

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Statement of Decision of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 24(1) of the
Housing (Scotland) Act 2006**

Chamber Ref: FTS/HPC/RP/24/5506

Title no/Sasines Description: AYR227

**29 Martin Avenue, Irvine, KA12 9NU
("the Property")**

The Parties:-

**Mr Sebastian Sudorowski, 29 Martin Avenue, Irvine, KA12 9NU
("the Tenant")**

**Mr Nimai Panja, 12 Cygnet Road, West Bromwich, B70 9RH
("the Landlord")**

The Tribunal

**Ms Yvonne McKenna (Legal Member and Chair)
Mr Kingsley Bruce (Ordinary Member and Surveyor)**

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, and taking account of the evidence available to it following inspection determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act and therefore that a Repairing Standard Enforcement Order requires to be made.

Background

1. By application dated 26 November 2024, the Tenant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.

2. The application stated that the Tenant considered that the Landlord had failed to comply with their duty to ensure that the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order, and the property does not meet the tolerable standard. In particular the application stated that;

(a) The front and back gutters are clogged, causing water to leak down the exterior walls of the Property.

(b) There is mould on the walls in several areas; in one of the bedrooms where the walls are damp; on the bathroom ceiling; and next to the radiator in the upstairs hall. It is stated that an extractor fan is required in the bathroom due to the level of condensation despite the bathroom window being open 'nonstop'.

(c) The building is cracked on the exterior of the property at the rear and in an exterior passageway (or pend) leading from the front to the rear of the Property. These cracks are said to be progressively worsening.

3. On 29 January 2025, a Legal Member on behalf of the President of the Housing and Property Chamber intimated a Notice of Acceptance being a decision to refer the application under Section 22 (1) of the Act to a Tribunal to address the Tenant applicant's concerns in terms of section 13(1) (b) and section 13 (1) (h) of the Act.

4. The Tribunal served the Notice of Referral, Notice of Inspection and Hearing on the Landlord and the Tenant, together with a set of papers as set out in the Notice of Referral, on 26 April 2025.

5. Both parties returned notification forms, stating that they would attend a Hearing. The Tenant requested that a Polish interpreter be in attendance.

6. On 11 May 2025 the Landlord sent written representations to the Tribunal.

7. On 5 June 2025 the Landlord wrote to the Tribunal and requested that the Hearing be conjoined with an application for eviction which he had lodged with the Tribunal. The Tribunal replied on 9 June 2025 to the Landlord stating that the eviction case could not be conjoined as it was still at an assessment stage, and had not been accepted as a valid application by the Tribunal.

Summary of the issues

8. The issue to be determined was whether the Property met the Repairing Standard in terms of section 14(1) (b) of the 2006 Act by reference to the alleged defects set out above at paragraph 2 of this decision.

The Inspection

9. An inspection of the Property was arranged for 13 June 2025. The Tribunal inspected the Property at 10am on that day, in the presence of the Tenant who provided entry. A Polish interpreter, Mr Sasha Depzyski was also in attendance. The Landlord did not attend the inspection. A copy of the inspection report is attached as a Schedule to this decision.

The Hearing

10. Following the inspection of the Property, the Tribunal held an in person Hearing at 11.30 am, on the same day, at Russell House, King Street, Ayr. The Tenant attended the Hearing supported by his daughter Ms Natalia Sudorowski. The Landlord attended the hearing. The Polish interpreter was also present.

11. The Tribunal outlined to parties what had been seen at the inspection of the Property and explained the procedure regarding the Hearing.

12. The Landlord said that he had been unable to attend the inspection as he was reliant on public transport.

The Tenant's Position (Summary)

13. The Applicant referred to his application. He said that he had let the Letting Agent know about the clogged gutters. They had sent someone out to cost the necessary work. That was in July 2024. No works had been authorised, and the Tenant had heard nothing further.

14. Similarly he had spoken with the Letting Agents and asked if it was possible for vents to be installed in the bathroom, due to the mould/condensation there. An engineer attended in August 2024 to evaluate the work. The Tenant had expected that this work would be passed for approval by the Landlord. He heard nothing further.

15. He had chased the Letting Agents who explained they still awaited approval by the Landlord to proceed with the required works.

16. In relation to the Landlord's requested visit in October 2025, the Tenant required more notice, as he is a long distance bus driver.

