

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RT/25/0709

Craigdarroch Gardens Cottage, Moniaive, Thornhill, DG3 4JB being part of the Farms of Ballinie and Calside, in the parish of Glencairn, delineated and outlined red on the plan annexed to the Disposition to Humphrey Hugh Sykes and others as Trustees under maintenance Fund Settlement, recorded 31 July 1985 (under exception of two areas of woodland hatched red on said plan annexed to said Disposition), part of Craigdarroch Estate, referred to in the Disposition to Robert Sinclair-Scott, recorded 14 May 1952 which subjects are registered in the Register of Sasines and are currently subject to an application to the Land Register under title number DMF35811 (“the Property”)

The Parties:-

Dumfries and Galloway Council Housing Standards, Militia House, Dumfries, DG1 2HR (“the Third Party Applicant”)

Mrs Carin Sykes, Craigdarroch, Moniaive, Thornhill, DG3 4JB (“the Respondent” and “the Landlord”)

Mr Christopher Freeman, sometime residing at Craigdarroch Gardens Cottage (“the Former Tenant”)

Tribunal Members:

Mr Martin McAllister, Solicitor (Legal Member) and Mr Donald Wooley, Chartered Surveyor (Ordinary Member) (“the tribunal”)

Decision

The tribunal determined:

(One) that the Landord 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 14 February 2025, the Third Party 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 Applicants and the Respondent were parties to a private residential tenancy agreement.
3. Subsequent to the submission of the Application, the Former Tenant left the Property and the tenancy was terminated.
4. The application states that the Property does not meet the repairing standard set out Section 13 of the 2006 Act: it states that the House is not wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order and the house is not substantially free from rising or penetrating damp.
5. The application makes specific reference to the following matters:
 - 5.1 Mould in bedroom 1, and ensuite bathroom, bedroom 3, a kitchen cupboard, a bathroom, the hallway and the dining room.
 - 5.2 Staining on the main wall of bedroom 3.
 - 5.3 Damp in the living room and.
 - 5.4 Incomplete work to fireplace.
 - 5.5 Rot to window frames in kitchen and bathroom.
 - 5.6 Water marks on ceiling of the kitchen.
 - 5.7 Missing tile on step in the kitchen.
 - 5.8 Window in dining room does not close.
 - 5.9 Crack on window frame in dining room.
 - 5.10 Flaking plaster in dining room.
 - 5.11 Rusted gutters
 - 5.12 Cracked rendering at front of the Property.
 - 5.13 Crack near the Chimney.
 - 5.14 Gutters “overgrown.”
 - 5.15 Cracked rendering.
 - 5.16 Lack of electrical installation condition report.
 - 5.17 Evidence of boiler servicing.

6. On 31 March 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 26 August 2025. No representative of the Third Party was present. The Landlord was not present and she had arranged for Mr Jack Dourie to provide access to the Property.
8. A schedule of photographs and summary of site observations, 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 two -storey detached property situated in the estate grounds of Craigdarroch, Moniaive. The accommodation comprises of a living room, dining room, three bedrooms, an ensuite bathroom, a bathroom and kitchen.
10. There is significant mould/staining on the inner frame of the main bedroom windows.
11. External window sills in the bedrooms are rotten.
12. Mr Dourie confirmed that the landlord has ordered new windows for some of the upper floor rooms.
13. There was evidence of recent décor works having been carried out in the Property. Walls and windows have been painted.
14. There was some evidence of minor mould around windows in the bedrooms and ensuite bathrooms. There was no evidence of mould or staining on the walls.
15. Some windows have been “painted shut” and are difficult to operate.
16. A solid fuel stove in the living room has been partially dismantled and there is a label on it warning against its use.
17. Much of the plasterwork surrounding the fireplace is damaged and missing.
18. There is a thermostatically controlled radiator within the living room capable of providing a heat source.
19. A new oil -fired boiler has been installed in the Property and Mr Durie confirmed that it had not yet been commissioned.

20. There was significant damp at the skirting level in the living room.
21. The higher -level kitchen windows are in need of repainting but there is no evidence of significant rot.
22. The timber sash and casement window in the kitchen displays evidence of rot.
23. Moisture readings taken at ceiling/external gutter level identified areas of significant damp within the kitchen which may be residual as repairs and renewals, notably at the eaves gutters, have been completed since the Third Party inspected the Property.
24. A tile or tiles on the connecting internal kitchen step have been replaced but have not been grouted.
25. There was evidence of historic condensation and mould staining in the kitchen cupboard but testing confirmed the area to be dry.
26. Moisture readings taken towards ground level in the kitchen pantry proved positive confirming the presence of damp.
27. The bathroom windows were in fair condition.
28. There is no evidence of mould at the entrance door which appears to have been recently painted.
29. There was no evidence of loose tiles on the hallway floor.
30. There is significant evidence of damp, most notably at the lower wall area of the dining room. This is at a level likely to cause deterioration to the internal fabric if left unrepaired.
31. The left hand window in the dining room does not function properly and cannot open.
32. There was no evidence of significant cracking at the window frames in the dining room.
33. Externally, the Property has undergone a scheme of partial repair. Eaves gutters are free of vegetation and significant blockages. The eaves gutters have been renewed with modern PVC replacements.
34. There was no evidence of significant cracking at the external rendering at the outer walls or around the chimney.

