Housing and Property Chamber
First-tier Tribunal for Scotland

Note of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/24/5595

Re: 95 Stevenston Court, New Stevenston, ML1 4HW ("the Property")

Parties:

Mr Jacek Gizinski, 95 Stevenston Court, New Stevenston, ML1 4HW ("the Applicant")

Mrs Sharon Kerr, c/o Property Angels, 14 Main Street, Bothwell, G71 8RF ("the Respondent")

Tribunal Members:

Andrew Upton (Legal Member) and Andrew Taylor (Ordinary Member)

Summary of Review

1. On 10 July 2025, the Tribunal determined that the Respondent was in breach of her duties under s.14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act") and made a Repairing Standards Enforcement Order against the Respondent. In terms thereof, the Tribunal required the Respondent to appoint a suitably qualified condensation/damp specialist to investigate the cause of condensation, dampness and mould in all areas of the property including any ventilation issues, external causes such as leaking gutters, absence of or compromised Damp Proof Courses, etc, and to report thereon; such report to include a specification of recommended works for remedying any want of repair associated with condensation, dampness and mould to the Tribunal for further consideration. The Tribunal allowed the Respondent 42 days to do so. In reaching its determination, the Tribunal determined in particular that the Property was not in a condition that met the Repairing Standard and, in particular, that the Property was neither:-

    a. wind and watertight and in all other respects reasonably fit for human habitation; nor
    b. substantially free from rising or penetrating damp.

2. On 26 August 2025, the Respondent produced a Report by Bromac Limited dated 20 August 2025. On 27 August 2025, the Applicant wrote to the Tribunal to challenge the Bromac Limited Report. In particular, the Applicant asserted that no moisture readings were taken by Bromac Limited during its inspection, and no detailed investigation was undertaken.

3. On 30 October 2025, the Tribunal determined that the Bromac Limited Report was insufficient to meet the requirements of the RSEO, but varied the RSEO to require a fresh report providing sufficient information to be given in.

4. Thereafter, the Respondent produced a report by JSN Property Services dated 18 December 2025 ("the JDN Report") which provided the detail that the Tribunal was looking for in this case. In summary, the JDN Report identified that:-

    a. The Property evidenced high levels of condensation;
    b. Mould growth was present in two bedrooms, the lounge and the kitchen and caused by condensation;
    c. The extractor fan in the kitchen was not operational;
    d. On the rear elevation, the union on the guttering was failing;
    e. On the protruding gable side, the guttering was full of organic debris;
    f. In the bedroom (front right), the recorded air temperature was 19.1°C, the relative humidity was 68.6%, the dew point was 13.2°C and the surface temperature was 15.6°C;
    g. In the lounge, the storage heater was not in operation, and the placement of items close to wall surfaces was restricting airflow. The recorded air temperature was 20.5°C, the relative humidity was 65.9%, the dew point was 13.7°C and the surface temperature was 18.9°C;
    h. In the bedroom (rear left), the weep vents on the double glazed unit were open. The fixed radiator was switched off. A portable electric heater was in operation. The recorded air temperature was 20.7°C, the relative humidity was 62.7%, the dew point was 13.2°C and the surface temperature was 22.5°C; and
    i. In the kitchen, a Nuaire extract fan was fitted but not operational. The recorded air temperature was 20.7°C, the relative humidity was 63.3%, the dew point was 13.5°C and the surface temperature was 21°C.

5. The JDN Report also made certain recommendations. Primarily those were focused on changing how the Applicant and his family used the Property to mitigate the condensation risk, including by maintaining stable background temperature rather than employing cycles of rapid heating, and limiting the drying of laundry indoors. However, it also recommended the improvement of mechanical ventilation and the installation of a Positive Input Ventilation ("PIV") unit. A quote of £2,537.18 inclusive of VAT was provided for the PIV works. That quote did not include costs for subsequent decoration.

6. On 19 October 2026 the Tribunal convened by teleconference call to review RSEO compliance again. The Applicant was present on the call. The

Respondent was present on the call and was supported by Mrs Franchitti of Property Angels.

7. Firstly, it was a matter of agreement between the parties that the gutters had been fixed and cleaned by the building's property factors. Secondly, it was also a matter of agreement between the parties that the mechanical ventilation had been replaced and upgraded in both the kitchen and the bathroom, which were the main sources of moisture in the property. Additionally, electrical works had been undertaken to separate the bathroom extractor fan from the light switch so that it could be operated independently from the lights.

8. The Applicant's position was that the Property was in substantially the same condition as before. There is mould growth in most rooms. He heats and ventilates the Property. The mould growth is still there. He disputes that his furniture is restricting air flow at the walls where the mould growth is evident. He says that his electricity bills are very high for the Property type due to the electric storage heaters.

