

Housing and Property Chamber

First-tier Tribunal for Scotland



**Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Hereinafter referred to as “the tribunal”)
Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)**

Case Reference Number: FTS/HPC/RP/24/2888

Re: 5 Gardners Crescent, Edinburgh, EH3 8BZ (“the house”)

Land Register Title No: MID104948

The Parties:-

Joshua Oakes, 5 Gardners Crescent, Edinburgh, EH3 8BZ (“the tenant”)

Burnside Property Ltd, 29 Whitehill Village, Dalkeith, EH22 2QD (“the landlord”)

Tribunal Members:

**Fiona Watson (Legal Member and Chairperson) and
Sara Hesp (Ordinary (Surveyor) Member)**

Decision

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed on them by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the house, and taking account of all the available evidence, determines that the landlord has not failed to comply with the said duty. The tribunal’s decision is unanimous.

Background

1. By application received on 24 June 2024, the tenant applied to the tribunal for a determination that the landlord had failed to comply with their duty under Section 14(1) of the Act.
2. In his application, the tenant stated that he believed the landlord had failed to comply with their duty to ensure that the house met the repairing standard as set out in section 13(1) (a) of the Act. The application stated that there was “*an unhealthy amount of mould in upstairs toilet ceiling.*”
3. On this basis, the tribunal consider that his complaint is that the landlord had failed to ensure that: (i) the house is wind and watertight and in all other respects reasonably fit for human habitation and (ii) the house meets the tolerable standard.
4. On 22 August 2024, a notice of acceptance of the application was issued by a Convener with delegated powers of the Chamber President. An inspection and hearing were arranged for 11 April 2025.
5. The landlord was invited to submit written representations no later than 1 March 2025. Written representations were received from the landlord’s agent on 20 February 2025. These consisted of a statement setting out a timeline of when the issues were reported and how they were responded to.
6. On 10 March 2025, following a request by the Applicant to withdraw the application, the tribunal issued a minute of continuation confirming the tribunal’s intention to continue with the application. This was on the basis that the application should be determined on public interest grounds due to the nature of the alleged repairs issues and the potential effects for any current and/or future tenants/occupiers if the allegations were substantiated.

The inspection

7. The tribunal inspected the house on the morning of 11 April 2025. The

weather conditions at the time of the tribunal's inspection were warm and dry. The landlord's agent, Calum MacGregor of CMG Residential was present at the inspection. The applicant was not present. Three of the other tenants of the Property were present.

8. Photographs were taken during the inspection. These are attached as a schedule to this decision.

The house

9. The house is a ground floor entry level flat in a tenement block, which spans over two levels (ground floor and basement). It comprises six bedrooms, living room, kitchen, and hallway (none of which were inspected) and two bathrooms (one on each level).

The hearing

10. Following the inspection, the tribunal held a hearing at George House, 126 George Street, Edinburgh, EH2 4HH. The landlord's agent, Callum MacGregor was present at the hearing. The applicant did not appear nor was he represented.
11. The landlord's agent referred to the written representations lodged as aforementioned and further submitted that by way of update, following a report from the applicant on 11 February 2025 regarding mould in the bathroom, the bathroom was repainted. Prior to then, it had last been painted in or around August 2024. The extractor fans had been repaired in August 2024, where they required to be cleaned and dusted. There have been no further complaints from the applicant (nor any of the other tenants in the Property) since February 2025.

The evidence

12. The evidence before the tribunal consisted of:
 - (i) The application form submitted by the tenant.
 - (ii) Copy tenancy agreement between the parties in respect of the house

which commenced on 1 June 2024.

- (iii) Copy emails between the tenant and the landlord's agent regarding the issue of mould.
- (iv) The written representations received from the landlord's agent of 20 February 2025
- (v) Registers Direct copy of Land Register title MID104948.
- (vi) The tribunal's inspection of the house.
- (vii) The oral representations of the landlord's agent at the hearing.

Summary of the issues

13. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlord has complied with the duty imposed by section 14 (1) (b).

Findings in fact

14. The house is owned by the landlord.
15. The landlord is the registered landlord for the house.
16. The parties entered into a tenancy agreement for the house which commenced on 1 June 2024.
17. The landlord's agent was notified by the tenant of an issue with mould appearing in the upstairs bathroom.
18. At its inspection, the tribunal carefully checked the upstairs bathroom which was the subject of the complaint. The tribunal also checked the downstairs bathroom. The tribunal observed the following:
- a) There was no evidence of mould in either of the two bathrooms.
 - b) The ceiling in each bathroom shower area appeared to have been recently repainted.
 - c) The extractor fan in each bathroom were in working order.

Reasons for decision

19. In making its decision, the tribunal carefully considered all of the evidence before it. In doing so, it applied the civil burden of proof, which is the balance of probabilities.
20. During its inspection, the tribunal observed that there was no evidence of mould in either of the two bathrooms within the Property. The ceilings in each bathroom appeared to have been recently repainted. The extractor fans in each bathroom were tested and appeared to be in working order.
21. The tribunal was therefore satisfied that any previous issues of mould within the bathrooms had been addressed. It determined that at the time of its inspection the house is wind and watertight and in all other respects reasonably fit for human habitation and that the house meets the tolerable standard.

Summary of decision

22. On the basis of all the evidence before it, the tribunal determines that the landlord has not failed to comply with the duty imposed by section 14(1)(b) of the Act.
23. By way of observation, the tribunal noted the frequency of the re-occurrence of the mould in the Property and the short period between the two instances of mould, and it observed that the Landlord may wish to consider upgrading the extractor system if there is a further re-occurrence of mould.

Rights of Appeal

24. 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.

25. 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.

F Watson

Legal Member/Chairperson

Date: 14 May 2025

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Schedule of photographs taken on 11 April 2025



Photograph 1: Front elevation

Photograph 2: Upstairs bathroom - ceiling; shower cubicle



Photograph 3: Upstairs bathroom- extractor fan (working); upper wall; ceiling



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Photograph 4: Downstairs bathroom - ceiling



Photograph 5: Downstairs bathroom – ceiling; extractor fan



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Photograph 6: Downstairs bathroom – shower cubicle

