

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Repairing Standard Enforcement Order (“RSEO”): Housing (Scotland) Act 2006
Section 24**

Chamber Ref. No. FTS/HPC/RP/18/0193

Sasines Description: ALL and WHOLE the south-most house on ground Flat 1, Appin Terrace, Edinburgh, referred to in the Disposition by Castle Securities Limited to Kevin Power and Another recorded in the General Register of Sasines for the County of Midlothian on 9 November 1978.

Property address:

**1/1 Appin Terrace, Edinburgh, EH14 1NN
 (“The House”)**

The Parties:-

**MISS MICHELLE LEYDON and MISS LOUISE MORRISON, both residing at 1/1 Appin Terrace, Edinburgh, EH14 1NN
 (“the Tenants”)**

**MISS LESLEY SMITH or JENNINGS, residing at 10 Whites Road, Southampton, SO19 7NP
 (represented by their Agent Braemore Sales and Lettings, Orchard Brae House, 30 Queensferry Road, Edinburgh, EH1 4HS)
 (“the Landlord”)**

Whereas in terms of their decision dated 1 May 2018 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 to ensure that the house is:-

- (a) wind and water tight and in all other respects reasonably fit for human habitation; the tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the landlord:-

- (a) to appoint an approved firm of damp and timber preservation specialists to eradicate dampness within the living-room and box-room and make good all affected flooring and plasterwork and to thereafter re-decorate.

- (b) The tribunal order that the works specified in this Order must be carried out and completed within the period of 60 days from the date of service of this Notice.

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.

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.

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 Act.

In witness whereof these presents type written on this and the preceding page(s) are executed by Graham Harding, Solicitor, Whitefriars House, 7 Whitefriars Crescent, Perth, PH2 0PA, Chairperson of the tribunal at Perth, on 1 May 2018.

(date) before this witness:-

Graham Harding

Kirsty Graham

witness

chairperson

KIRSTY GRAHAM
name in full

WHITEFRIARS HOUSE
Address

7 WHITEFRIARS CRESCENT

PERTH PH2 0PA

Housing and Property Chamber First-tier Tribunal for Scotland



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

Statement of Decision: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/18/0193

**Property address:
1/1 Appin Terrace, Edinburgh, EH14 1NN
("the Property")**

The Parties:-

**MISS MICHELLE LEYDON and MISS LOUISE MORRISON, residing at 1/1 Appin Terrace, Edinburgh, EH14 1NN
("the Tenants")**

**MISS LESLEY SMITH or JENNINGS, residing at 19 Whites Road, Southampton, SO19 7NP
("the Landlord")
(represented by Braemore Sales & Lettings, Orchard Brae House, 30 Queensferry Road, Edinburgh, EH4 2HS)
("the Landlord's Agents")**

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as it saw fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property and taking account of the evidence presented in writing and oral representations determined the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Tribunal composed of Graham Harding (Legal Member) and Greig Adams (Ordinary Member)

BACKGROUND

1. By Application received on 29 January 2017, the Tenants applied to the Tribunal for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.

2. The Application by the Tenants stated that the Landlord had failed to comply with her duty to ensure that the property met the repairing standard. In particular, the tenants stated as follows:-

“Damp has been present since before we moved in. We notified them in October and repairs still have not been carried out. There has been damage to our belongings and two rooms we do not feel comfortable staying in”

3. The tribunal was provided with a copy of the AT5s and the Short Assured Tenancy Agreement issued by the Landlord's Agents.
4. The Tribunal was also provided with a series of e-mail exchanges between the tenants and the landlord's agents.
5. The tenant's application was acknowledged by the tribunal on 29 January 2018 and by a decision of a convenor with delegated powers on 19 February 2018 the application was referred to a tribunal.
6. The landlord's agents made written representations to the tribunal in correspondence dated 27/03/2018. This included a specialist report by AEGIS Property Care Limited dated 15 November 2017.
7. The tribunal inspected the property on the morning of 17 April 2018. The tenant, Miss Morrison, provided access to the property and was present during the inspection as was the landlord's agent, Mr Rowland.
8. Following inspection of the property the Tribunal held a hearing at George House, Room D8, 126 George Street, Edinburgh. In attendance was the tenant, Miss Louise Morrison, the tenant's representative, Mr Muir, the landlord's representatives, Mr Derek Rowland and Mr Kjartan Behm.

