

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision with statement of reasons in respect of an application under Section 22(1) of the Housing (Scotland) Act 2006 ("the Act")

Chamber Reference number: FTC/HPC/RP/24/2112

Parties:

Ms. Mairi Watt residing at 32, Cumbernauld Road, Moodiesburn, G69 0AA ("the Tenant")

Mr. James McEwan residing at 29, Willowbank Gardens, Kirkintilloch, G66 3AN ("the Landlord")

Property: Upper flat at 32, Cumbernauld Road, Moodiesburn, G69 0AA being the subjects registered under title sheet number GLA20931

Tribunal Members

Karen Moore (Chairperson) and Nick Allan (Surveyor and Ordinary Member)

Background

1. By application received between 9 May 2024 and 28 May 2024 ("the Application"), the Tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) and 13(1) (h) of the Act.
2. The Application comprised the tribunal chamber's standard application form and copy emails sent by the Tenant to the Landlord detailing the extent of the works require and advising that the Property may not meet the Repairing Standard and the Tolerable Standard.
3. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as there is dampness, mould and water ingress in the living room and lower bedroom of the Property which has continued since

March 2023. The Application stated that North 2 Lanarkshire Council has inspected the Property and formed the opinion that it failed the Repairing Standard. The Application stated that work had begun in April 2024 but had not yet completed.

4. A Convener of the Chamber, with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act, having considered the application in terms of Section 23(3) of the Act determined to refer the Application to a tribunal, and, in terms of Schedule 2, Paragraph 1 of the Act the First-tier Tribunal for Scotland served Notice of Referral upon the parties on 16 February 2024 and fixed an Inspection and Hearing for 22 October 2024 at 10.00 and 11.45, respectively.
5. Prior to the Inspection and Hearing, the Landlord submitted written submissions stating that the work had been completed. Also prior to the Inspection and Hearing, the Tenant wrote to the Tribunal to advise that the work had been carried out a few days earlier.

Inspection and Hearing

6. The Inspection took place on 22 October 2024 at 10.00 a.m. at the Property. The Tenant, Ms. Watt, was present and not represented. The Landlord was not present and not represented. At the Inspection, the Tribunal took dampness meter readings and photographs which were issued to the Parties.
7. The Hearing was held at 11.45 in the Glasgow Tribunal Centre on 22 October 2024 at 11.45 a.m. The Tenant, Ms. Watt, was present and not represented. The Landlord was not present and not represented. Ms. Watt set out the history to the Application. In particular, she stated that the Landlord had carried out work between June and November 2023 and had carried out further work a few days before the Inspection. The Tribunal explained to Ms. Watt that it had found evidence of dampness in both the living room and the bedroom but it could not be certain that this was an ongoing issue. The outcome of the Inspection and Hearing was that the Tribunal adjourned the Inspection and Hearing to a later date to allow time for the works to settle and the opportunity for the dampness to dry out. The Tribunal issued a Direction to the Landlord to provide documentary evidence of the work carried out, which Direction was complied with in part.

Adjourned Inspection and Hearing.

8. An adjourned Inspection and Hearing took place on 27 February 2025 at 10.00 and 11.45, respectively. Prior to the adjourned Inspection and Hearing, the Landlord submitted an inspection report carried out by his letting agent and advised the Tribunal that he did not intend to attend the proceedings on 27 February 2025.
9. The Inspection took place on 27 February 2025 at 10.00 a.m. at the Property. The Tenant, Ms. Watt, was present and not represented. The Landlord was not present and not represented. At the Inspection, the Tribunal took dampness meter readings and photographs are annexed.
10. The Hearing was held at 11.45 in the Glasgow Tribunal Centre on 27 February 2025 at 11.45 a.m. The Tenant, Ms. Watt, was not present and not represented. The Landlord was not present and not represented.
11. The Tribunal considered its findings at the Inspection. The Tribunal noted from the Landlord's responses to the Direction that that the work carried out appeared to be carried out in a traditional manner. With regard to the bedroom, the Tribunal noted that there had been an improvement in the level of dampness which had dried out and had been reduced to a satisfactory level. However, the dampness in the living room had not dried out and persisted. The dampness readings on sections of the living room gable wall and at the left-hand side of the gable window remain significant. Accordingly, the Tribunal found that the work carried out by the Landlord had not been successful.

