

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”)**

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 (“the 2006 Act”),  
Section 26(1)**

**Chamber Ref: FTS/HPC/RP/17/0441**

**Title no/Sasines Description: Land Register Title number MID73499**

**16 Clermiston Grove, Edinburgh, EH4 7DE  
 (“The House”)**

**The Parties:-**

**Ms Hayley Buyers, residing at 16 Clermiston Grove, Edinburgh, EH4 7DE  
 (“the Tenant”)**

**Ms Veena Shepherd or James, residing at 83 Arden Street, Coventry, West  
 Midlands, CV5 6FB, formerly residing at 37 Belmont Avenue, Breaston, Derby,  
 DE72 3AA and 1F2, 95 East Claremont Street, Edinburgh  
 (“the Landlord”)**

**represented by her agent, Orchard and Shipman, 2 Anderson Place, Sugar  
 Bond, Third Floor, Edinburgh, EH6 5NP  
 (“the Landlord’s Representative”)**

**Tribunal members:**

**Susanne Tanner Q.C., Legal Member and Chairperson  
 Mike Links, Ordinary Member**

### **DECISION**

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’), having taken account of the findings of the re-inspection on 11 May 2018 and the written submissions and evidence submitted by parties in response to the re-inspection report, determined that the Landlord has failed to comply with the

Repairing Standard Enforcement Order dated 26 February 2018, in terms of Section 26(1) of the Housing Scotland Act 2006 (hereinafter “the 2006 Act”).

2. The tribunal must serve notice of the failure on the local authority as required by Section 26(2)(a) of the 2006 Act.
3. The tribunal decided to make a Rent Relief Order in terms of section 26(2)(b) of the 2006 Act.
4. The decision of the tribunal was unanimous.

## **Reasons**

5. By application received on 24 November 2017 (hereinafter referred to as “the Application”), the Tenant applied to the tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the 2006 Act.

6. On 6 February 2018 an inspection of the House and a hearing took place.

7. On 26 February 2018 the tribunal issued a Decision in terms of Section 24(1) of the 2006 Act and made a Repairing Standard Enforcement Order (“RSEO”), requiring the Landlord to carry out such work as is necessary for the purposes of ensuring that the House meets the repairing standard in Section 13 of the 2006 Act and that any damage caused by the carrying out of any work in terms of the RSEO is made good. In particular the tribunal required the Landlord:

7.1. To investigate the cause of the dampness within the flooring area adjacent to the W.C. in the bathroom and carry out all necessary repairs and/or renewals in order that the House is watertight and reasonably fit for human habitation.

7.2. To provide a written report as to the works on the pipework for the sewage and drainage system at the House, including any findings and recommendations; and to put into effect any recommendations to ensure that the house is watertight and reasonably fit for human habitation.

The tribunal ordered that the works specified in the RSEO had to be carried out and completed within 30 days from the date of service of the RSEO.

8. On 11 May 2018, the ordinary member of the tribunal carried out a re-inspection of the House, after the time limit for completing the works specified in the order had expired. Reference is made to the full terms of the Re-inspection Report which was sent to parties on 15 May 2018. The ordinary member found that none of the works

in the RSEO had been undertaken. With reference to the two orders which were made:

8.1. The inspection revealed that within the week prior to the inspection a damp seal paint had been applied to the floor adjacent to the W.C. Despite this work high damp meter readings were obtained on the floor area. Photographs of the reading are included in the Re-inspection Report.

8.2. No written report had been provided by the Landlord or the Landlord's Representative at that time. The excavation of drainage pipes at the rear elevation, observed at first inspection, has now been back filled. The Tenant was unaware what, if any, repair works had been carried out.

9. The Re-inspection Report was sent to parties on 15 May 2018 and parties were given the opportunity to request an oral hearing within seven days of the date of the letter and the right to submit written representations, including any views on the level of any rent reduction to be applied, by 29 May 2018.

