order”) in respect of the Property. The Order required the Landlord to:-



- (a) Repair or replace as necessary the external rainwater goods and downpipes to leave them in a reasonable state of repair and in proper working order without any leakage, including removal of all flashband (temporary waterproof tape) and repair leaking areas using suitable materials and refixing the downpipe at gutter connection, to make sure the Property is watertight and the structure and exterior of the house are in a reasonable state of repair and in proper working order and that the Property meets the tolerable standard.
- (b) Carry out plaster repairs, dry out walls, carry out any salt neutralisation required, and redecorate walls and skirting boards as required, to ensure the house is watertight and in all other respects reasonably fit for human habitation and meets the tolerable standard; and eradicate all evidence of internal dampness within both bedrooms.

The Tribunal ordered that the works specified within the RSEO must be completed by 8 June 2024.

Access:

The inspection was undertaken at 10am on 16 August 2024 by the Tribunal Members. The inspection extended to an inspection of the items detailed within the RSEO.

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 re-inspection was to investigate whether the work required under the Repairing Standard Enforcement Order has been completed.

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

A visual assessment was undertaken within both Bedrooms and there was not any obvious visual indicators of ongoing dampness issue, there was no eruption of finishes such as plaster or paint and no obvious discolouration or staining.

At the external rear elevation, there was noted to be evidence of various historic damp control works including chemically injected damp proof courses (appears to be more than one) and also an apparent knapen siphon tube system. Such dampness remedial works are typically designed to assist in the control of “rising dampness”.

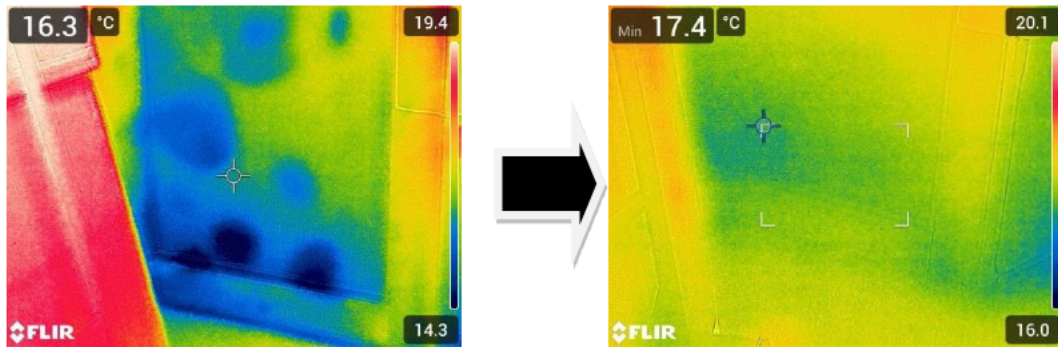


A “qualitative assessment” utilizing a Moisture Profiling technique which provides a sub-surface/at depth moisture reading was undertaken to the areas of concern within both bedrooms. The use of qualitative assessment is a non-disruptive technique and does not provide the true moisture content, rather the relative measurement compared to the other readings. At low level to walls in the previous areas of concern, there were elevated moisture readings recorded.



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).

The below left image records the dampness issue at the time of our previous inspection compared to the bottom right image that records the area during the reinspection. It is clear that significant drying to the areas has taken place with thermal gradient remaining to be expected (due to thermal bridging at the floor junction).



In summary, it is clear that there has been a significant improvement within both Bedrooms and such parts have dried significantly since our last inspection whilst there were no longer any visual indicators of dampness noted. The masonry walls will continue to naturally dry until they reach equilibrium and the remaining elevated readings are not considered to represent a present concern against the backdrop that such moisture meters are extremely sensitive and that elevated readings at low level to walls that have been subject to historic rising dampness treatments would be reasonably expected (as such measures are control rather than eradication measures, designed to control dampness to such a level that internal finishes are not unduly affected).

2. External Disrepair

It was evident that further remedial works had been progressed at the former branch connection into the cast iron downpipe with flashband removed and repairs undertaken to the capping. There was a scaffold in place (not accessed) and due to the top lift remaining in place we were not able to view the gutter adequately however, there was not any obvious signs of leakage to the elevation whilst drying works have managed to be progressed internally. Various debris from external maintenance works was noted to be remaining within the garden area including the scaffold access ladder.