Findings of Fact

12. The Tribunal's findings in fact were made from the Application, the written submissions and the Re-Inspection and Hearing.
13. The Tribunal found the following facts: -
 - i) The Landlord owns the Property which is currently tenanted by Ms. Watt;
 - ii) The Property is an upper floor flat within a block of four flats;
 - iii) The block appears to be of traditional construction with roughcast external walls and pitched;
 - iv) The Property is accessed via an external staircase shared with the other upper flat;
 - v) There is significant dampness on several areas on the living room gable wall and at the left-hand side of the window.

Issues for the Tribunal

14. In these proceedings, the Tribunal's statutory function in terms of Section 24(1) of the Act is that it must "decide whether the landlord has complied with the duty imposed by section 14(1)(b)" of the Act. Accordingly, the issues to be determined by the Tribunal are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) and 13(1) (h) of the Act at the date of the adjourned Inspection.

Decision of the Tribunal and reasons for the decision.

15. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that as there is significant dampness in the main living area, the Property is not wind and watertight and so is not reasonably fit for human habitation. Accordingly, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
16. In respect of the complaint in terms of Section 13(1)(b) that the Property that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, the penetrating dampness in the living area is such that the that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order. Accordingly, the Tribunal found that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
17. In respect of the complaint in terms of Section 13 (1) (h) that the Landlord has failed to ensure that the Property meets the Tolerable Standard, as the Tribunal has found that there is significant dampness in the Property, he Tribunal finds that the Property does not meet the Tolerable Standard and so the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
18. The decision is unanimous.

Repairing Standard Enforcement Order

19. Having determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b), the Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

Appeal

20. 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.

Signed

K Moore

27 February 2025

Housing and Property Chamber

First-tier Tribunal for Scotland



Re-inspection Photograph Schedule 32 Cumbernauld Road, Moodiesburn G69 0AA

Case Reference: FTS/HPC/RP/24/2112

Date of inspection: 27/02/2025

Time of inspection: 10.00 am

Weather conditions: Sunny and dry

Present: Mrs Karen Moore – Legal Member
Mr Nick Allan – Ordinary Member
Ms Mairi Watt - Tenant



