

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Determination: Housing (Scotland) Act 2006: Sections 26 and 27**

**Chamber Ref: FTS/HPC/RP/25/0410**

**G/L, 57 Gateside Street, Largs, North Ayrshire, KA30 9HS registered in the Land Register of Scotland under title number AYR62734 (“the Property”)**

**The Parties:-**

**Mr Derrick McClure, G/L, 57 Gateside Street, Largs, Ayrshire, KA30 9HS (“the Applicant” and “the Tenant”)**

**CHAP, Michael Lynch Centre, 71 Princes Street, Ardrossan, Ayrshire, KA22 8DG (“the Applicant’s Representative”)**

**Mr Robert Maxwell, MX Financial Services, 6 Waterside Street, Largs, KA30 9LN (“the Respondent” and “the Landlord”)**

**Tribunal Members:**

**Mr Martin McAllister, Solicitor (Legal Member) and Mr Nick Allan, Chartered Surveyor (Ordinary Member) (“the tribunal”)**

**Decision**

**The tribunal determined:**

**(One) that the Landlord has failed to maintain the Property to the repairing standard as set out in Section 13 of the Housing (Scotland) Act 2006 and**

**(Two) that a repairing standard enforcement order (RSEO) be made in terms of Section 24 of the Housing (Scotland) Act 2006.**

**Background**

1. By application dated 21 January 2025, the Applicant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord has failed to comply with the duties imposed by Section

14 (1) (b) of the Housing (Scotland) Act 2006 as amended (“the 2006 Act”).  
The application is in terms of Section 22 (1A) of the 2006 Act.

2. The Applicant and the Respondent are parties to a private residential tenancy agreement.
3. The tenancy commenced on 11 July 2020.
4. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: that it is not wind and watertight and in all other respects reasonably fit for human habitation, that its structure and exterior are not in a reasonable state of repair and in proper working order and that any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order. The application states that the Applicant does not consider that the Property meets the tolerable standard in respect of complying with relevant requirements in relation to electrical installations and the fact that it is not substantially free from rising or penetrating damp.
5. The application makes specific reference to the following matters:
  - 5.1 No light in the entry close.
  - 5.2 Non-functioning doorbell.
  - 5.3 Insecure front door.
  - 5.4 Hallway has uneven floor and poorly fitted carpet.
  - 5.5 Poor installation of shower power switch and hole in wall below it.
  - 5.6 Décor work requiring to be done around electrical sockets in hall.
  - 5.7 Section of tiling in bathroom requires re-installation.
  - 5.8 Sealant at bath requires replacement.
  - 5.9 Mould in bathroom.
  - 5.10 Bedroom has uneven floor and poorly fitted carpet.
  - 5.11 There is a large gap in the wall under the window.
  - 5.12 North facing wall has gap between ceiling and roof.
  - 5.13 Issues of dampness in cupboard where boiler is.
  - 5.14 Wrongly sized bedroom door.
  - 5.15 Grout at kitchen sink is rotten.
  - 5.16 Broken toaster.
  - 5.17 Uneven flooring in the living room with mismatched floorboards.
  - 5.18 Poorly fitted carpet in living room.
  - 5.19 Livingroom ceiling at area adjacent to the road has extensive water damage.
  - 5.20 Wrongly sized living room door and it has a missing pane of glass.
  - 5.21 West facing wall in living room has extensive water damage and is damp and wet.
  - 5.22 Damage to wall at fireplace.
  - 5.23 Newly installed electrical sockets have not been “finished off” and need sanding and painting.
  - 5.24 Skirting boards detached from wall.
  - 5.25 Redundant electrical sockets have not been removed.
  - 5.26 Living room requires redecoration.

5.27 Property is damp throughout.

6. On 24 February 2025, a Notice of Acceptance was issued by a legal member of the Tribunal acting under delegated powers of the Chamber President.

### **Property Inspection**

7. The members of the tribunal inspected the Property on 29 May 2025. The Applicants was present.
8. A schedule of photographs, prepared by the Ordinary Member, is attached to this Decision and is referred to for its terms.

