

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/25/4288

**RE: Property known as 98 Calder Place, Hallglen, Falkirk FK1 2QQ
("The Property")**

The Parties:-

**Martha-Marie Mooney, 98 Calder Place, Hallglen, Falkirk FK1 2QQ
("the Tenant")**

**Gail Paterson, James Paterson, Dunislay Cottage, Halls of Airth, Falkirk FK2
8PM
("the Landlords")**

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) in relation to the house concerned, and taking account of the written and verbal representations by the parties and the inspection, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:

Rory A.B. Cowan – Legal Member

Sara Hesp – Chartered Surveyor/Ordinary Member

Background

- 1) By application dated received on 3 October 2025 the Tenant applied to the First-tier tribunal: Housing and Property Chamber for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) and Section 19B(4) of the Housing (Scotland) Act 2006 ("the 2006 Act") and section 86(1)(b) of the Housing (Scotland) Act 1987.

2) The Application stated that the Tenant considered the Landlords had failed to comply with their duty to ensure that the Property meets the repairing and tolerable standards and in particular that:-

- a) The windows within the Property were not wind and watertight and the handles on same were not in a reasonable state of repair or in proper working order;
- b) There was no extractor fan with the family bathroom for the Property.
- c) The guttering to the front and rear of the Property was not in a reasonable state of repair;
- d) The roughcasting to the rear of the Property was not in a reasonable state of repair;
- e) The television aerial on the roof of the Property was not in a reasonable state of repair;
- f) The Property was not substantially free from rising or penetrating damp in that the family bathroom upstairs and the upstairs rear bedroom were affected by damp and mold;
- g) The access gate to the rear garden was not in a reasonable state of repair or proper working order; and
- h) The wooden fence between the Property and the neighbouring property at 96 Calder Place, Hallglen, Falkirk was not in a reasonable state of repair.

3) By letter dated 28 November 2025 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the 2006 Act to a tribunal.

4) The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the 2006 Act upon the Landlord and the Third-Party.

5) Following service of the Notice of Referral, written representations were received from the Landlords as well as further representations by the Tenant.

6) The Tribunal inspected the Property on the morning of 13 July 2025. The Tenant was present along with her mother Kathleen Mooney and provided access. Gail Paterson attended on behalf of the Landlords, but James Paterson did not attend.

7) Following the inspection of the Property, the tribunal held a hearing on 13 July 2026 at Stirling Enterprise Park, John Player Building, Stirling FK7 7RP. Gail Paterson again appeared and represented the Landlords. The Tenant appeared and represented herself and her mother Kathleen Mooney attended with her as a supporter. Whilst not lodged in advance of the Hearing, the Landlords with the consent of the Tenant lodged a copy of the invoice from M Stewart Roofing and Maintenance. Whilst this copy was dated 10 July 2026, it was a matter of agreement between the parties that it related to the works carried out to the

Property in September 2025 and the date that appeared was a result of it being a recently printed copy.

The Hearing

8) The discussions at the Hearing were as follows:

The Windows

The Tenant stated that there were various windows that were not wind and watertight. These windows were in the living room, the downstairs toilet, the kitchen (although there was no issue with patio door), the "spare" bedroom at the front of the Property, the main bedroom, and the bedroom at the rear of the Property. The issues experienced were that the windows "were not sealed" properly and let in draughts rendering the rooms colder than they should be meaning the Tenant had to heat the rooms more than she felt she should. The Tenant also noted that a number of the handles for the windows were loose and did not work properly. She also stated that the window in the upstairs family bathroom did not have a "latch" that would allow it to stay open when the bathroom was in use. The Tenant also stated that some of the double-glazed units in windows had failed and were "misted". Mrs Paterson indicated that, on or around November 2022 she had asked a contractor (who was there to fit a new front door) to look at the handles on the windows. She indicated that she "assumed" that any that needed replaced had been replaced. Mrs Paterson also stated that the windows were watertight as there was no evidence, for example by way of watermarks, to evidence any water ingress. She indicated she did not know if there were any draughts or not. Mrs Paterson also stated that she had not seen any evidence of misted window units but that, if she did, she would have "no problem replacing" such failed units. The Tenant disputed that the window handles were checked or that any were replaced by the Landlords' contractor in November 2022. Mrs Paterson indicated that she would have invoices for what work was done, but she did not have them with her, nor were they lodged.

