

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Determination: Housing (Scotland) Act 2006: Section 24**

**Re: Property at 120 Kingsbridge Drive, Glasgow, G44 4JS (“the Property”)**

**Chamber Reference: FTS/HPC/RP/20/1890**

**Parties:**

**Miss Lisa McCabe, Mr Martyn John Curran, 120 Kingsbridge Drive, Glasgow, G44 4JS (“the Tenants” and “the Applicants”)**

**Staffa Rock PLC (formerly Carduus Housing PLC), c/o Indigo Square Property Ltd, 42 Holmlea Road, Glasgow, G44 4AL (“the Landlord” and “the Respondent”)**

**Castlemilk Law & Money Advice Centre, 155 Castlemilk Drive, Castlemilk Drive, Castlemilk, Glasgow G45 9UG (“the Applicants’ Representative”)**

**Indigo Square Property Ltd, 42 Holmlea Road, Glasgow, G44 4AL (“the Respondent’s Representative”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Donald Wooley (Ordinary Member)**

**Background**

1. This Decision deals with an application which is dated 28<sup>th</sup> August 2020 and is brought in terms of Rule 48 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Tenants seek a determination of whether the Landlord has failed to comply with the repairing standard. This application is in terms of Section 22(1) of the Housing (Scotland) Act 2006 (the 2006 Act).
2. There are two other applications before the Tribunal. One is dated 2<sup>nd</sup> December 2019 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of the Rules. the other is dated 3<sup>rd</sup> February 2021 and is brought in terms of Rule 111 of the Rules. The Tenants

seek an order of payment in of compensation. The compensation sought is in respect of the condition of the Property, costs of decoration and it alleges that the Landlord has not complied with its contractual and statutory obligations from the start of the tenancy on 17<sup>th</sup> June 2016.

### **Previous Procedure**

3. There have been various case management discussions. The determination of the application under Rule 48 has been delayed as a consequence of the coronavirus pandemic.

### **The Repairs Application**

4. The application states that the Property does not meet the repairing standard set out Section 13 (1) (a), (b), (c), (d) and (h) of the 2006 Act in the following respects: The Property is not wind and watertight and in all other respects reasonably fit for human habitation, the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order, the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order and that the Property does not meet the tolerable standard.
5. The application gave considerable detail on why the applicants considered that the Property did not meet the repairing standard and the issues are summarised:
  - 5.1. The internal doors were insecure and some doors had fallen off.
  - 5.2. The Property is generally damp and there is condensation dampness.
  - 5.3. There is mould growth throughout the Property.
  - 5.4. The Property is poorly insulated.
  - 5.5. The ventilation in the Property is poor.
  - 5.6. There is water ingress.
  - 5.7. The Property is draughty.
  - 5.8. The electric lights do not work properly.
  - 5.9. Some electric sockets do not work properly.
  - 5.10. The central heating system does not work properly.
  - 5.11. There are numerous plaster cracks throughout the Property.
  - 5.12. There is a dripping sound above the kitchen when the hot tap is turned on
6. A legal member of the Tribunal, acting under delegated powers referred the application to a tribunal for determination. Parties were notified of this. The notification to parties was in terms of Schedule 2, Paragraph 4 of the 2006 Act.
7. Case management discussions were held on 14 December 2020, 3 March 2021 and 24 May 2021. Directions were made, under Section 16 of the First-tier

## Inspection

8. The Legal Member and Ordinary Member inspected the Property on 9<sup>th</sup> August 2021. The pre- hearing inspection summary and schedule of photographs attached to this Decision details the position as identified during the inspection of the Property. The photographs represent a random sample of pictures taken during the inspection illustrating the position on that day relative to the repairing standard application. The Applicants and Mr McIntosh, solicitor for the Applicants were present. Ms West represented the Respondent. A summary of the findings during the inspection together with those items incapable of being photographed is as follows:
- 8.1. Light weight internal doors have been re-hung throughout the property. It was noted that all were functioning, capable of opening and closing and were secured to the architraves / door frames by individual hinges. Relative to previous fittings the hinges are small, they were sitting proud (not rebated) and several are secured by means of a single screw. As a result of the limited number of screws, two hinges towards the upper level of most doors have been fitted to provide additional support. (Photographs 1-8.)
  - 8.2. Throughout the property there are significant signs of mould growth almost certainly arising from condensation moisture (Photographs 11 – 18 and 21-24) highlight examples and accord with previous photographic evidence supplied both by the tenants and their professional representative. Readings taken with the aid of a protimeter in all affected rooms, including kitchen and bathroom, confirmed that the mould affected areas throughout the property were relatively dry and in the “low risk” category at the time of inspection.
  - 8.3. With the exception of a “tide mark stain” towards ceiling level at the mutual wall between the dining room (used as a bedroom) and the living room, no signs of penetrating damp were noted. This area when tested was established to be dry. It is understood that corresponding external repairs to the building had, relatively recently, been completed. (Photographs 9 – 10).
  - 8.4. Within the kitchen, the window is incapable of closing (Photograph 30) and externally there are gaps in the window frames (Photograph 31) creating conditions which may result in penetrating damp or draughts during certain weather conditions. When tested at the inspection there was no evidence of penetrating damp or drafts. The windows are relatively old, displaying some signs of deterioration reflecting their age.
  - 8.5. External cracking and staining were noted affecting the rendering although there were no corresponding signs of penetrating damp (Photograph 36).
  - 8.6. Damp readings taken at the enclosed chimney flue in the living room established this area to be dry (Photographs 19 – 20) and that there is a functioning fitted ventilator.

- 8.7. During the inspection the hot tap was operated for a period of time and no sound of dripping above the kitchen ceiling was heard. Although some residual staining was noted there was no evidence of dampness (Photographs 13 – 14).
- 8.8. Manually operated ventilators have been installed at the kitchen and bathroom to reduce condensation and ameliorate conditions within the property. (Photographs 25 – 29). There are no external self-closing shutters at the ventilators although no draughts were evident during the inspection. Above the kitchen ventilator there is a small area of missing plaster (Photograph 29).
- 8.9. Randomly placed fibreglass insulation quilt to varying depths has been installed within the attic (Photographs 32-34).
- 8.10. There is a visible “bow” affecting the ceiling in the living room where cracking has occurred following a join in the concealed plasterboard lining. The affected area is coated with artex (broken around the crack), the age and composition of which is unknown. (Photograph 35). No other significant cracking was identified within the property affecting the walls or ceilings. A number of relatively small hairline cracks are visible in the plaster and slight cracking at the plasterwork above the front bay window next to a curtain rail was noted (Photograph 23).
- 8.11. Prior to the inspection, the Tribunal had been presented with an Electrical Condition Installation Report (EICR) dated 22 January 2021. This had been supplied following a previous electrical inspection where a number of category C2 defects had been identified. It confirmed that they had since been rectified and that the system was now in a “satisfactory condition”. Photograph 38 identifies a poorly secured pvc ceiling rose at a pull switch within the bathroom. The tenant indicated that the ceiling lights in the Property and specifically in the dining room / bedroom 3 would, on occasions, flash intermittently after being left on for a period of time. This did not happen during the inspection.
- 8.12. Radiators throughout the property are generally secured to internal walls (Photographs 3 & 5) and are served by a wall mounted boiler gas fired combination boiler. The boiler was functioning and there was no physical evidence of a leak.

