



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

Reference number: FTS/HPC/RP/24/4431

**Re: Property at 12a Coutts Building, Golf Road, Ballater, Aberdeenshire, AB35
5RE (“the Property”)**

The Parties:

**Mr Samuel Hollands, 12a Coutts Building, Golf Road, Ballater, Aberdeenshire,
AB35 5RE (“the Tenant”)**

Mrs Lucinda Fernie, Polmonier Cottage, Ballater, AB35 5TB (“the Landlord”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”). The Tribunal accordingly made a Repairing Standard Enforcement Order (“RSEO”) as required by Section 24(2) of the Act.

Background

- 1 This is an application under section 22(1A) of the Housing (Scotland) Act 2006 (“the Act”) by the Tenant for a determination that the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- 2 The application stated that the Landlord had failed to comply with the repairing standard for the following reasons:-
 - (i) The property had severe damp and moisture levels, resulting in mould throughout the property, with the main area affected in the bedroom.
 - (ii) There was no suitable airflow to the bathroom resulting in mould and rot in the ceiling boards.

- (iii) There was damp in the living room ceiling and walls, with warping and cracks forming.
 - (iv) The ceiling in the bathroom and hallway had collapsed.
- 3 The application was therefore referred to the Tribunal for a determination and Notice of Referral was served on the Landlord under Schedule 2, Paragraph 1 of the Act. An inspection was scheduled for 16 July 2025 with a hearing set for later that day. Parties were invited to make written representations in advance of the hearing.
- 4 On 2 July 2025 the Tribunal received written representations from Laurie & Co Solicitors LLP on behalf of the Landlord.

The inspection

- 5 The Tribunal inspected the property at 10.00am on 16th July, 2025. The Tenant was in attendance and permitted access. Neither the Landlord nor the Landlord's representative were present.
- 6 The property is in a mixed residential and commercial area within the centre of the Burgh of Ballater, which lies around 40 miles west of Aberdeen city centre. It was dry and bright during the inspection with showery weather over the preceding days.
- 7 The property is a ground floor flat within a three-storey purpose-built tenement containing a total of six flats. The main outer walls are of solid stone construction, pointed externally. The roof is pitched and slated. The building is upwards of 125 years old. The windows are likely to be upwards of 30 years old and are timber framed and double glazed. Heating is via wall mounted oil filled electric heaters in the lounge and bedroom and a wall mounted fan heater in the shower room. Hot water is via a "Santon Aquaheat" electric water heater located in the hall cupboard and the instantaneous electric shower.
- 8 The accommodation comprises: communal entrance hallway, entrance hall, Lounge to front, shower room with WC and wash hand basin, kitchen with window to rear, bedroom off kitchen with window to rear.
- 9 The inspection was restricted to the items contained within the application paperwork. The lounge was inspected first. The atmosphere was noticeably humid and the window was closed. Staining from water ingress was noted to the left side of the chimney breast wall, close to the ceiling. The stain extended on to the adjacent ceiling. The stain was tested for moisture content using a Protimeter Surveymaster moisture meter. The readings were red, 99% to the plaster finishes. Droplets of moisture had formed to the ceiling at this area. Below the area of staining, there was a tide mark to the carpet, where it met the skirting board. When tested, the skirting board showed red readings of 99%. The majority of the chimney breast wall appeared to have been over

boarded with plasterboard. Elsewhere there was moderate mould growth to the gable and front walls, particularly around the window area. When tested with the meter, green readings of below 20% were observed. There was slight mould to the stairwell wall. Green meter readings below 20% were observed.

- 10 Within the hallway, the Tenant pointed out the decoration was defective at the site of the storage heater, which had been removed prior to the commencement of the tenancy. The hot water heater was inspected. It felt warm. When the basin hot tap was opened, hot water came through sufficient to fill the basin with very hot water
- 11 The shower room was inspected. A significant portion of the ceiling plaster was missing. There was extensive mould to the gable wall behind the WC and above the shower. When tested for moisture, most areas showed green, below 20%, with the exception of the area above the shower, close to the area of collapsed plaster. The exposed lath was black adjacent to the gable, indicating that it had likely been damp at some point. The extractor fan was operating. There was an air vent integrated within the door to the hallway. The electric fan heater was switched on and operated normally.
- 12 The kitchen was inspected. The window was closed. There was slight mould growth to the plaster finishes of the outer wall. When tested, green readings, below 20% were observed. There was an area of detached wallpaper to the window soffit. The area was tested for moisture and green readings below 20% were observed. The cooker hood was inspected and found to be the re-circulation type (not vented to outside). There was no fixed heating in the kitchen. There appeared to have been a storage heater, evidenced by marks to the decoration and floor coverings.
- 13 The bedroom was inspected next. The window was closed. There was extensive mould growth to the gable and rear walls. For the most part, moisture meter readings were green, below 20%. A circular mark, mid way up the gable wall showed red, 99%. Moisture meter readings to the plasterwork at the gable, just above the skirtings and to the skirtings themselves, showed red, 80-99%.
- 14 The internal communal areas were next inspected. The Tenant pointed out an area of new plasterwork at the first half-landing.
- 15 The rear of the building was inspected. Only a limited inspection of the chimneys and roof surfaces was possible from ground level. It was seen that the cement flashing at the shed adjoining the rear of the building had been repointed recently. Dark staining to the rear wall, below and above the windows and below a joint to the WC extension indicated previous leakage of the rainwater goods, but the adequacy of the rainwater goods could not be assessed as it was dry during the inspection. The slaterwork appeared to be largely intact. There were no obvious defects to the pointing to the cement flashing at the edge of the roof and to the tabling at the gable. It could be seen that all of the chimney cans to the gable chimney have vented caps.

