

Housing and Property Chamber First-tier Tribunal for Scotland



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

**DECISION OF THE TRIBUNAL
UNDER SECTION 26
OF THE HOUSING (SCOTLAND) ACT 2006**

The Parties:

Sharelle Raybould and John Rafferty ("the Tenants")

**Piotr Jablonski and Beata Jablonska, 10 Fir Grove, New Stevenston, Motherwell
ML1 4DP ("the Landlord")**

22 Hillfoot Road, Gartlea, Airdrie ML6 9PN ("the House")

Tribunal Reference number: FTS/HPC/RP/21/1590

Tribunal Members:

John McHugh, Chairperson
Mark Andrew, Ordinary (Surveyor) Member

DECISION

The Tribunal having carried out a further inspection of the House determined that the work required by the Repairing Standard Enforcement Order dated 18 November 2021 ("the RSEO") had not been completed and resolved to issue a Rent Relief Order.

The decision of the Tribunal was unanimous.

Background

The RSEO required the Landlord to complete the following work within 80 days of service of the RSEO:

- 1 To carry out works so that the interior of the House is rendered reasonably free of penetrating dampness.
- 2 To carry out repairs such that the kitchen walls and cupboards are complete, free of gaps or holes, cleanable and reasonably capable of preventing the entry of pests.
- 3 To repair or replace the kitchen units such that all cupboards and drawers are capable of being easily opened and closed and with all handles in reasonable condition.
- 4 to fill any gaps around the boiler into which items are reasonably at risk of falling.
- 5 to ensure that the wall panelling in the kitchen is adequately secured without the use of tape, making adequate provision for access to the central heating components and controls.

Reasons for the Decision

On 1 March 2022, the Ordinary (Surveyor) Member carried out a re-inspection of the House.

At the re-inspection the following was noted:

1 The Landlord has arranged specialist damp proofing companies to attend and provide quotations for work. This includes the proposal by Curol Ltd. for the Landlord to consider fitting a Nuaire Flatmaster condensation unit from Platinum Chemicals. The Landlord is proposing, instead, to install Passyfier Core type vents (also available from Platinum) within the walls of the property. These also remove moist air (condensation) from a building. The tenants do not want this type of passive extraction system to be fitted as they have the reputation of bringing cold air into the property and of reducing the thermal efficiency of the building. The specialist damp proofing companies reports that have been forwarded by the landlord to the Tribunal (from Curol Ltd. and Russell Preservation) indicated that they could not find evidence of rising damp but admitted that there may be a problem with cavity wall insulation. Damp meter readings taken on 1st March found excessive damp areas in the walls in the front middle bedroom (bunk bedroom) below the window up to the wall with the adjacent front (bay window) bedroom; in the rear (double) bedroom below the window and to each side of it up to window sill height; in the front (bay window) bedroom (which is no longer used as a bedroom by the tenants) on the gable wall, below the bay windows and between the bay window and the adjoining bedroom and in the front lobby from @500mm above floor level down to the floor. The excess damp was found within the plaster using a protimeter. Further investigation is necessary to determine the cause of this excessive dampness which is likely to include penetrating damp crossing between the leaves of the exterior cavity wall either due to a failure of the cavity wall insulation or poor initial construction and improper use of wall ties. The property remains affected by penetrating damp and the method which the landlord

proposes to use to deal with the damp conditions can only deal with condensation issues. Although this is a cause of dampness within the property it is not the only one and it is unlikely to reduce the levels of excessive moisture in the walls of the property. The RSEO has not been complied with

2. The Landlord has repaired the backboard panel beneath the boiler so as to ensure a seal of the backboard against the kitchen worktop. A gap remains below the boiler and above the backboard so as to provide ventilation and access to the boiler. The landlord has made a hinged section of backboard to the side of the boiler which permits access to the pipework hidden behind it. The hinge has been made using gaffer tape. This is not a proper permanent method of creating an inspection area and a proper set of hinges or straight piano hinge should be used. The landlord has not installed a back to the sink cupboard or filled the cut away hole in the sink cupboard base. The cupboard is therefore not properly cleanable and can admit the entry of pests. The RSEO has not been complied with.

3. The Landlord has fitted a new handle to the kitchen larder cupboard and all of the door handles work properly. Although they do not match, this does satisfy the requirements of the RSEO

4. As at 2 above. The Landlord has carried out the necessary work to comply with the RSEO The gap below the boiler has been eliminated by the backboard fitted onto the worktop.

5. As at 2 above. Gaffer tape has been used to make a hinge for the side panel inspection beside the boiler The Landlord has used tape where he was instructed not to. The landlord has failed to comply with the RSEO.

The parties have made representations in response to the inspection report. Both parties accept that the works required by the RSEO have not been completed. The Tenants suggests that a rent relief order abating the rent by 50% would be appropriate. The Landlord suggests a figure of 10%.

Rent Relief Order

There are significant amounts of work required by the RSEO which have not been completed. The failure to carry out the works has a material detrimental effect upon the Tenants' enjoyment of their occupation of the House. In particular, one of the bedrooms is not able to be used because of dampness.

In the circumstances, the Tribunal considers that a Relief Order imposing a restriction of rent by 40% is appropriate.

Right of Appeal

Section 64 of the Act provides a right of appeal to a party aggrieved by the decision of the Tribunal 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.

J McHugh

John McHugh
Chairperson

Date: 6 April 2022