### **The Hearing**

9. The Hearing was held by video conference over two days: 16<sup>th</sup> August 2021 and 7<sup>th</sup> October 2021. The Applicants were present and were represented by Mr McIntosh. Ms West represented the Respondent.

**16<sup>th</sup> August 2021**

**Preliminary Matters**

10. The Tribunal stated that it intended to deal with the Repairs Application first. Parties had made written submissions and had lodged documents with appropriate indexes. The Applicants had lodged numerous photographs. Mr McIntosh had lodged two reports by Professor Tim Sharpe dated respectively 28<sup>th</sup> June 2020 and 31<sup>st</sup> July 2021. There was a discussion about matters still live and it was acknowledged by Mr McIntosh that extractor fans had been installed in the kitchen and in the bathroom and that a satisfactory electrical installation condition report dated 22<sup>nd</sup> January 2021 had been produced.

11. Mr McIntosh said that he intended to lead the Applicants and Professor Sharpe. There was a discussion about whether or not Professor Sharpe should be present during the Applicants' evidence. Ms West raised no objection to this and the Tribunal decided to proceed on that basis.

12. Ms West indicated that she would give evidence.

Ms McCabe and Mr Curran

13. Ms McCabe and Mr Curran each gave their evidence outwith the hearing of the other.

14. Ms McCabe and Mr Curran said that they lived together in the Property with three children aged four, three and six months. They said that there had been problems with the Property since they had taken up the tenancy on 17<sup>th</sup> June 2016. They said that any problems had been reported to Indigo Square, the Landlord's letting agents. Mr Curran said that over the years he had sent a number of photographs to the agents which showed the problems within the Property. He said that in any year perhaps twenty such reports were made and that, in total, he may have made over a hundred reports.

15. Ms McCabe said that there was mould growth around window seals and under the windows. She said that, when windy, there was a considerable draught at the window in the large bedroom. She said that various repairs had been undertaken but that the condition of the Property was really unchanged since the start of the tenancy. Mr Curran said that there was no proper beading round that window and that it had been draughty since they moved in. He said that some draughts were coming from the laminate floor at the window and that is why silicone sealing had been used there by the Landlord in an attempt to rectify the issue.

16. Ms McCabe said that there are patches of black mould throughout the Property which she has to wipe "multiple times" to little avail because the mould grows again. She said that the patches gradually got worse and described the existence of mould throughout the Property. Mr Curran said that there is

condensation dampness throughout the Property. He said that there is dampness in the kitchen which had been worse at one point.

17. Ms McCabe said that the mould is worse in the winter but said that it is worse this summer than the previous one.
18. Ms McCabe said that there has been mould around the window seals in the bathroom since 2016 and that, although she wipes it clean, it grows back.
19. Ms McCabe said that the advice of the letting agent was to wipe the mould away and she said that she does so because she would not want her children to touch it. She said that she had not wiped some areas for the previous two months because she wanted them to be seen by members of the tribunal at the inspection. Ms McCabe said that she uses a spray called "Astonish" to clean the mould. She said that advice from the letting agents was also to leave windows open and she said that she does open windows and that the kitchen window is constantly open because it does not close properly. She said that it was difficult in the winter to have open windows when she is trying to heat the house and has three small children. She said that, in the winter, the heating is on from 6am to midnight each day.
20. Ms McCabe said that the letting agent had provided an anti-fungal spray which she had used once.
21. Ms McCabe said that extractor fans were fitted in the kitchen and the bathroom and that she uses them. She said that she uses the bathroom one when the children are having baths. She said that, at the same time the extractor fans were fitted, silicon sealant was used at the front bedroom window to attempt to deal with draughts. She said that it is still draughty.
22. Ms McCabe said that the letting agent had provided an electric humidifier in 2017 which she had used but had not found it to be effective in dealing with the dampness. She said that she had stopped using the dehumidifier because it made no difference. She said that, prior to her stopping its use, she operated it probably twice a week and emptied around half a tank of water after each occasion.
23. Ms McCabe said that, on walls where there had been damp patches, she and her partner had painted but that damp patches came through again. Mr Curran confirmed that, in various areas, he had put coats of paint on walls and that otherwise it would have been much worse.
24. Ms McCabe said that, on various windows, condensation gathers and then drips onto window sills. She said that the windows do not fit properly.
25. Ms McCabe said that, when she moved into the Property, the internal doors and door frames were in poor order. She said that, for example, the living room and kitchen door frames were split. She said that the internal doors have been replaced but that there was still an issue with the kitchen door which needs more pressure applied to it to ensure it is closed. She said that some screws are

missing from door hinges. She said that she considers the doors which have been installed to be of poor quality. She said that two of the surfaces of the doors have water marks on them which could probably be painted over.

26. Mr Curran said that the doors in the house had not been good and that they had come off because of cracks in door frames. He said that the replacement doors fitted by the Respondent are of poor quality and had not been fitted properly.
27. Ms McCabe said that there is a significant crack in the ceiling of the living room and she said that a contractor had come to the Property to deal with it but could not do so until the ceiling had been checked for the presence of asbestos. She said that he had been concerned in case artex in the ceiling contained asbestos. She said that the matter of the crack had been raised with the letting agent in 2020 when it had measured probably ten centimetres. She said that it had got bigger since then.
28. Mr Curran said that said that the original solution to deal with the extensive crack in the living room ceiling had been to plaster over it but that the contractor said that he would not work on the ceiling until it had been checked for asbestos. Mr Curran said that, at no time, had he been told by anyone that the suggested work involved installing boards screwed into the ceiling.
29. Ms McCabe said that all the radiators in the Property are on internal walls and that none are situated beneath windows.
30. Ms McCabe said that there are now no issues with the electric sockets but that the light in bedroom three/dining room still flashes.
31. Mr Curran said that the "majority of the lights flash" and, when asked for clarification by Ms West, was unable to say whether this issue had been reported to the letting agent after the EICR had been issued in January 2021.
32. Ms McCabe said that, when the hot water tap in the kitchen is operated, a drip can be heard. She said that this seems to come from the area of the kitchen ceiling.
33. Ms McCabe said that there are no external covers on the extractor fans which had been fitted in February 2021. She said that she has not experienced wind or water ingress from either fan.
34. Ms McCabe was questioned on the use of the Property. She said that baths and showers were taken and that she used the extractor fan in the bathroom.
35. Mr Curran said that he has used the extractor fans "a few times." He said that when he showers, he is very quick and that he sometimes opens the bathroom window when doing so.
36. Ms McCabe said that there was no drying green for clothes but that there was an outside space which could be utilised for this. She said that she uses a

washing machine. She said that she had a clothes horse and that she sometimes used it outside when it is sunny. She said that there is no tumble dryer in the Property and that generally she dries washing over radiators in the bedrooms or over the clothes horse in the house.