- 16 The front of the building was inspected. Again, only a limited inspection of the upper elements was possible from ground level. Slight cracking was noted to the cement flashing at the edge of the roof. There was some corrosion to the rainwater goods and a gap at the right hand down pipe joint, but again, the adequacy of the rainwater goods could not be fully assessed in the prevailing weather conditions. It could be seen that the brickwork to the adjacent chimney of the adjacent property had been repointed recently, together with the joint between the tabling and the gable of the subject property.
- 17 Photographs were taken during the inspection and are included in the attached schedule.

The hearing

- 18 The Tribunal held a hearing on 16 July 2025 at 2pm by teleconference. The Tenant joined the call. The Landlord was represented by Ms Lynda Fyfe of Laurie & Co Solicitors LLP. Ms Fyfe was accompanied by a colleague for training purposes.
- 19 The Tribunal summarised the findings from the inspection before hearing evidence from the parties on the application. The following is a summary of the key elements of the evidence and is not a verbatim account.
- 20 As a preliminary matter the Landlord's position is that the Tenant failed to notify her under section 22(3) of the Act of the work that is required to be completed. Ms Fyfe made reference to the written representations from the Landlord on this point. Any reference to previous tenants or other properties within the block were irrelevant to the Tribunal's determination of the application. The Tenant's position is that the Landlord was notified of the repairs, with reference to the correspondence submitted with the application. The Tenant clarified that some of the Whatsapp messages submitted with the application were between the Landlord and the occupier of another property in the building.
- 21 The Landlord does not dispute that repairs were required to the property. Her position is that she has been denied access by the Tenant. The Landlord had made efforts to get the work carried out. Ms Fyfe directed the Tribunal to the communications that had been submitted between the Landlord and various contractors. She highlighted the repairs that had been carried out, including the ceiling in the communal hall. Ms Fyfe confirmed that the Landlord owned one other property in the building, which was located above the let property in this case. The Landlord had completed repairs to the other property earlier this year. Ms Fyfe explained that the Landlord had intended to continue investigating the issues in the let property but had been prevented from doing so by the Tenant. The Landlord had not made a right of entry application to the Tribunal as she had ultimately decided to seek repossession of the property in order to sell it. She had not, as far as Ms Fyfe was aware, obtained a report from a damp and condensation specialist. Ms Fyfe advised that a

notice to leave had been sent to the Tenant and the Landlord was in the process of applying to the Tribunal for an eviction order.

- 22 The Tenant does not trust the Landlord to get to the root cause of the damp and mould. A ceiling had collapsed in November 2023 and the Landlord had failed to address this until February 2025. The damp and condensation was a recurring event. The Tenant resided with his partner who suffered from various health issues which meant she could not be left alone with contractors. The Tenant had not refused access. He had tried to organise times with the Landlord. The Tenant had subsequently had an altercation with the Landlord and her husband. The Tenant had spoken with the local authority and had been advised to submit this application to the Tribunal. The Tenant wanted an independent third party to assess the property in order to get to the root cause of the moisture.
- 23 Ms Fyfe made closing submissions on behalf of the Landlord. The Landlord was unaware that the hearing was an evidential hearing and was therefore not in attendance to give evidence in response to the Tenant's allegations. The Landlord had complied with her repairing duties insofar as she was able to do so, and had taken all reasonable steps to identify the source of the water ingress. Ms Fyfe made reference to section 13(3) of the Act which requires the Tribunal to take into account the age and character of the building when determining whether the house meets the repairing standard. The property was an old tenement building and during periods of heavy rainfall it could be difficult to identify the source of any leaks. The Landlord had never been asked to obtain a report from a damp and condensation specialist. Anything she had suggested to the Tenant had been met with resistance. The Tenant displayed hostility towards the Landlord. He had submitted the application to the Tribunal as a result of the Landlord's alleged behaviour towards him. With reference to the ceiling collapse, the Tenant had not notified the Landlord of this promptly.
- 24 The Tenant reiterated that the Landlord had been made abundantly aware of the problems in the property. He did not believe enough steps had been taken to find the root cause of the issues. The Tenant just wanted the property to be repaired. He had therefore applied to the Tribunal so that the appropriate steps could be taken.

