

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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

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

**Chamber Ref: FTS/HPC/RP/18/1716**

**Title no: LAN 181264**

**60 Northcrofts Road, Biggar ML12 6EL ("The Property")**

**The Parties: -**

**Dean Gallacher, 60 Northcrofts Road, Biggar, ML12 6EL ("the Tenant")**

**Ms Mary McNee c/o Mrs Mary Calveley 4 Sillerknowe Court, Biggar, ML12 6AR  
("the Landlord")**

Whereas in terms of their decision dated 12 October 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 :-

- (a) The house is wind and watertight 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, and
- (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, and
- (f) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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: -

1. To instruct a suitably qualified pest control specialist to investigate whether there is a rodent infestation and consider the likely points of entry to the property by rodents. Thereafter, to carry out such repairs and treatments as are recommended to eradicate the infestation and prevent further infestation.
2. To repair or replace the defective radiator in the hall.
3. To instruct a suitably qualified SELECT, NAPIT or NICEIC registered electrician to (a) check the effectiveness of the extractor fan in the bathroom, and repair or replace the extractor fan if recommended, (b) check the electric fire in the living room and repair or replace the fire if recommended, (c) reinstate the damaged electrical sockets in the kitchen and bedroom, and (d) carry out a certified electrical condition check on the entire electrical installation of the property, and exhibit a copy of the EICR to the Tribunal,
4. To instruct a suitably qualified plumber to investigate the slow drainage in the shower cubicle and carry out such remedial work as is recommended to ensure that water drains properly from the shower, and to fix the defective tap in the kitchen.
5. To install a CO detector in the kitchen of the property.
6. To instruct a suitably qualified window and door contractor to repair all defects in windows and doors at the property, including the shed windows, and ensure that the property is wind and watertight.
7. To repair the damaged external window sill,
8. To clean the mould from the bedroom and shower room blinds or replace the blinds.
9. To replace the damaged chair in the living room.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of 8 weeks from the date of service of this Notice.

**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.**

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.

**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 two preceding pages are executed by Josephine Bonnar, Solicitor, legal member of the Tribunal, at Motherwell on 12 October 2018 in the presence of the undernoted witness:-

A Bonnar

J Bonnar

\_\_\_\_\_ witness

\_\_\_\_\_ Legal Member

Aidan Bonnar  
38 Alexander Gibson Way  
Motherwell

# **Housing and Property Chamber**

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

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

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

**Chamber Ref: FTS/HPC/RP/18/1716**

**Title no: LAN 181264**

**60 Northcrofts Road, Biggar ML12 6EL ("The Property")**

**The Parties: -**

**Dean Gallacher, 60 Northcrofts Road, Biggar, ML12 6EL ("the Tenant")**

**Ms Mary McNee c/o Mrs Mary Calveley 4 Sillerknowe Court, Biggar, ML12 6AR ("the Landlord")**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

**The Tribunal comprised: -**

**Mrs Josephine Bonnar, Legal Member**

**Mr Mike Links, Ordinary Member**

## Background

1. By application received on 12 July 2018 the Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The Application states that the Tenant considers that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard. The Tenant states that the Landlord has failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation, (ii) 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, (iii) 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, (iv) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, (v) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed, (vi) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. And (vii) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically, the Tenant complains of;- (1) loose waste pipes with gaps surrounding that have led to rodent infestation, no mesh over air vents, exposed bore hole to external wall and wasps nest outside rear window, (2) Leaking pipework under the kitchen sink, (3) damaged radiator in hall which flooded house and resulted in no heating or hot water in the property for 6 months, (4) ridge on hall floor because of flood and foul odour from carpet and underlay, (5) no carbon monoxide detector, (6) drainage system in shower defective, (7) draughts at front and back doors and kitchen and living room windows, windows not watertight in kitchen and living room and damaged glazing seal at kitchen and living room windows, (8) damaged glazing seal at bathroom window, (9) cracked external window ledge at shower room and extractor fan not working, (10) dampness and mould at bedroom and shower room windows, (11) defective living room window frame, (12) defective electric fire in living room, (13) paving defects in garden, (14) dripping tap in kitchen, (15) defective electrical sockets in kitchen and bedroom, (16) unsecure fence post, (17) decking requires painting, (18) main shed has no window and has electrical appliances inside, (19) sheds in poor condition, (20) no gas safety certificate, (21) no energy

performance certificate in place, (22) electrical appliance safety testing is required, (23) EICR is required, (24) damaged leather chair which does not comply with Fire Regulations, (25) breach of contract as one of the sheds included in the tenancy cannot be accessed.

