

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

**Property: Lion Lodge South (No 2), Coldstream, Berwickshire TD12 4HE
("the Property"/ "the house")**

Chamber Reference: FTS/HPC/RP/18/1918

**Mrs Maria Rosamond, Lion Lodge South, Coldstream, Berwickshire
TD12 4HE ("the Tenant")**

**Ladykirk Estates Limited, registered in Scotland under the Companies
Acts (SC15891) and having their registered office at Academy House,
Shedden Park Road, Kelso, Roxburghshire TD5 7AL ("the Landlord")**

**Tribunal Members – George Clark (Legal Member/Chairperson) and
Greig Adams (Ordinary Member/Surveyor)**

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"), determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act and that a Repairing Standard Enforcement Order should not be made.

Background

- 1. By application received on 31 July 2018, the Tenant applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").**
- 2. The application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard. In particular, the Tenant stated that the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation.**

3. In her application and its supporting documentation, the Tenant stated that there was all-pervading damp in the entire building, foremost in evidence on the three outside walls in each of the main rooms. In the second reception room, the carpet had become stained in an area about four feet in from the wall, seemingly from moisture wetting the carpet from below and, in this room, three walls were badly affected by excessive black mould. The seams/joints on the boiler flue had had to be duct taped to prevent an ash-like substance falling from the flue on to the kitchen countertop below. The old boiler, when in use, produced a black dust-like substance on all surfaces in its vicinity and the thermostat had a propensity to turn itself on at inappropriate times. The boiler and thermostat needed to be replaced. The ashpan in the stove was rusted through in one corner. The kitchen wall above the boiler was badly stained from repeated water damage. The toilet bowl in the bathroom was set at a jaunty angle, depriving the lid from support from the tank, resulting in repeated broken hinges. The gutter near the side door overflowed whenever there was heavy rainfall and had stained the carpet just inside the doorway. The heating system was not adequate, as only three of the six radiators heated sufficiently and the stove in the living room failed to project heat into the room, making the two small radiators in that room inadequate.
4. On 30 August 2018, the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22(1) of the Act to a tribunal, gave Notice of Referral and of the date set for an inspection and hearing.
5. The Landlord made written representations to the Tribunal, in which they stated that all 62 properties owned by them in the Scottish Borders were professionally managed and maintained. They were inspected annually by the Estate Manager and the Accountant and a report was prepared for the Directors. The 2018 inspections had found that the Property was in an unsatisfactory state because of the way it was lived in by the Tenant. Following the 2017 inspection, work had been done on the Property, including some damp treatment, redecoration and carpeting and it was extremely disappointing to find the Property in such a poor state only nine months later. The Property was fitted with both a multifuel stove in the sitting room and an oil-fired central heating system, but it appeared that the Tenant went away for extended periods during the winter months, leaving the Property unheated and unventilated. Rather than use the heating system provided, the Tenant chose to use her own free standing calor gas heater. Consequently, the walls of the main rooms became saturated with condensation and subsequently stained black.
6. The Tenant had vacated the Property on 31 July 2018 and the Landlord had inspected it on 2 August. The Landlord's view was that there was no inherent damp, only dried black condensation marks which had occurred as a result of the Tenant's misuse of the Property. The Landlord was currently taking the opportunity provided by the

change of tenant to refurbish the Property. The contention of the Landlord was that the poor condition of the Property was entirely the result of the Tenant's misuse, but notwithstanding that, the requirements of the repairing standard had been fully complied with at all times.

7. The Tribunal inspected the Property on the morning of 8 October 2018. The Landlord's Estate Manager was present at the inspection. The Tenant was not present or represented at the inspection.
8. The Tribunal comprised George Clark (Legal Member/Chairperson) and Greig Adams (Ordinary Member/surveyor).
9. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.
10. The inspection commenced with a condensation assessment which consisted of utilising an infrared thermometer and thermal detector to establish relative humidity, air temperature, surface temperature and to calculate dewpoint. The thermometer/thermal detector utilises a traffic light warning system, with a red light indicating where surface wall temperatures are calculated to fall below dewpoint and as such be subject to condensation. Further analysis was also undertaken with a thermal camera providing further assessment of surface temperatures whilst a thermal imaging moisture meter was utilised to establish qualitative moisture readings to aid diagnosis.
11. At the time of the inspection, the Property was undergoing a complete refurbishment. Some of the wall surfaces in the kitchen, bathroom and living room had been stripped back. In the main bedroom, a full membrane had been installed between the external wall and the internal plasterboard. There was extensive damp staining and black mould growth on that wall, much of which was concentrated around the plaster adhesive points ("dabs"). This "dot and dab" process creates "cold bridges", allowing the cold temperature of the outside wall to extend to the plasterboard. The wall surface was so cold that it was beyond the "dew point" and, as a result, any moisture would condense on the internal wall. Relative humidity readings of 67-74% were found. The air temperature was 17.5 degrees Celsius, the wall temperature was 10.8 degrees and, as the dew point was 12.8 degrees, condensation was inevitable. Similar readings were taken throughout the Property. All the floorcoverings in the Property had been removed and it appeared that the flooring was being replaced. The bedroom had secondary glazing, but no trickle vents.