37. During the evidence of Ms McCabe and Mr Curran, Mr McIntosh referred them to many of the photographs which had been lodged with the Tribunal and which assisted them both in identifying areas of alleged issues with the Property. This also informed the Tribunal.

#### **Professor Tim Sharpe**

38. The Tribunal had the benefit of two reports provide by Professor Tim Sharpe. The understanding of them was assisted by the photographs incorporated in them.

#### **The report dated 28<sup>th</sup> June 2020**

39. The report describes the construction of the Property as an upper flat in a four - in -a-block arrangement which is accessed from a stair from the front of the building. It states that the external walls are assumed to be cavity masonry construction, with a roughcast finish externally and plastered on hard internally. The report states that the Property does not appear to have cavity insulation installed and that the roof is pitched with a slate finish. It describes the windows as PVCu framed double glazed units with fixed main lights and opening casements. The report states heating to be provided by a gas- fired central heating system supplying radiators to all apartments and there being no provision for extract ventilation in either the kitchen or the bathroom.
40. Professor Sharpe states that, due to its construction, the Property will lose heat through the external surfaces to the front, side and rear elevations, and the roof. The report estimates that the U-Values of the external walls are in the order of 1.5W/m<sup>2</sup>K as compared to current requirements of 0.2W/m<sup>2</sup>K. It states that there is insulation in the loft which is poorly laid and which is unlikely to meet the current standards of 0.15W/m<sup>2</sup> and parts of the roof to the kitchen and bathroom form a coombe ceiling which will be uninsulated.
41. Professor Sharpe's report states that the Property will lose large amounts of heat through the thermally deficient external surfaces and will therefore be difficult and expensive to heat and that this will be exacerbated by the lack of extract ventilation from wet spaces to remove moisture at source, and also the placement of radiators on internal walls, away from heat loss surfaces. The report describes that this will result in a thermal gradient across the room, with external areas particularly adjacent to windows being cold.
42. Professor Sharpe states in his report that the defects in the Property will result in it being susceptible to condensation dampness and associated mould growth. He states that warm moist air produced by normal domestic activities such as cooking and washing will migrate to colder parts of the Property and that the surface air temperatures of the walls and roof will be below internal air



temperature. He states that where moist air comes in contact with these surfaces, the air will cool and condensation will form. He states that external corners and junctions are particularly susceptible as they lose more heat than normal wall surfaces and also tend to harbour stagnant air. The report describes the parts of the wall below the windows to be particularly susceptible, as the construction in these areas is single brick with a timber lining.

43. The report notes that the inspection of the Property took place in summer and that some areas had been repainted. It states that areas of dampness and mould growth were noted in the living room and main bedroom under the windows, but that reports of dampness are consistent with what would be expected in a dwelling of this age and condition.
44. The report states that there are areas of disrepair in the Property. Windows are stated to be old with evidence of deterioration of the seals which will lower their thermal performance. Professor Sharpe states that the windows are poorly installed, not correctly sized for their openings and that internal and external fixings are of poor quality and showing signs of deterioration. It states that the kitchen window cannot be closed properly. The report states that the defects in the windows will lead to water penetration which may cause further damage to the Property.
45. The report states the general condition of the Property to be poor and refers to cracks and bowing in the living room ceiling. It states that the internal doors have been removed and Professor Sharpe states that he had been told by the occupant that this is due to their poor quality and splits in the door frames. The report notes that the sliding door at the top of the stairs is broken and that the lack of doors presents a fire risk.
46. Professor Sharpe states that the effects of dampness and mould growth on occupants' health are well established. He goes on to state that the presence and further probability of dampness and general disrepair, including lack of fire separation, are such that the "building is not reasonably wind and watertight and cannot be considered to be in a reasonably tenantable or habitable condition."
47. The report lists a number of remedial measures which are required to bring the Property up to a reasonable standard. Professor Sharpe states that the U-Values of the external walls and roof should be upgraded to contemporary standards, particularly the areas under the windows. He states that radiators should be fitted to external walls and that humidistat controlled extractor fans should be fitted in the kitchen and bathroom. The report states that the condition of the windows is such that it would be more effective to replace them with properly sized units incorporating trickle vents for background ventilation and goes on to state that the doors should be replaced.
48. Professor Sharpe concludes his report by stating that repairs are required to the overall condition of the Property.

### **The Report dated 31<sup>st</sup> July 2021**

49. This report was issued following Professor Sharpe's inspection of the Property on 30<sup>th</sup> July 2021.
50. The report states that some works have been done since the previous report was issued: manually controlled extractor fans have been installed in the kitchen and bathroom, new doors have been fitted to the living room, bathroom and bedrooms, and that some PVC fascias have been fitted to the exterior of the kitchen window. The report states that Professor Sharpe has been told that some works have been done to the plumbing but that it is unclear what such works are.
51. Professor Sharpe's report states that the doors which have been fitted are of "minimum" quality and are poorly installed, with lightweight hinges and missing fixings. He states that the fans which have been installed are of minimum specification, require manual operation and are poorly sealed to the exterior of the render. He states that the fans do not have wind louvres, so wind and rain will be blown in through these.