3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 14 August 2018. The parties were notified that an inspection and hearing would take place on 28 September 2018. Both parties lodged documents and written representations in advance of the inspection and hearing.
4. The Tribunal inspected the property on the morning of 28 September 2018. The Tenant was present accompanied by a friend, Mr Andrew Carnan. Mrs Mary Calvely attended on behalf of the Landlord, for whom she holds power of attorney. She was accompanied by her husband, Stephen Calvey, and her solicitor, Jane Robison.
5. Following the inspection of the property the Tribunal held a hearing at Fountain Hall, Abbeygreen, Lesmahagow. The Tenant attended with Mr Carnan, as witness. Mr and Mrs Calvey also attended, represented by Ms Robison.

### **The Inspection**

6. At the time of the inspection the weather was sunny and dry. The Tribunal inspected the property which is a 2 bedroom, single storey detached bungalow. The Tribunal noted the following; - (a) Gaps around pipes leading to drain in front wall, (b) Small hole in right hand gable wall, (c) Uncovered vents in front and back walls, (d) Radiator in hall has rust in one corner and a bowl to catch water underneath, (e ) Ridge on floor next to radiator, no dampness detected (f) Gas boiler is in the kitchen – no CO detector (g) No heat detector in kitchen, (h) Drainage of water from shower tray very slow, (i) Gaps at base and top of front door, (j) Kitchen window has gap at top of frame and broken seal, (k) WC window has broken seal and condensation between panes, (l) Kitchen door silicone seals in poor condition, (m) Outside window sill of WC broken and paint peeling, (n) Condensation on shower room window, extractor fan working, (o) Condensation on window in rear bedroom, (p) Gap in living room window frame, (q) Electric fire in living room working, (r) Slabs at front and rear are cracked and uneven in some places, (s) Leaking tap in kitchen, (t) Electrical socket and wires in kitchen are loose and hanging off the wall, (u) Electrical socket in bedroom hanging off wall, (v) Loose gate post at front of house, undamaged

decking in garden, (w) Missing/damaged window in main shed which holds freezer and tumble drier, (x) Cream leather chair in living room in poor condition, (y) No smoke detector in living room, 2 smoke detectors in hall (battery operated one working, hard wired one not working), (z) Mouse droppings in kitchen and attic. A schedule of photographs taken at the inspection is attached to this decision.

## **The Hearing**

7. At the hearing the Tribunal heard evidence from the Tenant and from Mr and Mrs Calveley. A number of preliminary matters were addressed. The first related to paperwork which had been received and crossed over to parties late. The Tribunal established that both parties had copies of all documents and written representations which had been lodged in advance of the hearing. Mr Calveley objected to 2 documents lodged by the Tenant, being copies of witness citations for a case against Mr Calveley. Having heard from both parties, the Tribunal allowed the documents, although noted that they did not seem relevant to the application. Secondly, the Tribunal noted that a solicitor acting for the Tenant had made a request in writing to have the case conjoined with another application due to call before the Legal Member of the Tribunal for a case management discussion at 2pm on the same day. The Tribunal advised that it was refusing on the basis that it related to a different jurisdiction of the Tribunal, that the outcome of one case would not necessarily affect the other and that the repairing standard application was calling before a full Tribunal whereas the other application was calling for a case management discussion before the Legal Member only. The Tribunal next addressed an issue raised in the Applicant's written representations, namely that Mrs Calveley was acting as an "unregistered agent" and therefore was not entitled to access the property. The Tribunal noted that Mrs Calveley holds power of attorney for the Landlord who resides in a care home. In this capacity, she is entitled to deal with all matters relating to the property and indeed represent the Landlord's interests in legal proceedings. Lastly, the Tribunal noted that one of the complaints in the application is that the Landlord is in breach of contract by depriving the Tenant of access to one of the sheds at the property. The Tribunal determined that this matter is not a repairing standard matter and therefore not within the jurisdiction of the Tribunal. The Tribunal proceeded to hear evidence from parties in relation to the application.