The Hearing

12. Following the inspection, the Tribunal held a hearing at Langlee Community Centre, Marigold Drive, Galashiels. Neither of the Parties attended or was represented at the hearing.

13. The Tribunal considered all the evidence before it, including written submissions and the matters it had noted at the inspection.

Findings of fact

14. The Tribunal makes the following findings of fact:

- The Property is a stone-built detached gate lodge house with a tiled roof. It is currently undergoing complete renovation.
- The Tenant has vacated the Property.
- The carpet referred to in the Tenant's written representations is no longer in the Property.
- The boiler in the kitchen has been removed.

Reasons for the decision

15. The Tribunal was of the view that as the Property was vacant and had not been heated, it was not possible to conclude that the issues of damp and condensation indicated an inherent problem, nor was it possible to speculate whether its condition prior to the commencement of work had been caused by or contributed to by the Tenant's lifestyle.
16. The Tribunal was unable to determine that the Tenant's complaint be upheld, as the Property was in a very different condition from the way it would have been during the tenancy.
17. There are no visual signs of damp staining apart from those attributable to condensation. The extensive black mould is an indication of condensation rather than penetrating damp. The high relative humidity would be reduced by increasing the heating. The normal acceptable temperature to which the Property should be heated is 20 degrees and, if future occupants would be advised to control the relative humidity down to 50% and reduce water vapour by heating and more ventilation. If the temperature was 20 degrees and the relative humidity was 50%, that would reduce the dew point to 9.3 degrees, which would be below the temperature of the wall and condensation would not occur.
18. The boiler in the kitchen has been removed and the issue relating to the ashpan in the stove in the living room is a very minor matter.
19. The toilet is set at an angle, but it is fit for purpose.
20. The Tribunal was unable to test the central heating system.
21. The guttering appeared at the time of the inspection to be fairly clear of debris. It is not designed to deal with flash flood rain and may

overflow in very heavy rain, but there is no obvious sign of staining on the surrounding stonework.

22. The decision of the tribunal was unanimous.

Right of Appeal

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.

Signed **G Clark**
Date: 11 October 2018 Legal Member/Chairperson



*This is the Schedule of Photographs
referred to in the foregoing
Statement of Decision dated 11/10/18*
G Clark

Legal Fellow / Clerk person



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SCHEDULE OF PHOTOGRAPHS



1 External view of House.



2 External view of House.



3 Condensation assessment – red light indicates wall temperature below dewpoint.



4 Condensation assessment – red light indicates wall temperature below dewpoint.



5 Second reception room.



6 Second reception room.



7 Moisture readings.



8 Moisture readings.



9 Moisture readings.



10 Second reception room.



11 Second reception room.



12 Sitting Room – during refurbishment.



13 Sitting Room – during refurbishment.



14 Sitting Room – during refurbishment.



15 Sitting Room – during refurbishment.



16 Condensation readings.



17 Condensation readings.



18 Condensation readings.



19 Condensation readings.



20 Moisture readings.



21 Moisture readings.



22 Moisture readings.



23 Moisture readings.



24 Moisture readings.



25 Moisture readings.



26 Moisture readings.



27 Investigation of wall construction.



28 Investigation of wall construction.



29 Kitchen.



30 Kitchen.



31 Moisture readings in Kitchen.



32 Moisture readings in Kitchen.



33 Bathroom.



34 Bedroom.



35 Moisture readings in Bedroom.



36 Moisture readings in Bedroom.



37 Moisture readings in Bedroom.



38



39 Secondary glazing example.



40 Living Room – refurbishment progressing.



41 Floor covering removed.



42 Kitchen – refurbishment progressing.