### **Professor Sharpe's oral evidence**

52. Professor Sharpe said that he was the Head of Department of the Department of Architecture at the University of Strathclyde. He is a member of the British Standards Institute retrofit working group for Airtightness and Ventilation, a member of the National Institute for Health and Care Excellence Public Health Advisory Committee on Indoor Air Quality and is Chair of the NHBC Scotland Technical Committee.
53. Professor Sharpe said that he had undertaken between six and seven hundred similar surveys to the one he carried out on the Property.
54. Professor Sharpe said that when moist air hits cold surfaces, condensation occurs. He said that air will condense and mould spores will grow. He said that this occurs more at certain parts of a building such as corners.
55. Professor Sharpe said that moist air is created in houses from normal domestic activity such as breathing and cooking and that adequate heating and ventilation mitigates the effect of the moist air.
56. Professor Sharpe said that poor insulation in a property leads to increased heat loss and that such heat is through the physical external surfaces particularly where there is no insulation.
57. Professor Sharpe said that the building of which the Property forms part has cavity brick walls with what he described as a "cold roof." He said that the windows are a relatively weak point in construction and that if walls are poorly insulated and there are poor windows, there will be more heat loss.

58. Professor Sharpe said that use of a dehumidifier in the Property would not have a great effect in improving matters. He said that some moisture will be removed but that it will be replaced fairly quickly. He said that dehumidifiers are more usually used in periods of peak demand such as when a flood occurs. He said that the core cause of dampness would not be resolved by use of a dehumidifier.
59. Professor Sharpe said that, although air always contains moisture, the level varies according to the season. He said that the use of anti-fungal spray will temporarily address the mould growth but will have no effect on its root cause.
60. Professor Sharpe said that the Property is occupied by a family consisting of two adults and three children and that it was reasonable to expect that it can be used for "normal domestic activities". He said that the kitchen is small and it would be difficult to know where a tumble dryer could be placed. He said that it would also be expensive to use. He said that there are limited opportunities for drying clothes outside in Scotland. He said that, in his view, it is a "normal domestic activity" to dry clothes inside houses.
61. Professor Sharpe said that the Property's U-Values fall far below current standards. He said that, although the Property is more than fifty years old, he would expect it to be brought as close as possible to the current standards. He said that the Property suffers from thermal bridging where warm air transfers to the outside walls because of poor insulation. He said that a number of Housing Associations are addressing issues of poor insulation in walls of older properties. He said that, if insulation problems are not addressed in older properties, they will be cold and damp causing health problems for their occupants. He said that the principal mitigating factors in such properties are adequate insulation, heating and ventilation.
62. Professor Sharpe was asked about the difficulties in improving insulation of walls in situations such as this where the Property is part of a larger building. He said that, whilst challenging, such retrofitting of insulation is possible.
63. Professor Sharpe said that the U-Values under the windows in the Property are particularly poor. He said that, on his two inspections, he saw evidence of mould growth.
64. Professor Sharpe said that the insulation in the loft had been poorly laid and that he had observed this on his first survey carried out on 5<sup>th</sup> March 2020. He said that he did not inspect the roof space on his second survey in July 2021. He said that it is important that loft insulation is uniformly laid and is hard to the ceiling. He said that the loft insulation is badly laid and does not meet current standards which suggest such insulation to be three-four hundred millimetres thick.
65. Professor Sharpe said that, because areas underneath windows are the coldest spots in rooms, radiators should ideally be fixed to outside walls there rather than to internal walls as is the case in the Property.

66. Professor Sharpe was referred to Photograph 14 of Applicants' production 1/7. He said that it showed that the seal on the window had failed and that, in doing so, compromises insulation.
67. Professor Sharpe said that all the windows in the Property are of the older type, of poor quality and have been badly fitted. He said that the windows have not been properly sized to meet the apertures and that, in general terms, it would probably be more cost effective to replace them rather than repair them.
68. Professor Sharpe said the condition of the windows is such that there will be air movement inside the frames. He said that there are lots of gaps around the edges where there have been ineffective attempts to block with packing and foam.
69. Professor Sharpe said that the large bay window in the main bedroom has a number of screws which are starting to rust.
70. Professor Sharpe said that he had not found any areas around the windows with penetrating damp but that there was condensation dampness. He said that, because of their poor installation, there would be draughts. He said that, in his view, the windows are not reasonably wind and watertight.
71. Professor Sharpe was referred to a number of photographs of the windows and his evidence in general terms is that they are poorly fitting, have failed seals and have mould growth around and beneath them caused by condensation
72. Professor Sharpe commented on Mr Curran's evidence that he had only used the extractor fan on a couple of occasions when he showered. He said that, if a window was open then the fan would not necessarily need to be used. He said that Ms McCabe had said that she operated the fan when bathing the children and he said that a bath produces more moisture vapour than a shower.
73. Professor Sharpe highlighted the differences he had observed on his second survey in July 2021. He said that extractor fans had been fitted and that internal doors had been installed.
74. Professor Sharpe said that the fans would have a beneficial effect on the Property and will provide much needed ventilation. He said that he regretted that they were of a manual type rather than humidistat which would have meant that they would have operated automatically when required. He said that there are no external wind vents installed on the fans and that the absence of such a feature will cause draughts and it is possible that rain will be blown through them.
75. Professor Sharpe was referred to various photographs showing the internal doors and their fixings. He said that the photographs demonstrate that many of the doors had not been properly fixed, that screws were missing and that hinges are wrongly sized. He described them as "the cheapest possible doors." He said that that the hinges used are not big enough to fit the doors to the door frame.

He recommended that the hinges be properly sized to the doors and properly secured to door frames.

76. Professor Sharpe said that improvements can be made to the Property to aid with insulation and U-Values. He suggested that insulated dry linings could be installed, especially under the windows. He said the aim would be to raise the surface temperatures of walls. He said that, in his opinion, radiators should be moved to be installed under windows. He said that steps should be taken to improve the insulation of all walls and he said that one immediate measure which could be taken would be to improve the areas around windows. Professor Sharpe said that humidistat fans could be installed. He said that he believed it would be more cost effective to replace rather than repair windows. He said that properly installed windows would improve the fabric of the building.
77. Professor Sharpe said that, if no work was done to the ceiling in the living room, the continued existence of the crack would be unsafe and that it required to be repaired. He said that one such method of repair would be installation of plasterboard beneath the ceiling which would be attached to battons screwed into the joists. Professor Sharpe said that some artex contained asbestos and that, before any work was done to the ceiling, he thought that an appropriate test of it should be made. He said that this would be necessary to ensure the safety of the operatives working on the ceiling. He said that asbestos, if encapsulated within artex and in good general condition then if undisturbed can be considered safe but that work to repair the crack and bowing in the living room ceiling would mean that it could be disturbed.
78. Professor Sharpe was referred to the document "Scottish Development Department Building Directorate Condensation in Housing" (hereinafter referred to as "the 1984 Report.")
79. Professor Sharpe acknowledged that one section in the document referred to "Education." He said that, in his two visits to the Property, he did not engage in any conversations with the occupants which could be described as education and that he provided them with no guidance. He said that his purpose was to carry out surveys and conversations he had with them was to elicit information to assist him in his work. He rejected the view that problems in the Property are due to "lifestyle issues" and said that the tenants' use of the Property is entirely reasonable. He said that, in his view, the Landlords did not understand the basic physics of the issues causing difficulties in the Property.
80. Professor Sharpe was referred to the 1984 report and said that there is no evidence, from his inspection of the Property, that the Landlord has taken the terms of the Report into account. He said that there is mould in the Property and that this causes adverse effects on people particularly children.
81. Professor Sharpe was asked about the effect of damp clothes being dried almost exclusively within the Property. He said that this would contribute to condensation dampness but that, in his view, it is not unusual or unreasonable behaviour to do so. He said that drying clothes inside a property will produce

moisture. He said that, when drying clothes inside a property, increasing ventilation is useful but he said that, in winter, he could understand why there might be difficulties to do this effectively.