Hearing

35. A Hearing was held by teleconference on 26 August 2025. The Respondent dialled in and indicated that she was phoning from Spain. It was explained to her that there were difficulties in the Tribunal taking evidence from anyone outwith the United Kingdom. The Third -Party Applicant did not participate.

36. The Respondent said that she understood the position with giving evidence and said that she planned to return shortly to Scotland and that she would be able to submit written representations once she had heard the findings of the inspection. The tribunal considered this a suitable way to proceed.

37. The Ordinary Member set out the findings from the Inspection and the hearing concluded because no evidence could be taken from the Respondent.

Representations from the Respondent

38. The Respondent submitted written representations on 27 August 2025 and stated the following:

38.1 Windows in the dining room, drawing room and bathrooms are to be replaced and the contractor has been instructed.

38.2 Damage had been caused by the Former Tenant who also removed fixtures and civil proceedings are being initiated in relation to those matters.

38.3 The incidence of mould was as a direct result of the Former Tenant's failure to adequately heat and ventilate the Property which caused detriment to its condition.

38.4 A lintel had been removed from a load bearing wall and the wood-burning stove had been improperly removed and reinstalled by the tenant in a manner which was unsafe and without proper authority or professional oversight.

38.5 The Tenant repeatedly ran external taps leading to depletion of the water supply and possible compromise of the Property's foundations.

38.6 The Tenant refused access for essential inspections.

38.7 The Tenant removed white goods listed in the tenancy inventory.

38.8 The Tenant removed shelving in outbuildings and the greenhouse.

38.9 The Tenant carried out works to the chimney which were unsafe.

38.10 The Respondent was denied access by the Tenant to carry out inspections and therefore no liability arises over a failure to maintain the house to the repairing standard during the period where she was denied access.

Discussion and Determination

39. The tribunal considered the representations submitted by the Respondent. It could come to no view with regard to whether the Respondent had been denied access to the Property. The tribunal's role was to determine if the Property met the repairing standard on the date of the inspection.

40. The tribunal determined that the Property did not meet the repairing standard on 26 August 2025.

41. The tribunal noted that works had been carried out in the Property and that these were ongoing.

42. In relation to the solid fuel stove in the living room, the tribunal noted that it was currently not capable of being operated but that an alternative source of heating was present in the room: a central heating radiator. In the circumstances, it did not consider it necessary to make any order with regard to the solid fuel stove but considered it appropriate that the Respondent should reinstate the fireplace.

43. Subsequent to the inspection, the Landlord submitted an electrical installation condition report dated 14 June 2024. Prepared by Dumfries Electrical Services Ltd, who are NICEIC registered, the tribunal noted that although the electrical system was deemed to be “satisfactory” for continued use, the report appears to have been relatively limited in scope and contained a significant number of category C3 observations which were of concern to the Tribunal.

44. In particular, the tribunal noted observation 9 in the EICR which stated:

“Very old rewirable fuses consumer unit fitted. This will need upgraded in the near future to maintain a good installation.”

Observation 6 in the EICR stated:

“One Rcd is protection all circuits within property. If a fault occurs it will trip all power to the property”

45. The tribunal determined to make a RSEO in the following terms:

45.1 The Landlord is required to fully investigate the cause and extent of the damp within the property and instruct a suitably experienced contractor to undertake the appropriate remedial action necessary to ensure that it is free from damp and mould. Any decoration damaged as a consequence of the remedial works undertaken should be made good. On conclusion of the works to eradicate damp and mould, the property should be in a reasonable state of repair, wind and watertight and in all other respects reasonably fit for human habitation.

45.2 The Landlord is to repair or replace defective, broken or rotted windows ensuring that they are in a reasonable state of repair and in proper working order.

45.3 The Landlord is required to produce a current Electrical Installation Condition Report for the Property. The Report requires to be prepared by an electrician registered with SELECT, NICEIC NAPIT or other accredited registered scheme who is either employed by a firm that is a member of such accredited scheme or is a self-employed member of such a scheme. The Report requires to confirm that the installation is “satisfactory,” has appropriate RCD protection wholly compliant with the repairing standard

and has no recommendations in the C1 or 2 category or F1 items for further investigation. It should also confirm that the C3 observations noted in the EICR already submitted to the Tribunal, dated 14 June 2024, as highlighted in paragraph 44 of this Decision, have been satisfactorily addressed.

45.4 The Landlord is to complete the installation of the central heating boiler ensuring that the property has satisfactory provision for heating.

45.5 The Landlord is to reinstate the fireplace in the living room and, as required, make good any décor damaged in the course of the work.

The Landlord requires to comply with the RSEO by 30 November 2025.

Reasons

46. The tribunal had regard to what it had found at the inspection of the Property and the written representations of the Respondent.

47. In relation to the EICR, the tribunal considered that it demonstrated that there were insufficient residual current devices in the Property. It also considered that observations 6 and 9 were such that the Property did not meet the repairing standard.

48. 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 McAllister

Martin J. McAllister,
Solicitor, legal member of the
Tribunal.
15 September 2025.