



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/24/5595

Re: 95 Stevenston Court, New Stevenston, ML1 4HW (“the Property”)

Parties:

Mr Jacek Gizinski, 95 Stevenston Court, New Stevenston, ML1 4HW (“the Applicant”)

Mrs Sharon Kerr, c/o Property Angels, 14 Main Street, Bothwell, G71 8RF (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Andrew Taylor (Ordinary Member)

Outcome

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is in breach of her duty under section 14(1)(b) of the Housing (Scotland) Act 2006, and made a Repairing Standards Enforcement Order.

Summary of Inspection and Hearing

1. This Application called for a Hearing on 1 July 2025. The Tribunal undertook an inspection of the Property at 10.00am, in the presence of the Applicant. The Respondent was not present at the inspection. At the inspection, the Tribunal was directed to the areas within the Property that the Applicant contends are affected by rising or penetrating damp, as well as external areas which the Applicant thought relevant to the Tribunal’s determination in this matter. During the inspection, the Tribunal took a number of damp meter readings at the areas of concern, as well as photographs. The recorded readings and photographs are appended as a schedule to this note.

2. Following the inspection, the Hearing called at Brandon Gate, Hamilton, at 12.00pm. The Applicant was present at the Hearing. The Respondent was not present or represented at the Hearing.
3. In this Application, the Applicant seeks a Repairing Standards Enforcement Order. In the Application, he claims that the Respondent has failed to meet the Landlord's duty to keep the Property compliant with the Repairing Standard in section 14 of the Housing (Scotland) Act 2006. In particular, he asserts that:-
 - a. The house is not wind and watertight and in all other respects fit for human habitation; and
 - b. The house is not substantially free from rising or penetrating damp.

The Inspection

4. The Property is a ground floor flat in a tenement in fair decorative order. The Property is accessed from a common close, with secure entry. At the time of the inspection, the weather was warm and dry with partial cloud cover. During the inspection, the Applicant directed the Tribunal to four areas within the Property of concern, namely:-
 - (a) The hallway, at the doorway between the Property and the common close;
 - (b) The living room, along the base of the wall on the western elevation;
 - (c) The master bedroom, along the base of the wall on the western elevation;
 - (d) The second bedroom, along the base of the wall on the northern elevation;
 - and
 - (e) The kitchen.

The Tribunal was also directed to external parts of the Property; specifically the Western, Eastern and Northern elevations.

The Hallway

5. As one enters the Property from the common close, there is localised dampness immediately to the right of the doorway, from floor level upwards (see photograph 1). Damp meter readings were taken at the skirting and within the plaster board immediately above the skirting. The readings averaged at approximately 20% moisture, which is higher than would be expected from condensation related dampness.
6. There is an alcove adjacent to the area of dampness. The Applicant keeps a combined washing machine and tumble dryer in the alcove. The machine has an internal condensing unit as its drying function.

The Living Room

7. As one enters the Living Room, the wall that one is faced with is an external wall. There are windows along that wall. When we arrived, there was a corner sofa running along the wall. There was a small gap between the sofa and the

wall. The sofa continued along the wall to the right hand side, adjacent to the fireplace. There was evidence of dampness along the bottom of the wall under the windows and along towards the fireplace. Damp meter readings were taken at the skirting and within the plaster board immediately above the skirting. The readings averaged at approximately 20% moisture, which is higher than would be expected from condensation related dampness.

The Master Bedroom

8. The master bedroom was a cramped space, dominated by a large bed on open frame. There is a television table with large screen television, and a "tallboy" set of drawers, running along one wall, which meets at a corner the wall in which the window is situated. There is also a fitted wardrobe. There was evidence of dampness within the wardrobe (see photograph 10), as well as along the wall behind the "tallboy" and television table (see photographs 2 and 4), and along the window wall. Damp meter readings were taken at the skirting and within the plaster board immediately above the skirting. The readings averaged at approximately 18% moisture, which is higher than would be expected from condensation related dampness.