82. Professor Sharpe said that landlords such as Housing Associations are taking a holistic approach to improve properties such as addressing poor insulation.

83. Professor Sharpe was referred to the reports of Alliance Timber and Damp Specialists Ltd dated 25<sup>th</sup> October 2017 and that fact that it states that the issue was condensation and that the report recommended that no work was required. He said that the U-Values in the Property were poor and, when asked about the contents of Home Reports lodged by the Respondent, he said that the information contained within the Home Reports was for another purpose and that it did not give the complete picture of the Property. When asked about the Energy Performance Certificate which is part of the Home Report, Professor Sharpe said that such EPCs are comparative tools and that they are not intended to give information on how a building would perform. He said that he does not consider that EPCs are test of the habitability of a property. He said that they do not identify such issues as insulation and ventilation. He said that Home Reports have limitations especially when someone relies on one to purchase a property for someone else to live in.

84. Professor Sharpe was asked if the extractor fans which had been fitted would aid ventilation and he said that they would but that he would have preferred them to have been of the humidistat type rather than have to be operated manually. He agreed that the doors which had been fitted are functional and that they open and close.

85. Professor Sharpe said that on his inspections he saw no evidence of continuing water ingress and, when asked if the windows were wind and watertight, he said that repairs could be made to them but that they may not be completely effective and that replacement would be better.

#### **7<sup>th</sup> October 2021**

86. Mr McIntosh and Ms West were present together with Ms McCabe.

#### **Preliminary Matters**

87. Ms West said that, since the previous calling of the case, the Landlords had undertaken or had committed to carry out certain works.

88. Ms West said that replacement windows will be installed throughout the Property. She said that she had been given a provisional installation date of 4<sup>th</sup> October but that, because of the current situation with delays in availability of materials, she did not know when the work would be done.

89. Ms West said that the artex in the lounge ceiling had been tested and it had been found to be free of asbestos. She referred the tribunal to the certificate

from Scopes Asbestos Analysis Services Ltd dated 1<sup>st</sup> October 2021 which she had lodged.

90. Ms West said that a contractor had been engaged to repair the lounge ceiling and that a date for the work would be arranged with the Tenants.
91. Ms West said that investigations had been carried out into the dripping noise heard by the Tenants and that contractors had not been able to find any fault and that it was considered that the noise was pipes expanding and contracting.
92. Ms West said that the Tenants had earlier reported lights which were flickering and she said that an electrician had carried out some work. She said that the light pendants in the third bedroom/dining room and large bedroom had been replaced and that a loose socket in the dining room had been repaired. She said that the Tenants had not made any further reports about flickering lights.
93. Ms West said that the landlords plan to relay the loft insulation but that, for safety reasons, she did not want to action this until the lounge ceiling had been repaired.
94. Ms West said that contractors identified water ingress in the kitchen which had been traced to a defect with external pvc panels. She said that this had been addressed. She said that she had received no further reports of water ingress.

#### **Evidence**

95. Mr McIntosh referred Ms West to the contents of the 1984 Report and she said that, prior to the Tribunal proceedings, she had not known about its existence. Ms West said that her agency gave information to all tenants about such things as proper ventilation of properties. She said that, if any issues are reported to her by tenants, she addresses them. She said that, in respect of the Property, when the issue of condensation was reported to her, she arranged for a dehumidifier to be supplied. She said that she heard in the evidence of the Tenants that they did not find it effective but that this had not previously been reported to her.
96. Ms West said that she accepted that there was condensation present in the Property but that she did not consider it to be dampness. She said that, in her view, the issue was caused by moisture in the air. She said that when she visited the Property on one occasion, "you couldn't see the room for the amount of washing being dried." She said that she believed that the Property was not properly ventilated by the Tenants.
97. Ms West said that, when she received reports of issues from the Tenants, she instructed window contractors to go to the Property and that the Tenants were advised to better ventilate the Property.

98. Ms West accepted that there is mould growth in the Property but she said that, in her view, it was as bad as it was at the inspection because it was not being cleaned off by the Tenants.
99. Ms West said that she never felt any draughts from around the windows but she accepted that when she had tested for this that it may not have been windy.
100. Ms West said that works had been done to address a problem of penetrating dampness and that an external panel had been replaced.
101. Ms West was referred to document Respondent 3/8 which was an extract of a list of maintenance reports held in the records of her agency.
102. Ms West accepted that, on various dates, there were reports of mould, wet walls and dampness. She said that, on receipt of each report, her agency responded by sending appropriate contractors or specialists. She referred to an entry from December 2017 where the agency's entry discloses that two dampness specialists had been to the Property and that both had reported that the cause of the issue was condensation.
103. Ms West said that she understood the principle of U-Values and was referred to the evidence of Professor Sharpe when he stated that the walls had poor U values. Ms West said that she had no knowledge of what insulation was contained within the walls.
104. Ms McIntosh questioned Ms West on the desirability of central heating radiators being located on external walls. She said that the Landlord purchased the Property with the radiators in their current position. She said she could offer no opinion on whether or not the radiators should be moved.
105. Ms West was asked about the desirability of humidistat fans rather than the ones which had been installed by the Landlord. She said that she had instructed contractors to install the fans but had not given them a specification.
106. Ms West was referred to item 17 from the document Respondent 3/8 which was an entry from 23 November 2016. Ms West said that it showed a report of the wall being wet under the window of the large bedroom. She said that the entry shows that she said that the issue could be condensation.
107. Ms West was asked about the internal doors in the Property. She said that the Tenants had removed the doors which were in place at the start of the Tenancy. She said that the Landlord had installed new doors throughout the Property. Ms West was referred to a number of photographs which showed cracking in a door frame and the absence of screws in some hinges. She said that all the doors had been installed by a contractor and if there are missing screws in hinges, they will be dealt with. She said that there is also a small hole at the vent in the kitchen and that the contractor would deal with this. She said that it is an all-trades company which is dealing with the lounge ceiling and that she would arrange for this contractor to attend to any other items such as the hinges.