THE INSPECTION

9. At the time of the inspection the weather was cloudy but dry. The tribunal noted the property was a ground floor flat in a tenement building.
10. The accommodation comprised living-room, kitchen, bathroom, two bedrooms and a box-room.
11. The tribunal noted the following on inspection:-

A non-disruptive inspection was undertaken within the property to investigate the presence of dampness utilising a thermal image moisture meter, thermal imaging camera and infra-red thermometer. A schedule of photographs is attached to this decision. Inspection of the living-room located at the front of the property revealed obvious visual signs of dampness to the rear right corner at the separating wall with the adjoining neighbouring property and separating wall with the box-room, affecting low levels of the wall and adjoining suspended timber flooring. Thermal imaging also showed clear differential in surface temperature due to dampness and saturation of

materials (photograph 10). Moisture meter readings were also recorded and indicated saturation of the low level walls to the rear corner of the living-room due to dampness.

Similar visual evidence of dampness was noted within the central box-room affecting the separating wall with the adjoining property and the separating wall with the living-room. Moisture meter readings again showed a saturation of materials of low level due to dampness.

Moisture readings were then taken to the rear bedroom in an area of mould growth located to the rear corner and did not reveal any readings that would indicate cause for concern or inherent dampness. An infra-red thermometer recording relative humidity, temperature of the room, surface temperature and dew point showed the area to be at risk of surface condensation.

THE HEARING

12. The tenant and her representative made reference to the e-mail exchanges between the tenants and the landlord's agents. The issue with regards to damp in the sitting-room and the box-room had been becoming progressively worse to the extent that these rooms were now effectively unusable and the contents in both rooms had been damaged. Miss Morrison explained that in addition to the damp in the sitting-room and box-room there was also a further small patch of mould growing in bedroom 1. As a result of the worsening damp conditions, Miss Morrison explained that the tenants could no longer use the sitting-room or box-room and had removed the furniture and belongings to other parts of the property and had disposed of items that had been affected by mould. Miss Morrison confirmed to the Tribunal that monthly rent of £775 was paid up to date.
13. For the landlord, Mr Rowland, said that he was broadly in agreement with the facts as stated by the tenants. There had been a built-in delay in treating the damp problem due to the difficulty in ascertaining where the problem was coming from. The report by AEGIS, commissioned by the landlord's agents had identified that the problem lay with one of the properties adjoining the landlord's property. The landlord's agents had spoken to Southside Letting Agents who managed one of the adjoining properties and they had advised that AEGIS Property Care had carried out a survey of that property which had proved negative. Mr Rowland said he had spoken to the owner of the other flat, a Mr Nicol, who had told him he was renovating the property and had put in a damp-proof membrane between the properties and there had been no evidence of damp. Mr Behm advised the tribunal that he had spoken to Edinburgh City Council but they had been of no assistance. He had spoken to the adjoining owner, Mr Nicol, who had indicated that there was no water source on the walls adjacent to the property but he was happy to allow a specialist firm access to his property. Mr Behm was of the view that there was not much more that could be done and had hoped that the tribunal could assist in breaching what was effectively an impasse. The repairs to the landlord's property could not be carried out until the source of the problem had been identified and the source could not be identified without invasive

procedures taking place in the adjoining properties and there was no mechanism for the landlord to gain access to these properties.

14. The tribunal queried with the landlord's agents as to whether they had sought legal advice as to the remedies open to the landlord in a situation such as this. The landlord's agents said they had not but did not think there were any legal remedies.