8. **Rodent infestation.** Mr Gallacher advised the Tribunal that he notified Mr and Mrs Calveley that there were mice in the house in October 2017. At their request, he arranged for a pest control firm to come to the property. They put down poison/traps in the attic. However, the problem did not resolve, and he notified Mr and Mrs Calveley of this. No further action was ever taken to address the matter. He referred the Tribunal to a letter from South Lanarkshire Council Environmental Service dated 17 July 2018 which refers to an inspection of the property when mouse droppings were noted in the kitchen. Mr Calveley advised the Tribunal that when the matter was first reported, he and his wife were on holiday and therefore asked Mr Gallacher to arrange for pest control to attend. They told him to deduct the cost of this from his next rent payment. When they were told that the infestation had not resolved, Mr Calveley contacted the pest control company and was advised that they were not convinced that there was an infestation. Mr Calveley arranged to meet someone from the company at the property, however they failed to attend. Mr Calveley went to the property on 28 December 2017, by arrangement, in response to complaints from the Mr Gallacher that the infestation was ongoing as well as other repairs issues. An altercation took place. Subsequently, the Mr Gallacher became difficult about allowing access to the property. Mr Calveley confirmed that no further pest control investigations or treatment have been arranged. Mr Gallacher advised the Tribunal that it is for the Landlord to arrange repairs and not him. He confirmed that he has been reluctant to allow Mr and Mrs Calveley access since the incident on 28 December 2017. Mr and Mrs Calveley acknowledged that mouse droppings had been noted during the inspection in both the kitchen and attic.
9. **Leaking pipework under kitchen sink.** Mr Gallacher confirmed that this had now resolved.
10. **Hall radiator.** Mr Gallacher advised that the problem with the radiator was reported both before the rust bubble burst and afterwards. He has not been able to switch the radiator off, so had to stop using heating and hot water altogether. The gas engineer who recently attended at the property in September 2018 has isolated the radiator and there is now hot water and heating, although the hall radiator still does not work. Mr Calveley advised the Tribunal that there is a maintenance contract for the gas appliances and boiler. Mr Gallacher was told about this when he moved in and there was a sticker on the boiler with the details. When the matter was reported, Mr Gallacher was told to contact the company, and appears to have chosen not to. Mr Gallacher disputed this saying that he had called but they had refused to



discuss the matter with him as he is not the contract holder. He was uncertain as to whether he had passed this information on to Mr Calveley. Mr Gallacher also advised the Tribunal that the ridge in the flooring next to the radiator was reported to Mr and Mrs Calveley as part of the radiator/heating problem. He confirmed that there had been a foul smell from the floor for a number of months, which has now resolved.

11. **CO detector.** Both parties acknowledged that there is no CO detector in the property. Mr Calveley advised the Tribunal that there was one fitted in June 2017. At that time, it was anticipated that the Landlord would be moving back into the property. The house was inspected by the Council and Fire service in advance of this and a CO detector installed on their instructions. Mr Gallacher disputed this saying that there has never been a CO detector in the property.
12. **Shower drainage.** Mr Gallacher advised that the problem with the shower started in December 2017. He has tried caustic soda and other products to try to unblock it, without success. Mrs Calveley advised the Tribunal that she had noted the shower to be full of hair, during the inspection.
13. **Windows and doors.** Mr Gallacher advised the Tribunal that he does not consider the property to be wind and watertight due to draughts from the doors and some windows and the build-up of water between the panes in some windows. He further advised that he has sent photographs to Mr and Mrs Calveley of the defects. Mr Calveley advised the Tribunal that the windows are only 8 years old, although no longer under guarantee. He further advised that he had noted condensation during the inspection and thought that Mr Gallacher needed to open the windows more regularly.
14. **Shower room window sill and extractor fan.** Mr Gallacher indicated that the fan comes on automatically with the light, and is therefore always used, but it does not remove the steam. He confirmed that he also opens the window after taking a shower. The Tribunal noted that it had not been possible during the inspection to measure the effectiveness of the fan. Mr and Mrs Calveley did not comment on the fan or sill complaint, although indicated that there had been so many letters and complaints that they could not remember these being specifically mentioned before the letter of 29 June 2018.
15. **Bedroom and bathroom blinds.** Mr Gallacher advised that he first noticed the mould several months ago.
16. **Electric fire.** The Tribunal noted that, when switched on during the inspection, heat could be detected from the fire, but no light. Mr