G Adams

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



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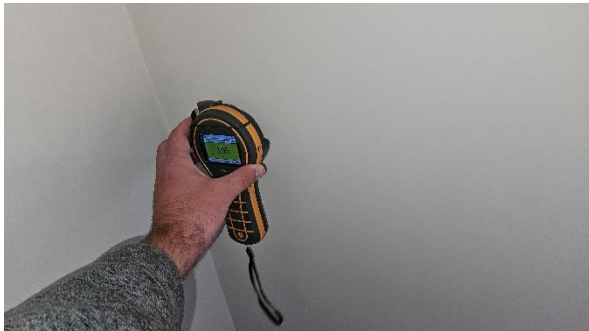
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Appendix A – Photographic Record



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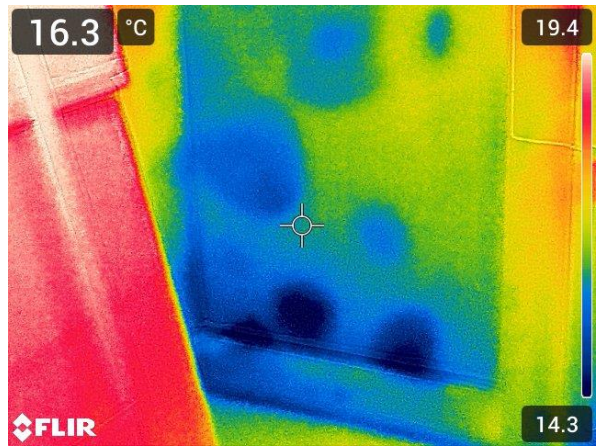
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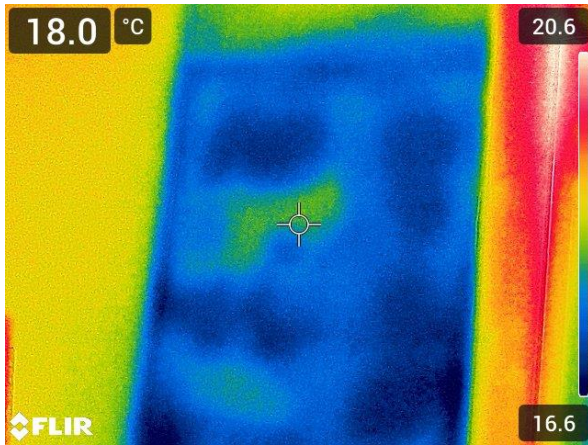
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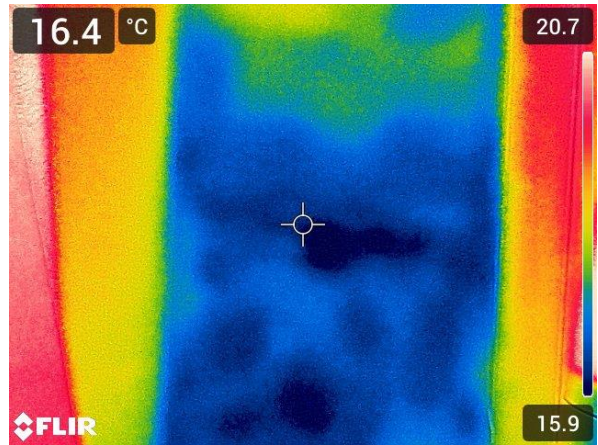
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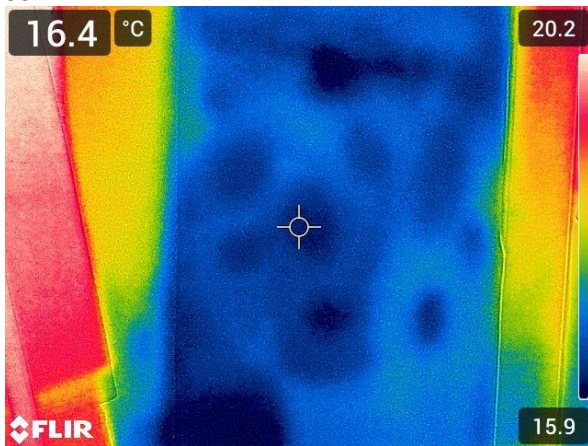