Findings in fact

- 25 The Landlord and the Tenant entered into a private residential tenancy agreement in respect of the property, which commenced on 4 August 2023.
- 26 The tenancy between the parties is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 27 Prior to the commencement of the tenancy, the Landlord indicated to the Tenant that there had been problems with damp at the property in the sitting room.

- 28 On or around 15 August 2023 the Tenant advised the Landlord by text message that there was mould in the bedroom.
- 29 On 28 September 2024 the Tenant sent a text message to the Landlord with reference to the ongoing damp and mould in the property.
- 30 The property is affected by condensation, dampness and mould.
- 31 The ceiling in the bathroom has collapsed.

Reasons for Decision

- 32 The Tribunal determined the application having regard to the terms of the application, the written representations from the parties, and the submissions at the hearing. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information upon which to reach a fair determination of the application.
- 33 Section 14(1) of the 2006 Act states “*The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy.*” In terms of Section 3 of the 2006 Act “*The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it*” The Tribunal is satisfied that the Tenant notified the Landlord of damp and mould within the property at various points prior to lodging the application. It was clear from Ms Fyfe’s submissions at the hearing that the Landlord is aware of these issues, and has previously taken steps to try and address the water ingress to the property. For the avoidance of doubt, the Tribunal did not take into account any reference to communications between the Landlord and any third parties as these were not relevant to the application before it.
- 34 The Tribunal was not however satisfied that the Tenant had given the Landlord notice of other items raised in the application and highlighted during the inspection, including the hot water, lack of proper airflow and structural stability of the property. On that basis, the Tribunal did not consider those matters as part of this application.
- 35 The Tribunal therefore considered whether the Landlord had complied with the duties under section 14(1)(b) of the Act in respect of the damp and mould within the property. The Tribunal concluded that she had not. The Landlord does not dispute that the property is affected by damp and mould, and the Tribunal was satisfied that the findings from the inspection sufficiently evidence this. The Landlord’s position is that she has made reasonable efforts to address the issue but has been prevented from doing so by the Tenant. The Tribunal noted however that she had not sought to apply to the Tribunal for assistance with gaining access to the property, despite her awareness of the damp and mould therein. Instead, it appears that she has elected to suspend any further work

because she has now decided to sell the property. As a result, the ceiling collapse in the bathroom is yet to be addressed, as well as the significant mould in the bedroom, which has the potential to cause health risks to the Tenant and his partner. The Landlord had stated in her written response to the application that she has been refused access to the property by the Tenant since September 2024. However, there is no evidence that she has taken any steps since then to carry out any further repairs. Her decision to repossess and sell the property does not negate the duties she has under section 14(1)(b).

- 36 The Tribunal considered the age, character and prospective life of the house, but concluded that these factors did not provide a suitable explanation for the evident water ingress to the property, as demonstrated by the findings of the Tribunal's inspection. Further investigations by a damp and condensation specialist will therefore be necessary to address and remedy the source of the water ingress.
- 37 For the avoidance of doubt the Tribunal found no failure of the duties under section 14(1)(b) in respect of the communal areas. It was clear from the inspection that the Landlord has taken steps to carry out repairs to the ceiling and the Tribunal could not identify any ongoing issues with water ingress in the communal hall.
- 38 The Tribunal therefore concluded that the Landlord had failed to comply with the duties under section 14(1)(b) for the above reasons and in terms of the following provisions of the Act:
- (i) In respect of 13(1)(a), the house is not wind and watertight and in all other respects reasonably fit for human habitation;
 - (ii) In respect of 13(1)(b), 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; and
 - (iii) In respect of 13(1)(h), the house does not meet the tolerable standard, in that it cannot currently be ascertained that the house is substantially free from rising or penetrating damp.
- 39 The Act states that where a Tribunal decide that a landlord has failed to comply with their duty in that respect, the Tribunal "*must by order require the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard*". The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of Section 24(2) of the Act. The Tribunal further determined that an appropriate timescale for the works to be carried out is one month.
- 40 The decision of the Tribunal was unanimous.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or 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 determined.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

8 September 2025

Legal Member/Chair

Date