FINDINGS IN FACT

15. The tenants have held the property under a Short Assured Tenancy since 22/05/17 at a rent of £775 per month.
16. There is extensive damp in the sitting-room and box-room resulting in the tenants being unable to effectively use these rooms. There is mould growth in bedroom 1.
17. The damp issue is longstanding and has existed since before the tenancy began but has become progressively worse over time.
18. The landlord has failed to address the problem nor has she taken legal advice as to any remedies that may be open to her in the event of the cause of the damp emanating from a neighbouring property.

REASONS FOR DECISION

19. The tribunal considered the issues as set out in the application and as observed at the inspection. The tribunal was not satisfied that in terms of Section 13 (1) (a) of the Act that the property was wind and water tight and in all other respects reasonably fit for human habitation.
20. The tribunal was of the view that there requires to be a Repairing Standard Enforcement Order ("RSEO") in respect of the matters identified above. Given the nature of the required repairs the tribunal is of the view that a period of 60 days from service of the RSEO is an adequate and reasonable timescale for the repairs to be completed.
21. The tribunal accordingly determined the landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
22. The tribunal proceeded to make an RSEO as required by Section 24 (1) of the Act.

23. The decision of the tribunal was unanimous.

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 part 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

In terms of Section 63 of the Act, 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.

Graham Harding

1 May 2018

____ Chairperson _____ Date



**1/1 Appin Terrace, Edinburgh, EH14 1
NN
("the Property")**

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SCHEDULE OF PHOTOGRAPHS



1 Rear corner of Living Room affected by low level dampness and high moisture readings.



2 Close view of eruption of finishes due to water content.



3 Failed decorative finishes due to saturation.



4 Staining and high moisture content to tongue and grooved flooring.



5 View of moisture transfer onto flooring from wall.



6 General view of low level staining within Boxroom.



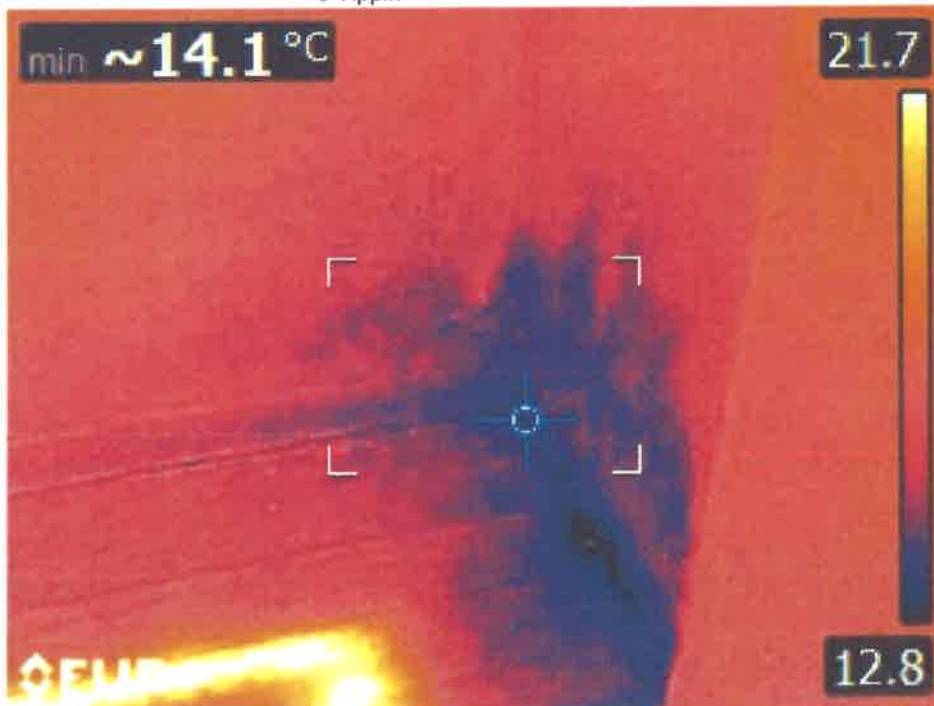
7 Evidence of low level staining and dampness within Boxroom.



8 Mould growth to rear bedroom due to condensation. No high moisture readings.



9 Appin Terrace front elevation.



10. Thermal image indicating area of dampness (blue areas).