Extractor Fan

The Tenant indicated that there was not an extractor fan in the family bathroom. She indicated that there had never been an extractor fan fitted, but that she had been told by a "roofer" who had attended the Property to carry out works that there "should be one". Mrs Paterson indicated that she had been a discussion with contractors about possibly fitting an extractor fan to the bathroom and she had been "swithering" about having one fitted, but that she had decided to sell the Property so had therefore decided not to "upgrade" the Property by having one fitted.

The Guttering

The Tenant indicated that she felt the guttering to the front and back of the Property needed to be replaced due to its appearance. She also indicated that birds had nested in her "loft". Mrs Paterson on behalf of the Landlords, indicated that the guttering had been checked and cleared in September 2025. She referred

to the invoice from M Stewart Roofing and Maintenance which was lodged late with the consent of the Tenant. There was mention of some possible historic water ingress prior to the gutters being cleared.

Roughcasting

The Tenant indicated that she felt this was "linked to" the guttering. She stated that the roughcasting was "unsightly looking" and something her neighbour had to look at. In response Mrs Paterson indicated that, when it was checked in September 2025 the contractor had said the roughcasting was "sound" and that it "was not causing damp".

Aerial

The Tenant explained that whilst the television aerial was not in use and not needed by her, it was not properly fixed to the Property and moved around with the wind. In response, Mrs Paterson indicated that she would have it removed from the roof of the Property.

Damp and Mould

The Tenant indicated that the Property was affected by damp and that it was spreading. The areas complained of were the back bedroom and the upstairs family bathroom. The upstairs rear bedroom is where both her daughters sleep although previously only one daughter slept there; the Tenant was now using the front bedroom for storage prior to moving from the Property. The Tenant stated that the mould was spreading across the walls and that her daughter was forced to put a blanket down the side of her bed as a barrier between her and the wall when sleeping. She also pointed to the ceiling and the slightly unusual patterning of the mould there and that she felt the issue was damp coming from the roof. Whilst she acknowledged that a roofer had attended and stated the issue was caused by condensation, she stated the roofer had not accessed the loft space to check there. In response Mrs Paterson indicated that, whilst she could clearly see the mould in the bedroom, all investigations the Landlords had carried out suggested that the cause was condensation and that "more" could be done by the Tenant to ventilate the bedroom. She confirmed that she had just had M Stewart Roofing and Maintenance out and said their findings were that the cause was condensation. She referred to their invoice which was lodged late which confirmed in the section headed "description" as vouching for that. She explained that this was a company she had used for years and although she found them to be reliable and trustworthy, she was not aware of them holding any particular accreditation.

Gate

The Tenant explained that the post next to the gate post had been put in by the Landlords' contractors. However, the post the gate was attached to was rotten and the top gate hinge was only held on by a "tack". As a result, the gate does not operate properly and is difficult to use as it has to be lifted to be opened. Mrs Paterson explained that the gate attaches to the neighbour's fence and that a new post had been put in as an attempt to strengthen the gate. However, Mrs

Paterson acknowledged that the gate post was rotten and the gate did not operate as it should.

Fence

The Tenant complained that the fence on the boundary with the neighbouring property at 96 Calder place had largely fallen down and that it was an “eyesore”. She explained that it was her neighbour’s fence albeit there had been a dispute with her neighbour about that. She explained that the fence has been wholly erected in her neighbour’s garden and was not on the mutual boundary. She suggested that a previous tenant of the Landlords may have installed the fence. The Tenant explained that despite it not being on the mutual boundary she had tried to take care of the fence. Mrs Paterson stated in response that she had contacted the previous tenant who had said that she had not installed the fence. She also stated that the fence had been there when the Landlords had purchased the Property. She acknowledged that there had been a dispute with the neighbour about who owned and was responsible for the fence. She also stated that she had sent someone out to look at the fence, but they had said that the fence was wholly on the neighbour’s property so they could not touch it. The Tenant responded by stating that the fence was on the neighbour’s property but that it should be moved to the mutual boundary.

Summary of the Issues

9) The issues to be determined are whether:

- a) The Property is wind and watertight and in all other respects reasonably fit for human habitation.
- b) The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order
- c) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- d) The Property meets the Tolerable Standard, in that it is substantially free from rising or penetrating damp.