### **Findings on Inspection**

9. The Property is a flatted property situated on the ground floor of a purpose-built tenement of flats constructed in the early part of the twentieth century. The accommodation comprises of a living room, a bedroom, kitchenette and bathroom.
10. The front door is poorly secured and ill -fitting and has no functioning deadlock.
11. The doorbell does not work.
12. The carpets throughout are poorly fitted.
13. Flooring throughout the Property is uneven and there are poorly fitting floorboards.
14. The wall below the shower switch in the hall is rough.
15. Areas of plasterwork where electrical sockets have been replaced throughout the Property are in poor condition.
16. A section of tiling in the bathroom has been removed.
17. Sealant around the bath has been renewed.
18. Sealant at the kitchen sink has been renewed.
19. There is a small amount of mould on the bathroom walls.
20. There is a section of coving missing in the bedroom and there is a gap in the bedroom wall.
21. The radiator in the bedroom is not secured to the wall.

22. There is a gap in the wall beneath the bedroom window.
23. The bedroom door is suitably sized and is functioning.
24. There is exposed stonework and exposed lath and plaster in the bedroom cupboard.
25. The living room door is glazed and there is a missing pane of glass.
26. There is a gap between the top of the living room door and the door frame.
27. The fireplace wall and the alcove in the living room is saturated and wallpaper is peeling from them. There is a “watermark” above the fireplace which extends across a significant section of the wall.
28. Skirting in the living room is detached.
29. There is historic water staining in the ceiling of the living room.
30. The kickboard below the kitchen sink has been re-instated.
31. The light fitting in the bathroom is inappropriate for its location, it should be a sealed unit, and consequently does not meet the relevant regulations.
32. There is water staining on the external gable wall.
33. At the rear wall of the Property, there is a build-up of debris and vegetation creating the potential for damp penetration.
34. The condition of the chimney stack is poor.
35. At the gable wall (next to the fireplace wall in the living room of the Property) the ground level is raised indicating a possible damp bridge.
36. The stone mullion at the living room window is badly cracked.

## **Hearing**

37. A Hearing was held at Beacon Arts Centre, Greenock on 29 May 2025. The Respondent was present. Mr McClure was present and was represented by Mr Meek of CHAP.
38. Mr McClure said that he wanted to withdraw reference to a broken toaster from his application.
39. Mr Maxwell had submitted written representations in which he stated that there had been issues with water ingress from the roof of the tenement which had affected all properties in it. The representations state that there is no factor for the tenement.

40. The representations state that there had been issues with getting all proprietors to agree to any repairs and paying for works. They state that there had been ongoing work on the roof which started in 2020 with the aim to making the building watertight and that, because of various issues, this work was not completed until July 2024.
41. The representations state that the Respondent considers that water ingress from the roof is the cause of dampness within the flat and that he has done everything possible to have it remedied.
42. The representations state that when more water ingress was reported by the Applicant on 31 December 2024, he contacted “all tenants that day.” They state that the owner of the flat above who had water ingress had contacted the roofing contractor.
43. The representations state that work was done by the roofer and that “it seems that the building is watertight.”
44. Mr Maxwell states that the issue of water ingress “is an ongoing situation which is out of my control but when issues arise, I try to deal with them as best I can and as quickly as possible.”
45. The Ordinary Member set out the findings from the Inspection.
46. The Ordinary Member said that, although not part of the application, it had been noted that the light fitting in the bathroom was not appropriate and constituted a safety issue. It was also noted that the stone mullion at the living room window had failed and that this was something which the landlord may want to address given that it is a safety issue and could also lead to a significant deterioration of the Property.
47. The Ordinary Member said that there was no damp smell in the Property and that air quality readings which he had taken were in a satisfactory range.
48. Mr Maxwell said that there had been issues with gaining access to the Property and Mr McClure said that he worked offshore and had allowed access when he was able to. The tribunal came to no view on the matter and concerned itself with what had been found at the inspection. It noted that, in relation to access for repairs, a landlord and a tenant require to act reasonably.
49. Mr Maxwell said that he relied on the written representations which he had submitted. He said that he had made efforts to have the tenement factored but that a majority of the proprietors refused to agree to an appointment. He said that it is difficult to get agreement for repairs. He said that £14000 had been spent on work to the roof and that he was trying to get the contractor to carry out an inspection to determine what had to be done.

50. Mr Maxwell said that no damp specialist had inspected the Property and that he relied on reports from a roofing contractor.
51. Mr Maxwell said that he had a number of emails which supported his position that he had tried to get work done but had been thwarted because a majority of owners had not agreed to spending money on repairs. He said that he would forward these to the Tribunal.
52. Subsequent to the hearing, the Respondent emailed the Tribunal on 2 June 2025 and submitted copies of a number of emails dated from 2019 to 2025.