The Landlord's Position (Summary)

17. The Landlord said that in order for work to be carried out at the Property, he needed to be satisfied that any such work was necessary. He complained that he had intimated that he wished to see for himself the issues with the Property, and had attempted to gain access in order to do so. He had e-mailed the Tenant on 23 October 2024; to state that he would be visiting on 26 October 2024. He had travelled from Birmingham. Access had been denied.

18. He said that some of the issues with the Property were longstanding, and should be the responsibility of the previous owner of the Property.

19. He is a pensioner with little savings, having invested in the Property in February 2024. He said that within 10 days of purchasing the Property that the Tenant had demanded a new boiler, despite the fact he had lived there for over 10 years.

Findings of fact

20. The Tribunal found the following facts to be established after inspection and Hearing:-

21. The Landlord purchased the Property on 9 February 2024.

22. The Landlord and the Tenant entered into a Private Residential Tenancy Agreement with a start date of 26 May 2024.

23. Prior to the Landlord purchasing the Property, the Tenant had resided there for around 15 years.

24. The Property is a mid terraced dwelling house, approximately 50-60 years old, originally built by a public sector landlord, located in a residential area of Irvine. The house appears to be of a form of construction known as "No-fines" concrete, external walls are lined in plasterboard internally, with rendered finishes externally. The accommodation consists of three bedrooms, a livingroom, a kitchen and a bathroom.

25. The Tenant resides in the Property together with his family members. There are 5 adults living at the address. The Property also accommodates a cat and a dog. In the upstairs bedroom where the mould is complained of, there are a number of cages housing several guinea pigs, and other small animals. The Tenant's daughter is employed as a veterinary nurse.

26. There is some vegetation, or weeds, in the gutters of the Property, to the front, and to the rear. The rear gutter was visibly off level at either end with potential for overflow of water.

27. There are cracks to the external render in three places, at ground floor to the front and rear of an access pend at the junction of the front and rear walls where they meet the wall of the pend. The cracks are largely superficial with no indication of underlying defect. To the rear, the render has been patched where a projecting wall of the neighbouring house meets the rear wall of the Property. The cracking is superficial and there is no indication of any apparent underlying defect. The cracks affect the render and there is no evidence that the property is not wind and watertight.

28. There is localised surface mould to the inside face of the front wall, above skirting level in the main bedroom facing the front of the Property. The type of mould discovered is commonly associated with condensation. It is confined to one lower corner of the room.

29. In the bathroom, there are slight indications of black spot mould to the ceiling,

and around a pipe duct on the ceiling there is slight water marking, which when tested with an electronic moisture meter, indicated a level of moisture consistent with slight water ingress around a vent pipe.

30. There are two small patches of discolouration/staining, possible surface mould adjacent to the top of the radiator at either side, on the upper floor landing. There is no indication of water escape from the radiator or water ingress. The marking noted was dry when tested and was not considered to be an indication of significant condensation. The cause could not be determined.

The Tribunal decision

31. The Tribunal found that the Property failed to meet the Repairing Standard as set out in section 13(1) (b) of the 2006 Act contrary to the Landlord's obligation in terms of section 14(1) thereof.

Reasons for the decision

32. The Tribunal took account of the oral and written submissions.

33. The Tribunal had regard to what was seen at the Inspection of the Property.

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

35. It is immaterial to the Tribunal that the Landlord complains that some of the issues the Tenant has raised in his application were in place at the time that he bought the Property; or that he has spent his money on firstly purchasing the Property and then paying for a boiler to be installed. He still requires to maintain the Property and for the Property to meet the Repairing Standard.

36. The structure and exterior of the house (including drains, gutters and external pipes) require to be a reasonable state of repair and in proper working order. There are issues emanating from the gutters which have caused some dampness in the bathroom around the soil vent pipe. It was clear to the Tribunal that the gutters at the Property require some attention. Therefore a breach of the Repairing Standard has been established in relation to this requirement.

37. In relation to the cracks on the exterior wall, and in the pend, these issues are not affecting the Property being wind and watertight. They are in a reasonable state of repair and there is no breach of the Repairing Standard.

38. In relation to the mould issues complained of it is a requirement that the Property meets the tolerable standard, and in particular that it is substantially free from rising or penetrating damp. As there is no significant dampness, the Property is found to meet the Repairing Standard in that regard. Therefore a breach of the Repairing Standard has not been established in relation to this requirement.

Decision Outcome

39. Having found there to have been breaches of the Repairing Standard, the Tribunal is therefore obliged to issue a Repairing Standard Enforcement Order as required by section 24(1) of the 2006 Act.