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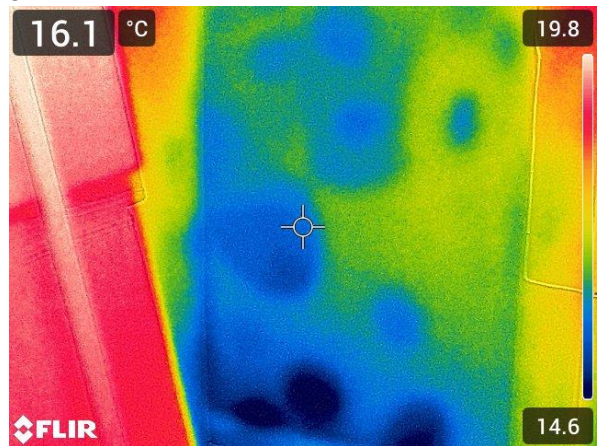
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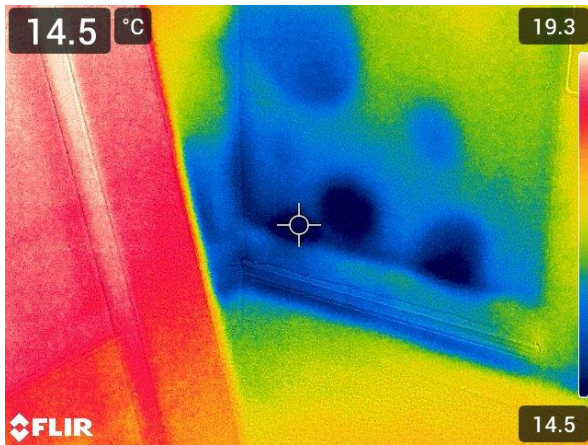
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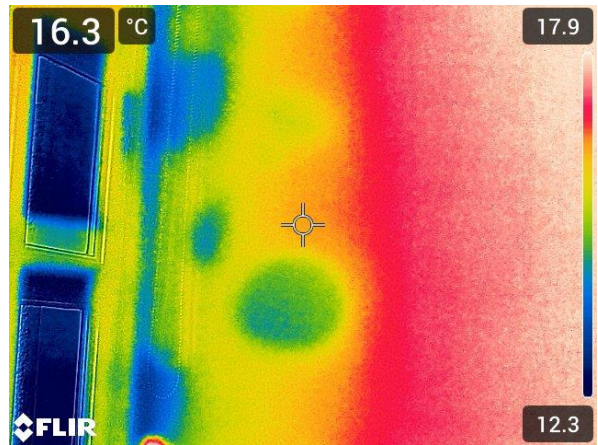
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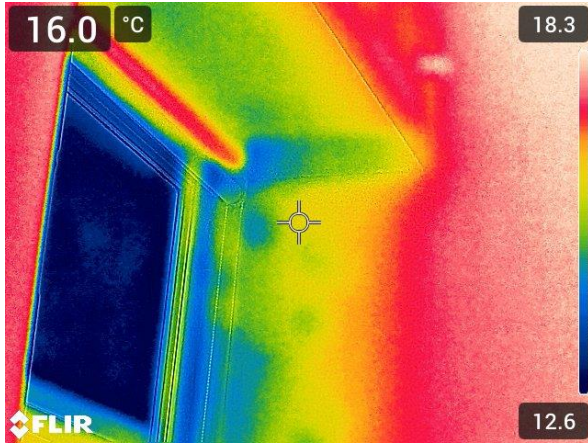
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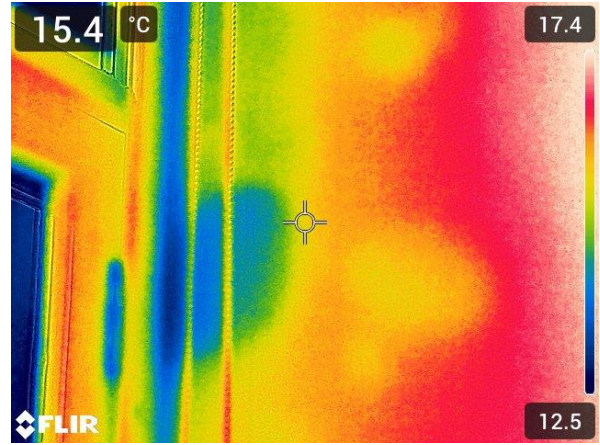
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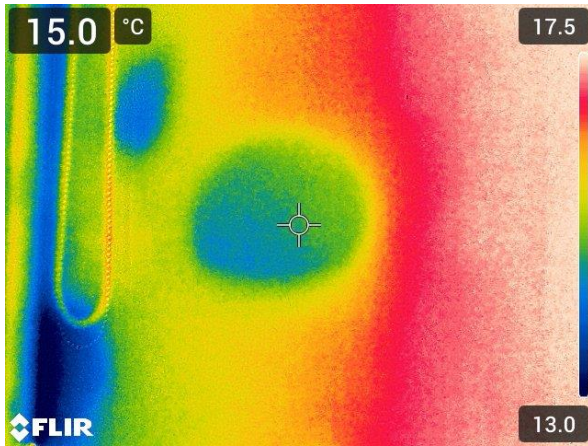
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