## **Discussion and Determination**

53. In terms of Section 14 of the 2006 Act, a landlord is required to maintain a tenanted property to the repairing standard at all times during the tenancy.
54. Section 16 of 2006 Act sets out exceptions to a landlord's repairing duty. Section 16 (4) states that a landlord is not to be treated as having failed in his repairing duty where the landlord has no necessary rights.
55. Section 16 (5) of the 2006 Act states that, in relation to common property, where the majority of owners has not consented to the intended work, the landlord is to be treated as lacking necessary rights.
56. The tribunal noted, from the emails which had been submitted by him, that the Respondent considers that dampness in the Property was caused by water ingress from the roof. The tribunal accepted that the Respondent had experienced difficulties in getting co-owners of properties in the tenement to agree to common repairs.
57. The tribunal considered whether the provisions of Section 16 of the 2006 Act were engaged. There was insufficient evidence that the cause of dampness in the Property was as a consequence of a failure to repair the roof. There were other findings from the inspection which may indicate the cause of the dampness. Even if a failure to repair the roof is causing dampness in the Property, there was insufficient evidence that the Respondent had currently "taken reasonable steps for the purpose of acquiring rights" (Section 16 (5) of the 2006 Act).
58. In situations where there are issues about getting consent for common repairs, the provisions of The Tenement (Scotland) Act 2014 are sometimes used by proprietors and the Respondent may wish to seek advice on this matter.
59. The tribunal determined that a functioning doorbell is not part of the repairing standard.

60. The tribunal determined that, in a number of issues, the Respondent has failed to maintain the Property to the repairing standard and that it is appropriate to make a RSEO.

61. The Respondent is required to do the following:

**61.1 Ensure that there is a functioning light in the close so that it allows safe access to the Property.**

**61.2 Repair or replace the front door of the Property to ensure that it is secure and has a functioning deadlock.**

**61.3 Repair uneven flooring throughout the Property.**

**61.4 Ensure that carpeting throughout the Property is properly fitted.**

**61.5 Make good the décor around electrical sockets and the shower switch.**

**61.6 Replace the detached section of tiling in the bathroom.**

**61.7 Make good the missing coving and gap in the wall of the bedroom.**

**61.8 Make good the wall under the bedroom window and properly attach the radiator to the wall.**

**61.9 Make good the exposed stonework and lath and plaster in the bedroom cupboard to ensure that no dampness or water ingress is possible.**

**61.10 Replace or repair the living room door to ensure that it fits the door frame and does not have a missing pane of glass.**

**61.11 Investigate and eradicate the dampness in the living room.**

**61.12 Re-attach the skirting board in the living room.**

**61.13 Replace the light fitting in the bathroom with one that is safe and compliant with regulations.**

**61.14 Make good any defects in décor caused by carrying out repairs to the Property.**

**61.15 Make good defects in décor caused by historic water ingress.**

**62. The Landlord is required to carry out the work required by the RSEO before 30 October 2025.**

## **Reasons**

63. The tribunal had regard to what it had found at the inspection of the Property.

64. The tribunal had regard to the statutory obligations imposed upon a residential landlord to ensure that properties meet the repairing standard throughout tenancies.

**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.**

M J McAllister

Martin J. McAllister,  
Solicitor, legal member of the First-tier  
Tribunal for Scotland.  
10 June 2025



# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### Inspection Photograph Schedule

#### Ground floor left Flat, 57 Gateside Street, Largs KA30 9HS

**Case Reference:** FTS/HPC/RP/25/0410

**Date of inspection:** 29/05/2025

**Time of inspection:** 10.00 am

**Weather conditions:** Damp and overcast

**Present:** Mr Martin McAllister – Legal Member  
Mr Nick Allan – Ordinary Member  
Mr Derrick McClure – Tenant



Photo 1 – Front elevation



Photo 2 – Poorly secured and ill-fitting door



Photo 3 – No functioning deadlock



Photo 4 – Non-functioning doorbell



Photo 5 – Carpet not fixed under threshold plate



Photo 6 – Prominent flooring ridge in Bedroom



Photo 7 – Loose/damaged timber floor (Lounge)