10. No request was made by either party for an oral hearing.

11. Both parties submitted written representations.

11.1. On 21 May 2018 the Tenant stated that she was not requesting an oral hearing. She stated that she agreed with the findings in the Re-inspection Report. She submitted written representations in which she stated that two different contractors had been to the House and given her their solutions to the problem; one had a proper solution but the Landlord's Representative had gone with the cheaper quicker option. She stated that mould is bound to come back again as it has once before. She submitted that a Rent Relief Order (RRO) should be issued as it is the least that should be done. She considers 100% is an appropriate level of deduction. She stated further that the amount of stress this has caused her has been ridiculous. She has been offered nothing in respect of compensation and no rent reduction. She has been paying full rent since she moved in even though the House is not up to standard.

11.2. On 25 May 2018 the Landlord's Representative submitted an email with attached letter dated 25 May 2018, letter from Drain Point dated 18 April 2018 and invoice from DGS dated 18 January 2018. A link was also provided to CCTV footage of a repair to a greywater downpipe. Within the letter from the Landlord's Representative it was stated that any delays in having works actioned are solely down to the Landlord's Representative and not the fault of the Landlord. A summary of works carried out to the date of the letter was provided. In relation to the rear garden excavation works the Landlord's

Representative advised that a greywater pipe at the rear of the building was repaired by Drainpoint in February 2018 and a report from Drainpoint was attached ("the Drainpoint Report"). The Drainpoint Report states that all works to the external drainage pipe were completed on 19 February 2018. In relation to the floor area around the W.C. the Landlord's representative acknowledge the finding at re-inspection that there is a continuing high level of damp in the area and advised that the Landlord has instructed a second damp proof specialist to make an independent diagnosis of the damp problem. A surveyor was to be instructed and a plumber was to be instructed to attend to ensure that there is not a slow leak from any of the pipework. The Landlord's Representative had some concern that the problem may be condensation related and stated that the Tenant would be made aware of what to do to minimise condensation and mould issues.

11.3. On 1 June 2018 the Tenant submitted a response to the Landlord's Representative's letter of 25 May 2018 and attachments. She stated that as at 1 June 2018, nobody had contacted her regarding the damp report or any other work. She had received a request for a company to visit on 8 June 2018 and quote for a bedroom heater. She further commented in relation to the concerns about condensation that window vents were kept open, the bathroom fan having been broken (which had been reported to the Landlord's Representative) and the fact that she keeps the bathroom window open for most of the day as well as other windows in the flat, to keep it well aired. She added that as the flat is so small it is difficult to keep furniture away from the walls but she has endeavoured to do so.

11.4. On 5 June 2018 the Landlord's Representative provided a further response and a copy of a report and quotation from a damp proof company, Wise Property Care dated 5 June 2018 ("the Wise Report"). The Wise Report was instructed by the Landlord's Representative. A number of recommendations were made about how the levels of condensation could be reduced in the House and a quotation was provided for the installation of two humidistat operated ventilation fans in the bathroom and kitchen. The email from the Landlord's Representative dated 5 June 2018 focussed on the finding of condensation in the Wise Report and advised that the Landlord is making arrangements to proceed with the recommended installation of mechanical ventilation in bathroom and kitchen together with reviewing the shower curtain and re-sealing/grouting the cubicle area. The Landlord's Representative also advised that the Landlord has instructed a contractor to attend on 8 June provide a quotation for heating in the bedroom. The Landlord's Representative stated that they intend to provide advice to the Tenant relative to condensation. The tribunal noted that the submissions in the said email and the attached Wise Report do not include any consideration of the investigation of the damp area of flooring around the W.C..



12. The 2006 Act, Section 26 provides that:

- “(1) 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 .*
- (2) Where the First-tier Tribunal decides that a landlord has failed to comply with the repairing standard enforcement order, the First-tier Tribunal must—*
  - (a) serve notice of the failure on the local authority, and*
  - (b) decide whether to make a rent relief order.*
- (3) The First-tier Tribunal may not decide that a landlord has failed to comply with a repairing standard enforcement order—*
  - (a) unless the period within which the order requires the work to be completed has ended, or*
  - (b) if the First-tier Tribunal is satisfied, on the submission of the landlord or otherwise—*
    - (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*
    - (ii) that the work required by the order is likely to endanger any person. ...”*

13. The tribunal proceeded to determine the question of whether or not the Landlord has complied with the RSEO on the basis of the parties' written representations and productions received since the re-inspection Report was issued on 15 May 2018.