The Second Bedroom

9. The second bedroom is used by the Respondent's children. There is a storage unit running along one of the walls, which meets at a corner the wall in which the window is situated. There was evidence of dampness behind the storage unit (see photograph 3), and along the window wall. Damp meter readings were taken at the skirting and within the plaster board immediately above the skirting. The readings averaged at approximately 20% moisture, which is higher than would be expected from condensation related dampness.

The Kitchen

10. The kitchen units showed evidence of delamination. The extractor fan did not appear to be expelling much air. The fans on the external face were not opening when the fan was turned on (see photograph 7).

The External Areas

11. To the front of the Property, in the area under the living room window, there is vegetation. There was no visible staining to the wall. There is a rainwater downpipe adjacent to the entrance to the common close (see photograph 5).
12. To the rear of the Property, there is staining along the base of the wall (see photograph 9). The Applicant directed the Tribunal's attention to the gutter directly above the area of staining. The gutter was discoloured, suggesting that water was escaping or overflowing in that area.
13. Continuing along the rear elevation, to the north, the external face of the Property turns at a right angle to the west, and continues until it meets the rear elevation of the block comprising 105-115 New Stevenston Court. There

is heavy staining and mould in that area (see photograph 8). That area is through the wall from the second bedroom, behind the storage units.

The Hearing

14. Following the Inspection, the Hearing took place at Brandon Gate, Hamilton. The Applicant gave evidence regarding his use of the Property. He is 45 years old and in full-time employment as a warehouse manager. He lives at the Property with his wife and two children, aged 8 and 9. They moved to the Property from Manchester in September 2022.
15. The Applicant said that the Property has been having problems with mould growth for some time. He spoke of being told that it was caused by condensation, and that he should clean it with soap and water. However, the Applicant did not believe that condensation was the issue. He spoke of keeping windows open in the Property for ventilation. He said that he tried to keep gaps of 4 inches between furniture and the walls to keep airflow. He had bought a bed with an open frame, rather than a divan, to keep air flowing. He spoke of having bought additional electric heaters for the Property, which were run constantly. He purchased two dehumidifiers for the bedrooms, which were run constantly. The larger dehumidifier is in the master bedroom, and requires to have its two-litre tank emptied every 24 hours. The dehumidifiers run all day every day. During the winter, his electricity bill for one month was £380 because the heaters and dehumidifiers had to be run constantly.
16. The Applicant said that the washer/dryer was used daily. He said that it generated a lot of heat in that alcove, and that he was surprised that the damp and mould was next to the door due to that heat. The washer/dryer has an internal heat pump condenser that requires to be emptied after use.
17. The Applicant spoke of feeling ignored by the letting agent. He said that a gutter was leaking at the rear of the Property, but has not been fixed. He had complained about there being an electric heater in the bathroom. He had wanted compensation for his mattress having been damaged by mould. The flooring next to the toilet has collapsed, and is being masked by duct tape. These issues have been reported, but not fixed. The Applicant believes that there is a property factor in place, but does not know who that is.

Discussion

18. This Application proceeds under section 24 of the Housing (Scotland) Act 2006. The Tribunal's function is to determine whether the Respondent has complied with her duty under section 14(1)(b) of the 2006 Act, which is the duty to ensure that the Property meets the repairing standard at all times during the tenancy.
19. The repairing standard is set out in section 14 of the 2006 Act. In terms thereof, a house meets the repairing standard if, amongst other things:-

“(1)(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...

(h) the house meets the tolerable standard...”

20. The tolerable standard is set out in section 86 of the Housing (Scotland) Act 1987. A house meets the tolerable standard if, amongst other things, it:-

“(1)...(b) is substantially free from rising or penetrating damp...”