108. Ms West was asked about her views on clothes being dried in the Property. She said that it is the Tenants' responsibility to decide how clothes are to be dried and that, if they are to be dried in the house, then there has to be sufficient ventilation.

109. Ms West said that she had lodged two Home Reports relating to the property with the Tribunal. She said that the first one, prepared by Harvey Donaldson and Gibson and based on an inspection dated 24<sup>th</sup> September 2015 had been available to the Landlord prior to purchase of the Property and that the second one, prepared by Shepherd chartered surveyors and based on an inspection on 18<sup>th</sup> June 2021 had been instructed by the Landlord. She said that both these reports identified no issue with dampness. She said that the Energy Performance Certificates showed that the Property has a category of what she described as a "high C" and she said that she thought that this was satisfactory.

### Submissions

110. Mr McIntosh said that his position was that the Property was not in a fit and habitable condition and that it did not meet the repairing standard of the 2006 Act. He said that in terms of the Act he did not consider the Property to be "reasonably fit for human habitation" as required by Section 13(1)(a) of the 2006 Act.

111. Mr McIntosh asked the tribunal to find that the windows are not wind and watertight. He referred to the case of *Summers v Salford Corporation* [1943] AC (HL) 283 where a sash cord broke on a casement window. He referred the tribunal to page 299 of the Report where Lord Atkin quoted a definition in the case of *Belcher v McIntosh* of "habitable repair." : *"It was difficult to suggest any material difference between the term 'habitable repair' used in this agreement and the more common expression 'tenantable repair' : they must both import such a state, as to repair, that the premises might be used and dwelt in not only with safety, but with reasonable comfort, by the class of persons by whom, and for the sort of purposes for which, they were to be occupied."* He said that the court found that it was not just safety which was significant but that the occupants could live in the house in reasonable comfort and he invited the tribunal to apply such a test with regard to the windows and to find that, in respect of the windows, the Property did not meet the repairing standard because their condition rendered the Property not habitable.

112. Mr McIntosh referred the tribunal to the case of *Wolfson v Forrester* 1910 SC 675 where the Lord President stated that it is an obligation of a landlord to hand over premises in a wind and watertight condition, and, if he does not do so there is a breach of contract and that, if a defect is brought to his notice then he is obliged to remedy it. Mr McIntosh said that, in respect of the principles set out in this case, the Landlords have failed to maintain the Property in a wind and watertight condition when defects have been brought to its notice.

113. Mr McIntosh referred the tribunal to the case of *Gunn v City of Glasgow District Council* (Court of Session 31 July 1992). He said that this was a case about inadequate insulation to the walls and roof of a building where condensation occurred as a result. Mr McIntosh referred to the judgement of the Court which was delivered by Lord Morison where he referred to the case of *Quick v Taff-Ely Borough Council* [1985] 3 A.E.R. 321 where Lord Dillon stated *"There was no evidence at all to suggest that the lifestyle of the tenant and his family was likely to give rise to condensation problems because it was outside the spectrum of lifestyles which the local authority could reasonably expect its tenants to follow."* Mr McIntosh said that his submission is that the evidence supported that the Tenants' use of the Property was entirely appropriate and within the spectrum of "reasonable." He said that the Tenants should not be blamed for the condition of the Property and that it was for the Landlord to ensure that it was free from defect such as condensation.
114. Mr McIntosh referred to Professor Sharpe's second report dated 31<sup>st</sup> July 2021 where he commented on works that had been carried out since he prepared his first report. The Report stated that the internal doors were of poor quality and missing hinges and that the extractor fans are of the minimum specification which require manual operation. It states that they are poorly sealed and do not have wind louvres which will allow wind and rain to be blown through. Mr McIntosh said that the report states that, apart from these works, the defects identified in the earlier report remains unchanged including the lack of adequate insulation, poor quality of the windows and the ceiling finishes.
115. Mr McIntosh asked the tribunal to accept in full the evidence and recommendations of Professor Sharpe contained in his two reports and in his evidence. He suggested that, in relation to the U values, it would be reasonable to have regard to the current building regulation. Mr McIntosh said that the *Gunn* case was authority for a landlord being obliged to bring a property to the repairing standard if the insulation of a property was lacking.
116. Mr McIntosh asked the tribunal to find that the insulation in the Property underneath the windows in the living room, at the windows in the kitchen and the large bedroom was insufficient. He suggested that the walls in these areas could be dry lined.
117. Mr McIntosh suggested that the radiators in the Property should be relocated so that they are on external walls and that the two extractor fans should be replaced with humidistat fans and that "gaping" holes around the fans should be repaired.

118. Mr McIntosh said that the internal doors could become unstable over a period and he invited the Tribunal to make an order requiring the door fixings to be made good because of the doors' "precarious state."

119. Ms West asked the tribunal to have regard to the fact that the Landlord is undertaking repairs to ensure that the Property meets the repairing standard.

120. Ms West said that she considered an order requiring relocation of radiators to be unreasonable. She said that the radiators are located in the same places as they were when the Landlords purchased the Property.

121. Ms West said that the Landlord relied on the Home Report when they purchased the Property. She said that after the Landlord purchased the Property, it had undertaken improvements work to make the Tenants more comfortable and she referred to the installation of a kitchen and removal of an old fireplace.

#### **Findings in Fact**

122.

122.1 The Applicants are tenants in the Property and have been since 17<sup>th</sup> June 2016

122.2 The windows in the Property are in need of repair.

122.3 There is a current Gas Safety Certificate and a current Electrical Installation Condition Report. Both are in acceptable terms.

122.4 There are some hairline cracks in the Property.

122.5 The ceiling in the living room is defective.

122.6 There is evidence of mould growth on walls and around windows throughout the Property.

122.7. There is loft insulation in the Property which is installed in a random manner.

122.8 There is deficient insulation at areas of the Property around the windows.

#### **Discussion and Reasons**

123. The Law

*The Housing (Scotland) Act 2006*

*Section 13: The repairing standard*

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*(1) A house meets the repairing standard if—*

*(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,*

*(b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,*

*(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,*

*(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,*

*(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,*

*(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and*

*(g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.*

*(h) the house meets the tolerable standard.*

124. The tribunal found the evidence led and the written submissions and documents which had been lodged to be of assistance to it. There were no significant matters of credibility which had to be addressed but it is a matter for the tribunal to assess the evidence before it, including the evidence of Professor Sharpe.