14. The Landlord has not complied with the RSEO, in particular the first order, in that:

- 14.1. The Landlord has not investigated the cause of the dampness within the flooring area adjacent to the W.C. in the bathroom and carried out all necessary repairs and/or renewals in order that the House is watertight and reasonably fit for human habitation, within 30 days from the date of service of the RSEO, or to date. Despite the localised internal works which were carried out by DGS in January 2018 and the external drainage repair works (referred to below) being carried out by 19 February 2018, there remained a high dampness reading in this area of flooring at the re-inspection on 11 May 2018, as referred to in the Re-inspection Report, including a photograph of the reading. The ordinary member of the tribunal noted that a damp seal paint had been applied to the area in the week prior to the re-inspection and yet there was a high dampness reading suggesting that the cause of the dampness has not been identified or remedied and the damp seal paint had been applied without rectifying the problem. The Landlord's representative indicated in its written submissions that a surveyor would be instructed to provide an opinion on the cause and that a plumber would be instructed to check for leaks and no further information has been provided by the Landlord or Landlord's Representative in the required time period to suggest that either of these things have been done. The

Wise Report does not consider the issue of the dampness in this area of flooring or suggest any remedial works in respect of the same.

14.2. In relation to the second order in the RSEO, the Landlord has provided a written report from Drainpoint dated 18 April 2018 as to the works on the pipework for the sewage and drainage system at the House, including findings and recommendations and put into effect any recommendations to ensure that the house is watertight and reasonably fit for human habitation. The tribunal is satisfied on the basis of the Drain Point Report of 18 April 2018 that the repair work to the external section of drainage was carried out by 19 February and was therefore completed within the required period.

15. The tribunal must serve notice of the failure on the local authority as required by Section 26(2)(a) of the 2006 Act.

16. The tribunal decided to make a rent relief order in terms of Section 26(2)(b) of the 2006 Act.

17. The Tenant submitted views about the level of any rent reduction to be applied, as stated above. The Tenant seeks 100% reduction (which is not permitted in terms of Section 27 of the 2006 Act, the maximum possible reduction being 90%).

18. The tribunal proceeded to consider the appropriate level of rent reduction.

18.1. The Short Assured tenancy began on 16 August 2017 and is due to expire on 16 August 2018.

18.2. The rent is £500 per calendar month, payable on the last working day of each month.

18.3. The Tenant has experienced the repairs issues giving rise to the Application since the start of the tenancy and has notified the Landlord's Representative of the same since 17 August 2017.

18.4. Despite numerous visits to the House the cause of the problem has not been identified and repairs have not been instructed or carried out.

18.5. The tenant only has two further rent payments to make on the last calendar day of June 2018 and the last calendar day of July 2018.

18.6. The Tenant advised at the hearing on 6 February 2018 that as a result of the repairs issues giving rise to the Application she has asked the Landlord's Agent if the lease could be terminated early in May 2018 and although a verbal response had been given she has not received a written response as at that

hearing date. She was still in occupation at the time of the re-inspection on 11 May 2018. The tenant's written submissions of 1 June 2018 suggest that the lease is continuing. It is not known by the tribunal if the tenancy will terminate earlier than the expiry date of 16 August 2018. The RRO is made on the basis that the tenancy has not been lawfully terminated and will expire on 16 August 2018.

19. Taking into account all of the circumstances, the tribunal decided that an appropriate level of reduction was 50% of the rent payable, for the remainder of the tenancy.

### **Right of Appeal**

- 20. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

### **Effect of section 63**

21. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Susanne Tanner

Signed ' .....Susanne L M Tanner, Queen's Counsel  
Chairperson of the tribunal

Date 14 June 2018