Photo 1 – Front/side elevation



Photo 2 – Rear elevation and access point

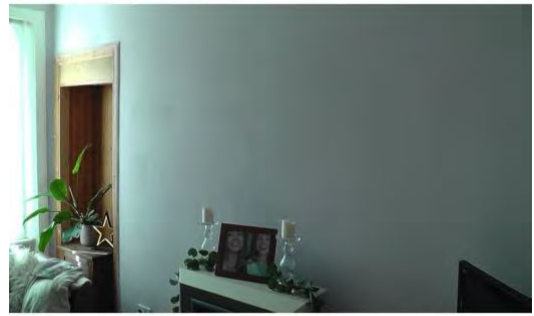


Photo 3 – Embedded dampness within Living room wall

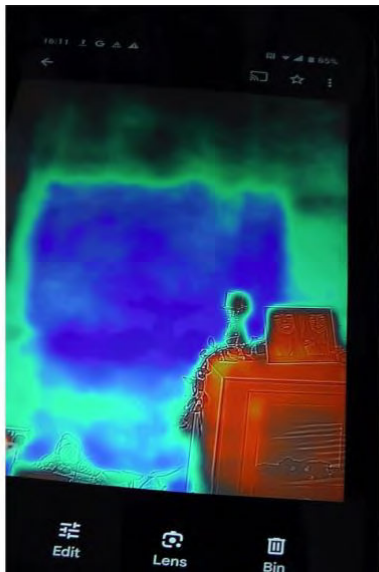


Photo 4 – Thermal image capture of Living room wall



Photo 5 – Embedded dampness within Living room wall

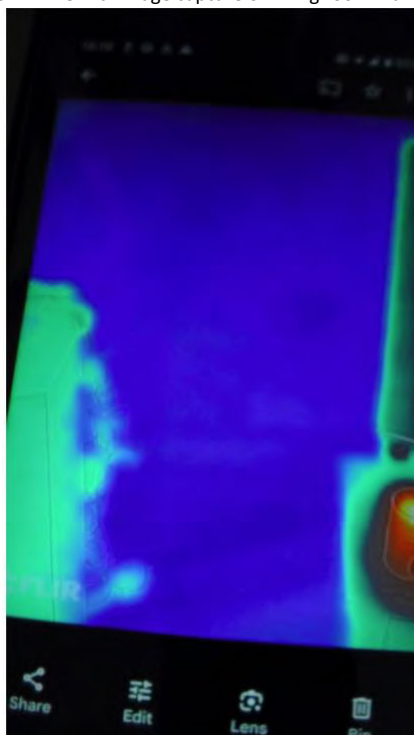


Photo 6 – Thermal image capture at photo 5 location



Photo 7 – Saturated window reveal

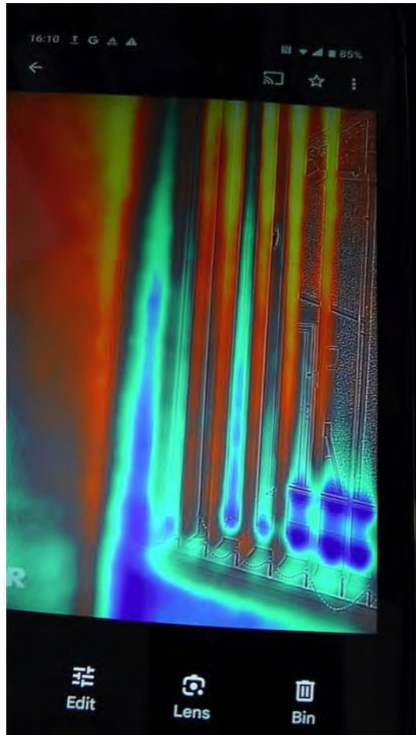


Photo 8 – Thermal image capture at photo 7 location

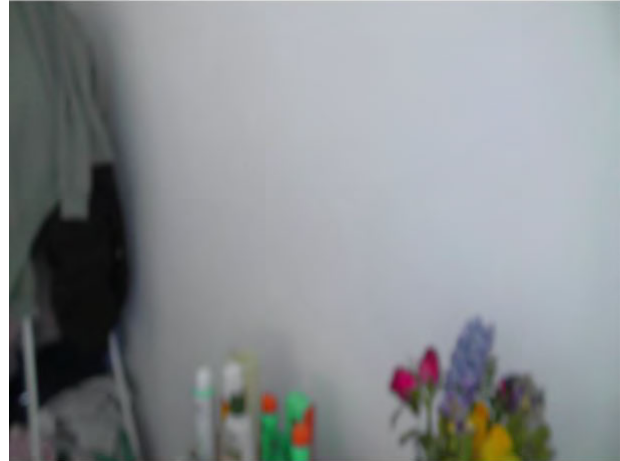


Photo 9 – Lower Bedroom gable wall drying out

Inspection Notes

1. The Tribunal noted the continuing presence of dampness within the Living room gable wall. Localised areas above and to the right of the fireplace remain saturated. Photographs 3,4,5 & 6 above refer.
2. The Tribunal noted the continuing presence of dampness on the left-hand side reveal of the Living room gable wall window. This section of the wall remains saturated. Photographs 7 & 8 Above refer.
3. The Tribunal noted that the dampness within the lower bedroom gable wall had reduced, from the date of the initial inspection, to a level which was no longer of concern. Photograph 9 above refers.

Nick Allan FRICS

Surveyor – Ordinary Member

First-tier Tribunal (Housing and Property Chamber) – 4th March 2025