

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RP/25/0071

Title Number: LAN227530

12B Regent Way, Hamilton, ML3 7AJ (“the Property”)

Parties:

Sofia Connor, formerly of 12B Regent Way Hamilton, ML3 7AJ (“the former Tenant.”)

JWR Holdings Ltd, 52 Southburn Road, Airdrie (“the Landlord”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Nick Allan (Ordinary Member)

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, determined that the Landlord has not complied with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application dated 8 January 2025, the former Tenant applied to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. She stated that the Landlord has failed to meet his obligations in terms of the Act by failing to ensure that the property meets the repairing standard. In particular, mould, mould mites and dampness are present throughout the property and communal space, dry rot is growing and hanging by the electrical board above the main entry in the communal hallway (a health and safety hazard), the bathroom door is swollen due to dampness, and the door handle is loose, and the kitchen blind thread has snapped. She stated that the property has become uninhabitable.

2. The parties were notified that the Tribunal would inspect the property on 26 August 2025 at 10am and that a hearing would take place at Brandongate in Hamilton at 11.30am on the same date. On 14 January 2025, the former tenant notified the Tribunal that she had given notice to the Landlord and that the tenancy would terminate on 11 February 2025. On 1 July 2025 the Tribunal issued a Minute of continuation in terms of the 2006 Act and the Landlord was notified that the inspection and hearing would proceed.
3. On 29 July 2025, the Landlord lodged written submissions and a number of documents. In the submission they stated that the property owned by the Landlord comprises a ground floor shop with two flats above the shop. They said that a report from Russell Preservation had been obtained in August 2024 and work was carried out by the same company in February 2025. The documents lodged included a Guarantee from Russell Preservation and an invoice for work which had been carried out. The invoice states that the work had been carried out as specified in the "report". The Guarantee states that it relates to work for "fungal decay". The report from August 2024 was not submitted.
4. The Tribunal attended at the property on 26 August 2025. Access was provided by a the letting agent, Mr Alexander. Mr Rafferty, a director of the Landlord, also attended. The property has been re-let, and the new tenant was not present. The Tribunal was advised that the new tenant had agreed to access being provided for the inspection. The Hearing took place at 11.30am. Only Mr Rafferty attended.

The inspection

5. The property a flat above a shop in the centre of Hamilton. The Tribunal noted the following: -
 - (a) The ground floor communal hallway is accessed by a door from Regent Way. Sections of the wall along the right-hand side of the communal hallway are saturated, with peeling plaster. The wall at the foot of the stairs which lead to the flat and the ceiling are also affected by dampness. There is evidence of water ingress on the stair landing outside the flat.
 - (b) There are very faint, early signs of mould in the bedroom of the flat. Otherwise, there is no evidence of mould, damp or mites inside the flat and damp meter readings were within normal levels.
 - (c) The bathroom door opens and closes freely with no evidence of damage related to dampness. The door handle is in proper working order.
 - (d) The extractor fan in the bathroom was tested and found to be in working order.
 - (e) The kitchen blind is intact and in working order.

6. A schedule of photographs taken at the inspection is attached to this decision.

The Hearing

7. Mr Rafferty told the Tribunal that the Local Authority had been involved and had closed their case. The Landlord instructed Russell Preservation. They inspected, provided a report and recommended certain remedial work. The work was carried out in accordance with the recommendations. They issued a guarantee and invoice, both of which had been lodged with the Tribunal. Mr Rafferty said that the report had included some internal and external observations and recommendations. The work was carried out in February 2025. In relation to the common close they replaced skirtings. Mr Rafferty said that the wall in the common close is plaster over sandstone. He said that it has been painted on many occasions, but the dampness comes back through. The source of the moisture is the roof over the shop next door. They have tried to get the shop owner to agree to the roof being inspected but he won't cooperate so they can't get any work carried out. He said that they do not have the necessary rights of access to attend to the matter without the agreement of the adjoining owner. In response to questions from the Tribunal Mr Rafferty said that he would provide the Tribunal with a copy of the Russell Preservation report.