9. The Respondent's position is that she intends to sell the Property, although relevant notices have not yet been served. The Respondent has been advised by her letting agents that it would be preferable to deal with this Application before proceeding with steps to evict. The proposed installation of the PIV unit is expensive and unreasonable in circumstances where she intends to sell once this matter has been dealt with. She is happy to assist the Applicant with rehoming as he has been a good tenant.

The Review

10. The previous RSEO was founded on the Property being neither wind and watertight nor substantially free from rising or penetrating damp. However, the JDN Report finds that the Property does not suffer from rising or penetrating damp. Whilst it notes certain external wants of repair (which have subsequently been remedied), it concludes that all mould growth in the Property is the result of condensation. There is no evidence to support a finding that the Property is not wind and watertight or that it suffers from rising or penetrating damp. In that respect, the RSEO cannot stand in its current terms.

11. However, since the RSEO was granted, the 2006 Act has been amended by the Investigation and Commencement of Repair (Scotland) Regulations 2026 ("Awaab's Law"). As such, the duty in s.14(1)(b) to ensure that a house meets the repairing standard now includes a duty to ensure that a house is "substantially free from damp and mould" (s.13(1)(ha) of the 2006 Act). S.14 provides a process which a landlord requires to follow to investigate and report on the causes of damp and mould (s.14(5)-(10)). S.14(10) in particular requires a landlord to have regard to any guidance produced by Scottish Ministers.

12. The Scottish Ministers have produced guidance to landlords to assist with the new process created by Awaab's Law. It can be found at: https://www.gov.scot/publications/awaabs-law-guidance-landlords-scotland/. The Tribunal had particular regard to paragraphs 3.19 and 3.20 of that guidance, which provides as follows:-

"3.19 Landlords must not make assumptions that reports of damp or mould are caused by the tenant's actions. For example, landlords must not dismiss or fail to investigate a report on the assumption that the problem is condensation attributable to tenant behaviour. Everyday tasks, like cooking, bathing, washing and drying laundry are unavoidable and should not be blamed for substantial damp or mould growth.

3.20 If an investigation determines that household factors are primarily influencing the reported issue, landlords should work collaboratively with tenants to understand the circumstances, take any necessary action such as providing advice and support to manage this issue, as appropriate. For example, landlords may wish to signpost tenants to advice services for energy or bill support."

13. Those paragraphs seem to suggest that the landlord's duty where damp and mould is caused by how the tenant lives in the house can be met by the provision of advice and information to the tenant on how to mitigate the risk of further mould. That approach is also consistent with s.16(1)(b)(i) of the 2006 Act, which provides that, "The duty imposed by section 14(1) does not require… (b) any work to be carried out for which the tenant… (i) is liable by virtue of the tenant's duty to use the house in a proper manner". If a tenant is not heating and ventilating a house sufficiently to prevent the formation of extraordinary levels of condensation then it is arguably that the tenant is not using the house in a proper manner. If damp and mould forms from that failure then it does not represent a breach of the landlord's duty.

14. In this case, the Respondent has provided advice and information to the Applicant about how to use a property to mitigate the risk of condensation forming. The Applicant claims to use the property properly.

Decision

15. Having regard to all of the circumstances, the Tribunal unanimously determined that the Property still did not meet the Repairing Standard. That determination was made on the basis that the Property is not substantially free from mould. Mould is present in most rooms in the Property.

16. Separately, the Tribunal was not satisfied on the evidence presented to it that the condensation in the Property which caused the mould was due to the Applicant's failure to use the house in a proper manner. Accordingly, the Tribunal was not satisfied that the exception in s.16(1)(b)(i) was engaged.

17. However, the Tribunal was not satisfied that the installation of a PIV unit was necessary to address the issues in this case. The issues are longstanding and a single visit JDN in December 2025 is not sufficient to give a clear understanding of the cause of the compensation or the effectiveness of measures to address it.

18. That being the case, the Tribunal determined that the RSEO ought to be varied under s.25 of the 2006 Act. The Tribunal will require that the Respondent:-

    a. clean and treat the surfaces within the Property where mould growth is present with a mould wash; and
    b. inspect the electric storage heaters at the Property are operational and, if not, to instruct such repairs as are necessary to put them in working order.

19. Thereafter, the parties should monitor the Property to determine whether the issues experienced to this point recur. The Applicant should have further regard to the advice previously provided by the Respondent on how to mitigate the formation of condensation. That may necessarily involve a degree of decluttering in the Property to aid airflow.

20. In the event that the mould growth recurs, parties ought to treat that as a new incident and follow the process set out in s.14(5)-(10) of the 2006 Act and the guidance published by Scottish Ministers in that regard.

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.

A Upton

02/11/2026

_____ _____

Legal Member/Chair **Date**