125. The tribunal was informed by its inspection of the Property and a copy of the Prehearing Inspection Summary and Schedule of Photographs dated 9<sup>th</sup> August 2021 is attached to this Decision.

126. The tribunal considered the evidence as presented by both parties and their representatives. A number of the items raised in the application to the Tribunal have been addressed and several remain outstanding. It is useful to deal with the matters which appear to the tribunal to have been resolved.

127. The application stated that some electric lights do not work properly and some electric sockets do not work. Subsequent to the application being made, the Landlord produced an EICR dated 22<sup>nd</sup> January 2021 which is in acceptable terms. At the inspection on 9<sup>th</sup> August, the Applicants reported that there were still issues with electrics. On 7<sup>th</sup> October 2021, Ms West informed the tribunal that an electrical contractor had replaced two light pendants and had repaired a

socket. Mr McIntosh made no submissions to indicate that there remained outstanding issues with electrics.

128. The Applicants led no evidence and made no submissions with regard to the central heating system and the Tribunal concluded that there are no current issues with the central heating system.

129. At the inspection, the tribunal found evidence of historic water ingress in the small bedroom/dining room and there was no evidence that this had not been resolved. On 7<sup>th</sup> October 2021, Ms West said that water ingress had been identified in the kitchen and that repairs had been carried out by contractors. Mr McIntosh did not submit that this was not the case and the tribunal concluded that there are no ongoing issues with water ingress other than perhaps with windows.

130. There are matters raised in the application which are still live.

#### **Loft Insulation**

131. The loft is insulated albeit the material is laid in a somewhat untidy manner. The tribunal noted that Ms West said that the insulation would be relaid when it is safe to do so. It considered that the current insulation in the loft space did not fall below the repairing standard.

Dripping sound when hot tap used

132. The tribunal heard no evidence that the hot water system was defective. It considered what Ms West said to be reasonable- that it was caused by expansion and contraction of pipes.

#### **Plaster cracks and the lounge ceiling**

133. At the inspection, the tribunal found that there were plaster cracks in the ceilings and walls throughout the Property. The tribunal considered that such cracking was commensurate with the age and condition of the Property and that they were not significant.

134. The tribunal found at the inspection that there was a significant bow and crack in the living room ceiling which is artexed. Concerns had been expressed as to whether or not the artex may contain asbestos but satisfactory evidence had been produced certifying that it did not. The tribunal considered that the crack could get worse and that the nature of the defect was such that it should be repaired. Ms West's evidence was that a contractor has been instructed to carry out a repair.

#### **The windows and draughts**

135. The tribunal noted that the windows display evidence of general wear reflecting age and design. They are generally functional but there are some repairs required. There was no evidence of draughts at the inspection but it was

not windy and the tribunal accepted that, given the condition of the windows it is possible that there may be draughts either from the windows or from the immediate surrounding area. It found the authorities referred to by Mr McIntosh to be helpful and, following the Summers and Wolfson cases, found that the Property was not wind and watertight. The tribunal noted that a contractor has been instructed to replace windows throughout the Property.

### **Internal doors**

136. Parties were not consistent in their evidence with regard to the condition of the doors which were in situ at the commencement of the tenancy. The Applicants were clear that the doors were in such poor condition that they “had fallen off.” Ms West did not accept this. The tribunal did not require to make a finding in this regard but only to consider whether or not the doors now installed in the Property are of an acceptable standard.

137. The tribunal found that the internal doors functioned and were capable of being opened and closed. It accepted the evidence that the doors could be of a better quality and hung better and that some hinges had screws missing but determined that there was no requirement for the doors to be replaced or to require any work to be done to them to meet the repairing standard. It noted the evidence of Ms West, that any missing screws on door hinges would be dealt with and considered that this would be beneficial.

### **Ventilation**

138. The matter of ventilation in the Property is linked to the overall consideration of condensation but it is useful to deal with extractor fans separately. Subsequent to the application being lodged, the Landlord had installed extractor fans in the bathroom and in the kitchen which are manually operated. Whilst the tribunal accepted the evidence of Professor Sharpe that humidistat fans would be preferable because they would operate automatically when required, it did not consider that the existing fans require to be replaced. They function. The tribunal finds that it was not established that the absence of external louvres on the extractor fans caused draughts or water ingress.

### **Condensation**

139. Conflicting evidence in relation to the condensation staining throughout much of the property, its cause and the required remedial action was presented to the Tribunal by each party.

140. The tribunal was referred by parties as to whether or not the condensation was caused by the “lifestyle” of the Tenants. It had some sympathy with Professor Sharpe when he stated that what the Tenants are

doing is carrying on normal household activities typical in Scotland. It also had an understanding of the difficulties of a family of five in an upstairs flat balancing the needs of ventilation, heating and drying of clothes in an economic manner. Notwithstanding that, it did consider it reasonable for it to consider whether the Tenants could reduce the level of condensation by employing mitigating measures.

141. The tribunal noted the terms of the two Home Reports undertaken in 2015 and 2021 by separate companies, considered that they were relevant and took them into account. Both Home Reports disclosed no significant issues with dampness and neither raised the issue of condensation.

142. The tribunal was assisted by the authorities referred to by Mr McIntosh. The Gunn case was particularly helpful in its reference to Lord Dillon's comments in the Quick case: *"There was no evidence at all to suggest that the lifestyle of the tenant and his family was likely to give rise to condensation problems because it was outside the spectrum of lifestyles which the local authority could reasonably expect its tenants to follow."* In the case before the tribunal, the tribunal considered whether or not the Tenants were within the spectrum of lifestyles which the Landlord might reasonably expect the Tenants to follow.

143. This is a family consisting of a couple and three young children. It is to be expected that such a family will generate a significant amount of laundry. Ms McCabe was candid in stating that washing is dried over radiators or on a clothes horse within the house. Ms West referred to one visit to the Property where she had observed so much washing that "you couldn't see the room."

144. Ms McCabe said that there was an area of ground at the rear of the Property which could be used for drying clothes and her evidence was that she sometimes made use of this when it is sunny and she said that she would put a clothes horse outside.

145. A dehumidifier had been supplied by the Landlord and had not been used because the Tenants did not find it effective but had not advised the Landlord's agents of this. The tribunal accepted Professor Sharpe's evidence on the effectiveness of a dehumidifier but it took account of the fact that the Tenants had not appeared to engage with the letting agents when they considered that the dehumidifier did not work. Mr Curran said that he only "sometimes used the extractor fan when showering".