Further procedure

8. The report was not submitted following the hearing or in response to a reminder issued by the Tribunal on 12 September 2025. On 21 October 2025, the Tribunal issued a direction. This directed the Landlord to provide a copy of the Russell Preservation Report and evidence that they lacked the necessary rights of access to have work carried out to address the dampness affecting the common parts of the building. The Landlord did not respond to the direction and did not provide a copy of a report from Russell Preservation or evidence in relation to the alleged lack of access rights.

Findings in Fact

9. The common close/communal hallway and stairs at the property is affected by water ingress and/or dampness and mould.
10. The inside of the flat is not currently affected by mould or dampness.
11. The bathroom door in the flat is not damaged and is in proper working order.
12. The kitchen blind in the flat is intact and in proper working order.

Reasons for Decision

13. 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 14(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". Section 22(3) of the 2006 Act states that an application can only be made if the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with the repairing standard. The Tribunal is satisfied that the former Tenant notified the Landlord of the repairing standard issues at the property prior to lodging the application.
14. The former tenant vacated the property on or about February 2025 and the property was re-let in April 2025
15. Based on the documents lodged by the Landlord and the evidence given at the hearing, it appears that remedial work was carried out inside the flat in February 2025, following the departure of the former tenant. It also appears that the Landlord waited until the property was empty before starting the work as the Russell Preservation report had apparently been obtained six months earlier. At the inspection, the Tribunal noted that there was no evidence of dampness or mould within the flat, other than a very faint, early sign of mould in the bedroom. Damp meter readings were within acceptable levels and the Tribunal is satisfied that this is a minor issue which does not breach the Repairing Standard at the present time. The other matters raised in the application – the defective bathroom door and the kitchen blind – have also been addressed and both were found to be in proper working order. The Tribunal is satisfied that the inside of the flat meets the Repairing Standard.
16. On the other hand, the communal hallway is in very poor condition. The wall which runs from the door to Regent Way to the rear of the property is saturated and large areas of plaster are peeling. The wall at the foot of the stairs which lead to the flat is also saturated and there is evidence of water ingress on the ceiling of the stair landing. The Landlord does not dispute that the common close is affected by dampness and/or water ingress. The Tribunal was told that the damage is due to water ingress from the roof of the adjoining property. However, the Landlord provided no evidence of this, and a visual inspection of the roof by the Tribunal did not clearly establish this to be the case. During the hearing the Landlord said that he would provide a copy of the report from Russell Preservation. He failed to submit this after the hearing and although a reminder was sent, and a direction issued, the report has not been provided.
17. Section 15 (1) of the 2006 Act states:- "Where a house forms part only of any premises, the reference in section 13(1)(b) to the house includes reference to any part of those premises which the owner of the house is

responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise”. The Tribunal notes that there is specific provision in the Landlord’s title deeds which require the common parts to be maintained jointly by the owner and the owners on adjoining subjects. In the circumstances, the Tribunal is satisfied that the Landlord has failed to comply with the repairing standard in relation to the common parts of the building

18. At the hearing, the Landlord stated that the owner of the adjoining property was not cooperative and would not allow access to the roof for inspection and repair. He also stated that this was required because he has no rights of access. He offered no evidence in support of the statements. The Tribunal’s direction dated 16 October 2025, stipulated that the Landlord was required to provide evidence in support of the claim that they have no access rights and cannot get any work carried out. The Landlord failed to respond.
19. Exceptions to the repairing standard duty are set out in Section 16 of the 2006 Act. In terms of Section 16(4) – “A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked the necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights. (5) For the purpose of subsection (4) in relation to any work intended to be carried out to parts owned in common with other owners but where the majority of owners has not consented to the intended work, a landlord is to be treated as lacking the necessary rights.
20. The Landlord failed to provide evidence that either Section 16(4) or (5) apply. In the absence of this evidence, the Tribunal is persuaded that the Landlord requires to comply with the repairing Standard in relation to the common parts of the property.
21. The Tribunal concludes that the Landlord has failed to comply with the repairing standard as set out in Section 13(a) and (h) of the 2006 Act.

Decision

22. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
23. The decision of the Tribunal is unanimous.

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.

J Bonnar

1 December 2025