

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)
STATEMENT OF DECISION: in terms of Section 26(1) of the Housing (Scotland)
Act 2006 (“the Act”) in respect of an application under Section 22(1A) of the
Act

Chamber Reference number: FTC/HPC/RP/24/2112

Parties:

Ms. Mairi Watt residing at 32, Cumbernauld Road, Moodiesburn, G69 0AA (“the Tenant”)

Mr. James McEwan residing at 29, Willowbank Gardens, Kirkintilloch, G66 3AN (“the Landlord”)

Property: Upper flat at 32, Cumbernauld Road, Moodiesburn, G69 0AA being the subjects registered under title sheet number GLA20931

Tribunal Members

Karen Moore (Chairperson) and Nick Allan (Surveyor and Ordinary Member)

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order

(RSEO), determined that it cannot be satisfied and so determines that the Landlord has failed to comply.

In addition, the Tribunal imposes a Rent Relief Order of 15% of the monthly rent from the date 30 days from the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

This Decision should be read in conjunction with Decision and RSEO both dated 14 March 2023.

Background

1. By application received between 9 May 2024 and 28 May 2024 (“the Application”), the Tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) and 13(1) (h) of the Act. Specifically, the Application stated that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard as there is dampness, mould and water ingress in the living room and lower bedroom of the Property.
2. An Inspection of the Property and a Hearing took place on 22 October 2024. The Tribunal noted that the Landlord had carried out works to the Property immediately before the Inspection and Hearing and so adjourned the proceedings to allow time for the works to settle and an opportunity for the dampness to dry out. The Tribunal issued a Direction to the Landlord to provide documentary evidence of the work carried out, which Direction was complied with in part.
3. The adjourned Inspection and Hearing took place on 27 February 2025 at 10.00 and 11.45, respectively, the outcome of which was that the Tribunal made the following RSEO:

"The Landlord must on or beforexxxxx

4. By email dated 24 March 2025, the Landlord submitted photographs of the Property and receipts for work carried out.

Re-inspection

5. A Re-inspection of the Property was fixed for 28 August 2025. Prior to that date, the Landlord, by email dated 25 August 2025, advised that the work required by the RSEO had been completed.

6. The Re-inspection took place on 28 August 2025. At the Re-inspection the Tribunal noted that, although work had been carried out by the Landlord, the dampness issue within the living room of the Property had not been eradicated.

7. The Tribunal issued a Re-inspection Report with photographs to the Parties. The Re-inspection Report and photographs show that the wall around the fireplace and at the gable window within the living room of the Property remain affected by dampness.

8. The Landlord, by email dated 16 September 2025, submitted a Report with photographs prepared by a damp proofing contractor.

9. The Tenant, by email dated 17 September 2025 disputed the findings of the damp proof contractor's Report and specifically disputed that drying washing was the cause of the dampness.

10. Neither Party requested a Hearing and so the Tribunal determined the issues based on the Re-inspection and the correspondence submitted by the Parties.

Tribunal's assessment of the Parties' submissions.

11. The Tribunal noted that the tone and wording of the emails submitted by the Landlord were informal and appear to suggest that he does not understand

the either the statutory role and powers of the Tribunal nor does he understand his statutory obligations and duties as a landlord. The Tribunal noted that neither the Landlord nor his agents appeared at any of the proceedings.

12. With regard to the damp proof contractor's Report submitted by the Landlord, although this Report showed low level dampness readings, the readings were not taken in respect of the areas of concern as tested by the Tribunal. Further, the readings taken were surface readings and not readings which showed the condition of the living room wall below the surface. The Report suggested that life-style condensation might be a contributory factor. The Tribunal, at its Inspection and the further two re-inspections, found no evidence of condensation or life-style condensation. Accordingly, the Report was of no assistance to the Tribunal.

13. The Tribunal had regard to the Tenant's submission and agreed that drying washing was not the cause of the dampness. The Tribunal noted that a dehumidifier was present in the Property.

14. The Tribunal agree with the Tenant that the Landlord ought to have attended the proceedings or been represented at them.

Findings of Fact

15. The Tribunal's findings in fact were made from all of the information before it being the Application, the Inspection and Hearing on 18 November 2024, the Re- Inspection and Hearing on 27 February 2025, the Re-inspection on 28 August 2025 and the Parties' written submissions.

16. The Tribunal found the following matters established: -

- i) The work required by the RSEO has not been carried out;
- ii) Unacceptable levels of dampness remain within the living room of the Property;

Summary of the Issues

17. The issues to be determined by the Tribunal are whether or not the Landlord has complied with the RSEO in full or in part and if it should vary or revoke the RSEO or if it should make a finding of failure to comply with the RSEO.

Decision of the Tribunal and Reasons for the Decision of the Tribunal

18. The Tribunal had regard to Section 25 (1) of the Act which states:-“(1) *The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it.*”

19. With regard to Section 25(1)(b), the Tribunal gave consideration to whether it should revoke the RSEO. The terms of the RSEO deal with health and safety. The Tribunal held the view that safeguarding any occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.

20. With regard to Section 25(1)(a), and whether it should vary the RSEO and allow further time for the Landlord to comply. The Tribunal noted that the Landlord had carried out works in an attempt to comply with the RSEO. However, the Tribunal took the view that the Landlord appeared not to realise from the Tribunal's Inspection and Re-inspection Reports that the cause of the dampness is, or might be, structural and so has concentrated on superficial aspects of dampness. The Tribunal took the view that the Landlord had had ample time to comply with the RSEO and so determined that there was no reason to vary the RSEO to allow further time to comply.

21. The Tribunal then had regard to Section 26 of the Act which states:-*“It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal.”*. The Tribunal had regard to the serious consequences, being a criminal prosecution, of a decision by it that the Landlord has failed to comply with the

RSEO without reasonable excuse. The Tribunal, having taken the view that the Landlord was failing to deal with the specific requirements of the RSEO to the extent that he had no intention of complying with it, determined in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO.

Rent Relief Order

22. The Tribunal then had regard to Section 27 of the Act which allows the Tribunal, having made a finding of failure to comply, to make a Rent Relief Order (RRO) of up to 90% and took the view that, in the circumstances of the whole application and procedure to date, an RRO was appropriate. The Tribunal noted that, although the living room area of the Property remains affected by dampness, the air quality is satisfactory and there are no spores. The Tribunal noted that the bedroom is now free of dampness. Therefore, the Tribunal determined that an RRO of 15% of the monthly rent be imposed from the date 30 days from the date on which this Decision was sent to the Parties until the RSEO is revoked or discharged.

23. The decision of the Tribunal is unanimous.

Appeal of tribunal's decision

24. 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.

Signed

K Moore

Karen Moore, Chairperson

Date 17 October 2025