Findings in fact and law

10) The Tribunal finds the following facts to be established:-

- a) That there is tenancy for the purposes of section 14(1) of the 2006 Act.
- b) That the tenancy commenced on or around 30 May 2024.
- c) Gail Paterson and James Paterson are the heritable proprietors of the subjects at 98 Calder Place, Hallglen, Falkirk FK1 2QQ and hold the landlord’s interest in the tenancy for same with the tenant being Martha-Marie Mooney.

- d) That the Property is a three-bedroom former local authority terraced dwellinghouse dating from around the late 1970s, with a pitched concrete tile roof, walls finished with roughcast and replacement UPVC double-glazed windows and doors.
- e) That the Property has a gas-fired boiler located within its kitchen
- f) That, the windows within the Property are watertight and whilst some handles are loose, they allow a user to open, close and secure the windows.
- g) Some air movement was noticed under the living room window.
- h) The upstairs family bathroom has never had an extractor fan fitted within it.
- i) The television aerial on the roof of the Property is not secured fully to the Property.
- j) The roughcasting to the rear (side) elevation of the Property whilst discoloured, patched and marked, appears intact.
- k) The guttering to the front and rear of the Property shows signs of age through discolouration and there had been some historic water ingress to the rear of the Property.
- l) The boundary fence between the Property and the neighbouring property at 96 Calder Place, Hallglen, Falkirk is wholly within the boundary of that property.
- m) The gate in the back garden of the Property is not properly attached to a post and cannot be operated normally or as intended.
- n) There is mould within the rear bedroom of the Property affecting the internal walls of the said bedroom as well as the ceiling of same.

Reasons for the decision

- 11) The Tribunal was satisfied that the windows within the Property were wind and water tight as well as being in a reasonable state of repair standing their age. Whilst some of the handles were loose, the handles allowed the windows to be opened and closed as well as securing them. In terms of the window in the family bathroom, whilst there is no latch fitted to the window, it does open and hold sufficiently for it to be used as well as having a trickle vent fitted. Further, whilst some air movement could be felt below the window in the living room, the window was water tight and the level of air movement was not considered unreasonable and not an issue of disrepair for the Property.
- 12) In terms of an extractor fan, both parties were in agreement that the family bathroom had not been fitted with an extractor fan. Whilst such a means of mechanical ventilation may be beneficial, the addition of same would be an upgrade to the Property and is not something the Tribunal can order.

- 13) There clearly is an issue with dilapidated fencing along the boundary with the neighbouring property. However, both parties were in agreement that the fence complained of sat wholly out with the boundaries of the Property and within the neighbour's garden. It is therefore the neighbour's property, and the Tribunal cannot order the Landlords to remedy problems on property belonging to third parties.
- 14) Whilst the roughcasting to the rear of the Property was marked and had been patched, it was intact. There was no evidence to suggest that it had failed or was causing any issues for the Property.
- 15) The Tribunal was not satisfied that the fixtures and fittings provided by the Landlords were in a reasonable state of repair and in proper working order for the following reason:
 - a) It was clear that the gate in the back garden was not in a reasonable state of repair. It was barely supported when closed and it could not be opened and operated in a normal fashion requiring the gate to be lifted to move it. Further, the top hinge for the gate was only loosely attached to the supporting post which was also rotten.
 - b) It was agreed by the Landlords that the unused television aerial was not properly fixed to the Property and should be removed.
- 16) The Tribunal could not be satisfied that the Property was substantially free from rising or penetrating damp and therefore meets the Tolerable Standard for the following reasons:
 - a) Whilst the Tribunal had sight of the invoice from M Stewart Roofing & Maintenance, which suggested issues may be caused by condensation rather than other cases, the level of mold in the back bedroom was significant.
 - b) There was a suggestion in the evidence given by the parties that at least prior to the clearing of the gutters in September 2025, some water ingress had occurred.
 - c) The gutters to the front and rear of the Property and the associated fascia boards are clearly old and discoloured which might be attributable to water damage.
 - d) The pattern of the mould on the bedroom ceiling was unusual to be solely attributable to lifestyle condensation.
 - e) Whilst most damp meter readings taken by the Ordinary Member of The Tribunal were within the normal range and all in the upstairs bathroom were within the normal range, some of the readings showed slightly raised moisture levels (see the attached schedule of photographs). There has been a recent prolonged period of dry and hot weather.
 - f) There is a limited amount of investigation that can be carried out by the Tribunal at inspection, and the Tribunal was therefore unable to rule out that the issues were caused or contributed to by a problem with the Property.