21. The focus of the Application is on whether the issues of damp and mould in the Property have been caused by environmental factors (i.e. how the Respondent and his family are using the Property) or a failure by the Respondent to meet the repairing standard.
22. Absent any contradictor, the Tribunal accepted the Applicant’s evidence regarding his use of the Property. Accordingly, the Tribunal accepted that the Applicant opens the windows throughout the Property daily for ventilation, that he runs dehumidifiers all day and night in the two bedrooms, and that he uses electric heaters regularly, and for much of the year constantly. The Tribunal accepted his evidence that he keeps gaps of four inches between items of furniture and the walls to promote airflow.
23. Having heard the evidence, and having inspected the Property, the Tribunal determined that environmental factors are likely contributing to issues with damp and mould in the Property. The Tribunal reached that conclusion for the following reasons:-
- (i) The bedrooms in the Property are cramped, with a lot of furniture within. Notwithstanding the gaps kept between furniture and walls, the volume of furniture is likely to disrupt ventilation.
 - (ii) The washer/dryer machine in the hall is likely to generate moist air in within the hallway, which will then accumulate on the cold surface of the wall leading into the common close.
24. However, whilst environmental factors are likely contributing to the formation of condensation and mould, it is the Tribunal’s view that the issues are not being caused by the Applicant’s use of the Property. The moisture readings taken throughout the Property, and at a deep level in the plaster and plasterboard, suggest that there is a problem with either rising or penetrating damp. The readings are simply too high to have been caused by environmental factors alone. Further, based on the Applicant’s use of the Property, including the opening of windows and operation of both electric heaters and dehumidifiers, the Tribunal has determined that the steps taken to mitigate condensation and mould in the Property would have prevented the moisture levels in the fabric of the Property reaching such a high level.
25. Separately, the Tribunal noted that the evidence of water damage to the external face of the Property in areas of high moisture readings tended to suggest that any issue with dampness and mould was being caused by the

fabric of the building becoming saturated and not being allowed to dry. What is unclear at this point is whether that is as a result of moisture rising up from the ground, or excessive water running down from, for example, overflowing or leaking gutters and downpipes.

Decision

26. It follows that the Tribunal has determined that the Property is not wind and water tight, nor is it substantially free from rising or penetrating damp. The Respondent is accordingly in breach of her duty under section 14(1)(b) of the 2006 Act. The Tribunal must make a Repairing Standards Enforcement Order as a consequence.
27. The Tribunal is unable to determine, from the material before it, what works are necessary to put the Property into a condition which meets the repairing standard. Accordingly, the Tribunal is unable to specify in the RSEO what works are required. The Tribunal therefore requires the Respondent to obtain and produce a report from a suitably qualified condensation/damp specialist which addresses the cause of the damp and mould within the Property, and provides recommendations to remedy those issues within the Property for the Tribunal to consider. The Tribunal requires that report within the next 42 days.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

A Upton

11/07/2025

Date



Schedule of Photographs



Property – 95 New Stevenston Court, New Stevenston, ML1 4HW

Reference- FTS/HPC/RP/24/5595

Tribunal Members – Andrew Upton (Legal Member) & Andrew Taylor ((Ordinary Member)

Purpose of Inspection – To prepare a record of the position at the property specifically as it relates to the items raised in the application and any issues arising therefrom.

Access – 10.00am, 1st July 2025

Weather – Clear and dry

In Attendance – The above Tribunal Members attended the property. Also in attendance was Mr Jacek Gizinski – Tenant.

Appendix 1

Schedule of Photographs taken during the Inspection on 1st July 2025



1. Mould and dampness adjacent front door



2. Mould/ main bedroom



3. Mould/dampness bedroom 2



4. Moisture meter in bedroom



5. External wall adjacent close



7. Fan at kitchen



8. Stained area of wall at bedroom



9. Staining at leaking gutter



10. Dampness/mould main bedroom

Andrew Taylor MRICS

Surveyor Member, Housing and Property Chamber, First-tier Tribunal For Scotland

1st July 2025