Right of Appeal

A landlord, tenant or third party applicant 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.

In terms of Section 63 of the Act, 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.

Yvonne McKenna

Signed Yvonne McKenna Legal Member

Dated 23 June 2025



Inspection: 29 Martin Avenue, Irvine, KA12 9NU

Reference: HPC/RP/24/5506

Circumstances:

The subject property was inspected on Friday 13 June 2025, By Mr Kingsley Bruce (Ordinary/Surveyor Member) and Mrs Yvonne McKenna (Legal Member). Weather conditions were dry and overcast following a period of settled weather. The property was occupied. The inspection was undertaken of external elements of the property, from ground level, whilst standing within the curtilage or from the public highway adjacent.

The subject property is a mid-terraced house, approximately 50-60 years old, originally built by a public sector landlord. Accommodation comprises three bedrooms, livingroom, kitchen and bathroom. The house appears to be of a form of construction known as “No-fines” concrete, external walls are lined in plasterboard internally, with rendered finishes externally.

Access:

The tenant Mr Sebastian Sudorowski and members of his family were present, and an interpreter Mr Sasha Depzyski, the Landlord was not present or represented.

Findings:

- Weed/vegetation growth to gutters front and rear. The rear gutter was visibly off level at either end with potential for overflow of water.
- Localised surface mould to the inside face of the front wall in one bedroom, above skirting level.
- In the bathroom, there were slight indications of black spot mould to the ceiling, and around a pipe duct on the ceiling there was slight water marking, which when tested with an electronic moisture meter, indicated a level of moisture consistent with slight water ingress around a vent pipe.
- Two small patches of discolouration/staining, possible surface mould adjacent to the top of the radiator at either side, on the upper floor landing. No indications of water escape from the radiator or water ingress. The marking noted was dry

when tested and was not considered to be an indication of significant condensation. The cause could not be determined.

- Cracks to external render were seen in three places, at ground floor to the front and rear of an access pend at the junction of the front and rear walls where they meet the wall of the pend. The cracks were largely superficial with no indication of underlying defect. To the rear, render has been patched where a projecting wall of the neighbouring house meets the rear wall of the subjects. Again, the cracking was superficial and no indication of underlying defect was apparent. The cracks affect the render and there was no evidence that the property was not wind and watertight.
- It was noted that the property is occupied by five adults, a cat, dog and a number of other small animals in the front bedroom.

Photographic schedule

Front elevation or street view of subjects



View of rear elevation, showing guttering and vegetation growth



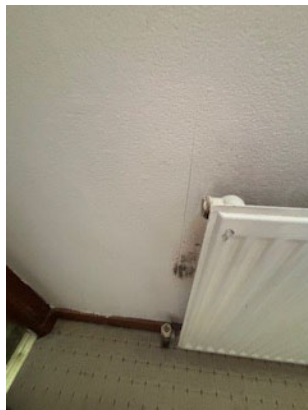
Front Gutters- showing weed/vegetation



Front bedroom: mould/condensation



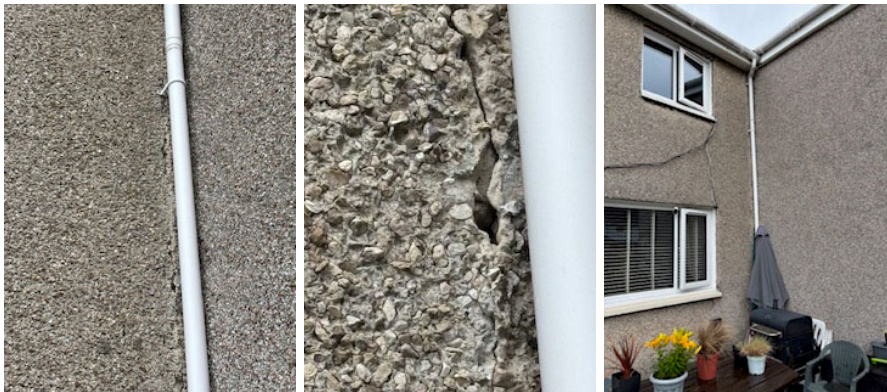
Landing: Marking at radiator



Bathroom Ceiling



Cracks to Render-Rear:



Cracks to render- Pend Wall:



Prepared by:

Kingsley Bruce

Ordinary (Surveyor) Member

First Tier Tribunal for Scotland- Housing and Property Chamber

23 June 2025