Photo 8 – Shower switch in Hallway



Photo 9 – Socket re-installation in Hallway



Photo 10 – Bathroom tile section removed



Photo 11 – Renewed Bathroom sealant



Photo 12 –Missing coving and gap in Bedroom wall



Photo 13 – Unsecured Bedroom radiator





Photo 14 – Fully functioning Bedroom door



Photo 15 – Boiler location in Bedroom cup/b

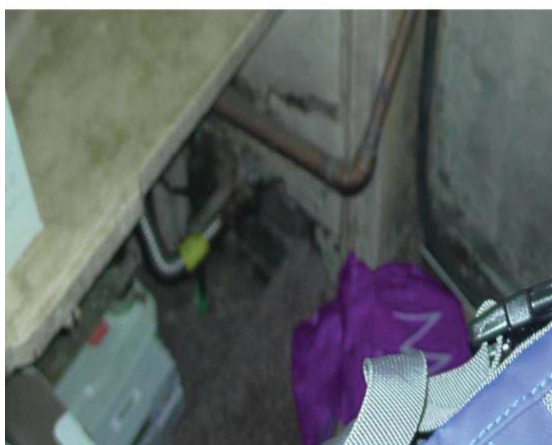


Photo 16 – Exposed stonework in Bed. cupboard



Photo 17 – Exposed lath and plaster in cup/b

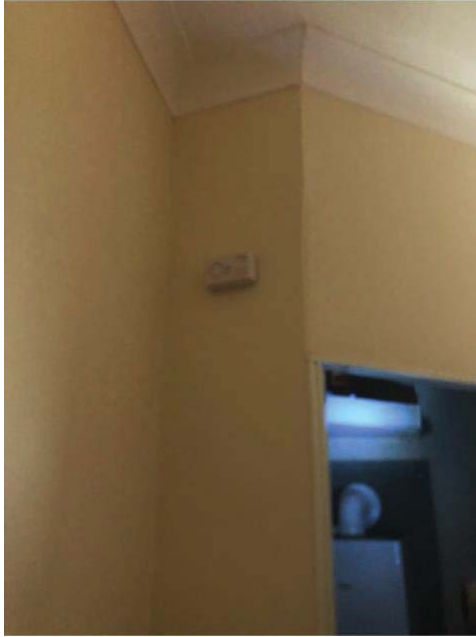


Photo 18 – Carbon Monoxide alarm in Bed



Photo 19 – Missing pane in Living room door



Photo 20 – Gap between Living room door + frame



Photo 21 – Saturated fireplace wall



Photo 22 – Saturated alcove

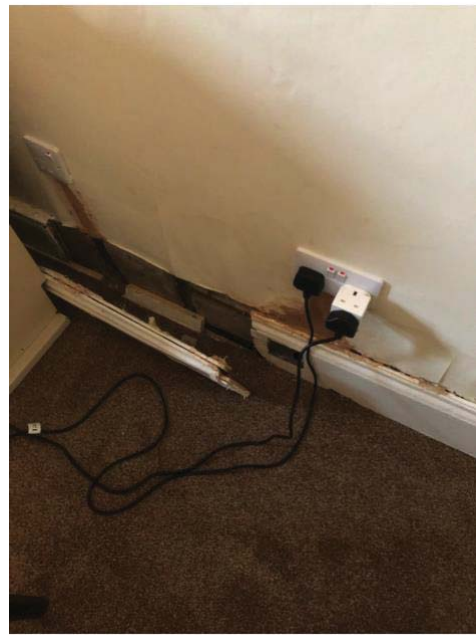


Photo 23 – Detached skirting + damp wall



Photo 24 – Historic water ingress staining



Photo 25 – Kickboard below Kitchen sink unit





Photo 26 – Inappropriate light fitting in Bathroom



Photo 27 – Debris/vegetation build-up at rear



Photo 28 – Water staining on gable wall



Photo 29 – Various chimney stack issues



Photo 30 – Raised ground level + damp bridge

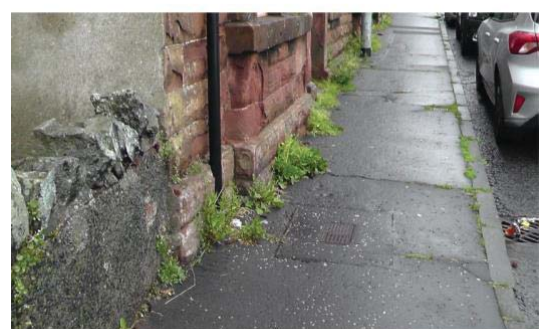


Photo 31 – Adjacent wall damp bridge



Photo 32 – Failing stone mullion



Photo 33 – Close up of mullion

Nick Allan FRICS  
Surveyor – Ordinary Member  
First-tier Tribunal for Scotland  
(Housing and Property Chamber)  
9<sup>th</sup> June 2025