146. The tribunal applied the "Gunn test" and found that, whilst the Landlord has obligations to ensure that the house is free from condensation dampness, the Tenants have a part to play. In Scotland, it is often windy when not sunny and people do dry clothes outside in such conditions. The tribunal found that it is within a reasonable spectrum of lifestyles for Tenants to dry clothes outside when possible and that not do so when possible, was unreasonable. It got no

sense from the evidence of the Tenants that they dried clothes outside on a regular basis. Drying clothes inside the Property would lead to a worsening of any existing issue with condensation.

147. On behalf of the Landlord, reports were provided by "Alliance Timber Damp Specialists" dated 25 October 2017 and "C Hanlon, multi trade specialists" dated 21 December 2021 suggesting that mainly cosmetic repairs/work would address the problem. Professor Sharpe's reports, based on inspections on 27th June 2020 & 30th July 2021, recommended a considerably more comprehensive approach to the remedial action required to address the condensation problem. One of the recommendations, specifically that of improving the U- value of the external walls, involved securing the cooperation of the other co-proprietors within the building. The others, included the renewal or significant repair of the windows, relining the single skin brick areas below the windows with additional insulation, repositioning the radiators throughout the property from the internal walls to immediately below the windows and relaying the insulation within the roof space.

148. The Tribunal finds that the cause of the condensation is almost certainly an imbalance between the moisture generated by the occupants as a result of general day to day living activity and the type of heating, ventilation and insulation employed throughout the property. Professor Sharpe has suggested a "belt and braces" approach to addressing the problem while the suggestions made by the landlord's tradesmen/contractors appear to address the symptoms rather than the cause. If fully adopting the recommendations of Professor Sharpe then it is likely that this would involve the landlord in considerable expense, a proportion of which may be beyond his control and possibly unnecessary when addressing the issue of the "Repairing Standard".

149. The landlord has proposed renewing the windows with modern replacements. It is assumed that these will be in accordance with current regulations and be capable of providing adequate ventilation when necessary. Many properties in both the owner occupied and tenanted sectors are of an age where radiators are not always positioned below windows and may not incorporate cavity wall insulation. Such properties would not normally be considered to be in breach of the Repairing Standard and the tribunal considered that for it to require radiators to be repositioned would not be proportionate.

150. Where however part of the construction is deemed to be of inferior design, such as the single skin sections of outer walls below windows with no supplementary insulation and these areas are considered to be a major contributory factor in the presence of condensation within the property, then remedial action will be necessary. This should take the form of installing appropriate insulation at these areas.



151. The tribunal consider that the renewal or significant upgrading of the windows to contemporary standards and the insulation of those single skin areas of the outer walls around and below the windows, should address the issue of condensation within the property specifically as it affects the Repairing Standard. This will however require the cooperation of the tenants, specifically if drying clothes next to radiators ensuring the relevant room remains properly ventilated and avoiding the risk of condensation and subsequent mould growth in the property.

152. In arriving at its determination, the tribunal considered that the fact the Property may not meet current building standards does not mean that it fails to meet the repairing standard set out in the 2006 Act.

#### **Repairing Standard Enforcement Order**

153. The tribunal determined to make a repairing standard enforcement order in the following terms:

#### **The landlord is required to;**

- 1. Repair or renew the cracked and bowing ceiling plaster within the living room, ensuring that it is in a reasonable state of repair and in proper working order. Thereafter all appropriate redecoration arising as a result of this repair should be completed as necessary.  
(Section 13(1)(b) of the 2006 Act)**
- 2. Renew or significantly upgrade the windows to contemporary standards ensuring appropriate ventilation.  
(Section 13(1)(a) of the 2006 Act)**
- 3. Insulate the single skin areas of the outer walls, around and below the window openings, to a standard which will adequately address the issue of condensation occurring at these areas.  
(Section 13(1)(a) and 13(1)(b) of the 2006 Act)**

**The tribunal determined that the works are to be completed by 31<sup>st</sup> December 2021.**

**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.

# M McAllister

Martin J. McAllister,  
Solicitor, legal member of the First-Tier Tribunal for Scotland  
Tribunal.  
31<sup>st</sup> October 2021

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**



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

**Repairing Standard Enforcement Order**

**Housing (Scotland) Act 2006: Section 24**

**Re: Property at 120 Kingsbridge Drive, Glasgow, G44 4JS (“the Property”)**

**Chamber Reference: FTS/HPC/RP/20/1890**

**Parties:**

**Miss Lisa McCabe, Mr Martyn John Curran, 120 Kingsbridge Drive, Glasgow, G44 4JS (“the Tenants” and “the Applicants”)**

**Staffa Rock PLC (formerly Carduus Housing PLC), c/o Indigo Square Property Ltd, 42 Holmlea Road, Glasgow, G44 4AL (“the Landlord” and “the Respondent”)**

**Castlemilk Law & Money Advice Centre, 155 Castlemilk Drive, Castlemilk Drive, Castlemilk, Glasgow G45 9UG (“the Applicants’ Representative”)**

**Indigo Square Property Ltd, 42 Holmlea Road, Glasgow, G44 4AL (“the Respondent’s Representative”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Donald Wooley (Ordinary Member) (“the tribunal”).**

**NOTICE TO  
Staffa Rock Plc**

Whereas in terms of their decision dated 31<sup>st</sup> October 2021, the First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal) determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“The “Act”) and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to demonstrate that the Property is wind and water tight and in all other respects reasonably fit for human habitation and that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, the tribunal now makes a repairing standard enforcement order (RSEO) in the following terms:

**The landlord is required to;**

- 1. Repair or renew the cracked and bowing ceiling plaster within the living room, ensuring that it is in a reasonable state of repair and in proper working order. Thereafter all appropriate redecoration arising as a result of this repair should be completed as necessary.  
(Section 13(1)(b) of the 2006 Act)**
- 2. Renew or significantly upgrade the windows to contemporary standards ensuring appropriate ventilation.  
(Section 13(1)(a) of the 2006 Act)**
- 3. Insulate the single skin areas of the outer walls, around and below the window openings, to a standard which will adequately address the issue of condensation occurring at these areas.  
(Section 13(1)(a) and 13(1)(b) of the 2006 Act)**

**The tribunal determined that the works are to be completed by 31<sup>st</sup> December 2021.**

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the 2006 Act.**

**A landlord, tenant or third party applicant 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.**

In witness whereof these presents typewritten on this and the two preceding pages are executed by Martin Joseph McAllister, solicitor, legal member of the First-tier Tribunal for Scotland at Saltcoats on 31<sup>st</sup> October <sup>2021</sup> before Peter Ashby, 21 Montgomerie Crescent, Saltcoats.

# M McAllister