Observations

- 17) Whilst the Tribunal was unable to make an order regarding the fence along the boundary with the neighbouring property due to it being situated out with the Property's garden, the fence is clearly in a dangerous condition and could cause injury and efforts should be made to have it dealt with by the neighbouring proprietor.
- 18) Whilst the Tribunal has issued a Repairing Standard Enforcement Order to allow further investigation into damp and mould within the Property it was noted on inspection that the Tenant had located a bed under the window of the rear bedroom as well as one along the external wall. Further, it appeared that blankets and other items were being deliberately placed along the edge of one of the beds to act as a barrier against the mould. The effect of doing so is to restrict the airflow around that item of furniture which could make the issue worse.

Decision

- 19) The Tribunal accordingly determined that the Landlord has failed to comply with his duties imposed by Section 14 (1)(b) of the 2006 Act.
- 20) The Tribunal therefore decided to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
- 21) The decision of the tribunal was unanimous.
- 22) The Ordinary Member of the Tribunal took several photographs which form the schedule attached to this decision.

Right of Appeal

- 23) 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.

24) 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.

R Cowan

Signed

Date 28 July 2026.....

Chair Person

6 boxes 28 July 2026
Put in the schedule & photographs
after 6 in the document
R Cowan

Housing and Property Chamber
First-tier Tribunal for Scotland



98 Calder Place, Hallglen, Falkirk FK1 2QQ

FTS/HPC/RP/25/4288

Schedule of photographs taken on 13 July 2026



Photograph 1: Front elevation

Photograph 2: Living room: Casement window



Photograph 3: Living room: Smoke detector - interlinked and in working order



Photograph 4: Downstairs WC: Casement window



Photograph 5: Hallway: Smoke detector - interlinked and in working order



Photograph 6: Kitchen: Casement window



Photograph 7: Kitchen: Heat detector – interlinked and in working order



Photograph 8: Kitchen: Carbon monoxide detector



Photograph 9: Landing: Smoke detector – interlinked and in working order



Photograph 10: Bedroom 1: Casement window (front left-handside)



Photograph 11: Bedroom 2: Casement window (front right-handside)



Photograph 12: Bedroom 3: Casement window – rear showing patches of black mould at ceiling level



Photograph 13: Bedroom 3: Section of rear wall showing staining and black mould at ceiling level



Photograph 14: Bedroom 3: Rear wall – damp meter showing moisture levels in normal range



Photograph 15: Bedroom 3: Rear wall – damp meter showing moisture levels in normal range



Photograph 16: Bedroom 3: Rear wall – damp meter showing slightly raised moisture levels



Photograph 17: Bedroom 3: Mould around window frame



Photograph 18: Bathroom: Casement window



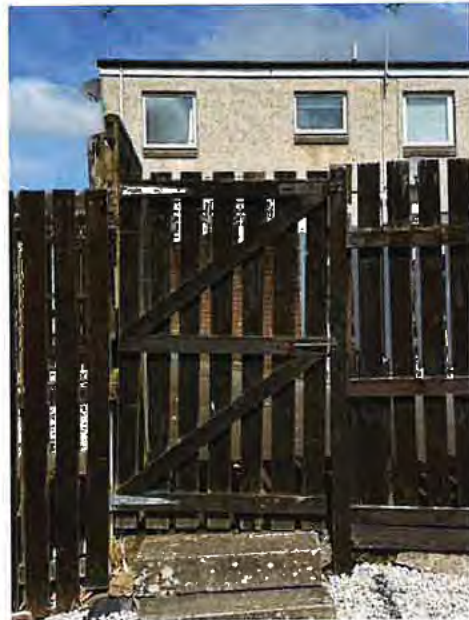
Photograph 19: Bathroom: Side wall - damp meter showing moisture levels in normal range



Photograph 20: Bathroom: Rear wall - damp meter showing moisture levels in normal range



Photograph 21: Rear garden: Gate



Photograph 22: Rear garden: Gate



Photograph 23: Rear garden: Right-hand side fencing



Photograph 24: Rear left-handside elevation - staining and patches to roughcast



Photograph 25: Section of rear guttering



Photograph 26: Rear elevation



Photograph 27: Aerial wire to rear elevation



Photograph 28: Section of front guttering