Gallacher advised that he does not use the fire because the light comes and goes and sometimes flickers and that there is a loud grinding noise from the fire at times. He believes it to be dangerous. Mr Calveley advised that the fire was installed about 2 years ago and was new at that time. It has not been PAT tested.

17. **Paving defects.** Mr Gallacher advised the Tribunal that the uneven areas of slabs noted at the inspection are dangerous and that he is particularly concerned when his young nephews visit. Mr Calveley disputed this saying that he did not consider the defects to be serious and that the slabs are safe to use.
18. **Kitchen Tap.** Mr Gallacher advised that Mr Calveley had attempted to fix the tap during a visit to the property and been unsuccessful. He had then indicated that he would send a tradesman. Mr Calveley denied that he had said this and that it was only a new washer that was required.
19. **Loose electrical sockets and wires.** Mr and Mrs Calveley advised the Tribunal that the sockets were not hanging off the wall when Mr Gallacher moved in. Mr Gallacher said that they had always been loose and had come away from the wall over time. Mr Calveley had re-attached the kitchen socket on one occasion, but it hasn't remained attached. He was also concerned that the wires leading from the kitchen socket to the shed are dangerous.
20. **Gate post.** Mr Gallacher advised that the gate post has become loose over time.
21. **Decking.** Mr Gallacher advised the Tribunal that the decking becomes very slippery when wet and needs repainted. Mr Calveley disputed this saying that wood will be slippery when it gets wet and just needs to be kept clear of moss and debris.
22. **Sheds.** Mr Calveley advised the Tribunal that the shed had 2 windows previously. Mr Gallacher disputed this saying that there had always been one window missing and the gap had been covered by cardboard. He also thinks all the sheds need repainted.
23. **Gas Safety certificate, Energy performance certificate, EICR and PAT.** Mr and Mrs Calveley confirmed that no gas safety certificate or electrical installation inspections report were obtained before Mr Gallacher moved in to the property. The reason for this was that he wanted to move in quickly, and they only had ten days or so to get the property ready. They recently arranged for both a gas engineer and an electrician to attend at the property. The gas engineer got access and a certificate is now available. The electrician was turned away because Mr Gallacher did not want them both in the house at the same time, so no EICR has been obtained. Mr Gallacher advised the Tribunal that he had been given

very little notice of the joint visit and had indicated that he only wanted one of the engineers in the property at one time.

**24. Cream leather chair.** Mrs Calveley advised the Tribunal that the chair was not intended to be left at the property when it was let to Mr Gallacher and was there at his request. It was not in its current condition when he moved in. Mr Gallacher confirmed that the chair has deteriorated over time and thinks that it maybe wasn't used regularly before and had become brittle.

**25.** Throughout the hearing Mr and Mrs Calveley blamed a lack of access to the property as a reason for the failure to carry out some of the repairs. Mr Calveley referred to a visit to the property on 28 December 2017, when he says Mr Gallacher was aggressive and threw him out. Eventually they instructed a solicitor, who sent letters to Mr Gallacher demanding access. These letters have been lodged with the Tribunal. In response, Mr Gallacher said he only wanted the Landlord herself or tradesmen to go to the property. Mr and Mrs Calveley said that Mr Gallacher's way of life made it impossible to arrange for tradesmen to attend. They stated that he sleeps all day and most tradesmen request morning appointments, due to the location of the property. Mr Calveley's health issues, and problems in relation to the Landlord's care home, had caused them both a great deal of anxiety and this contributed to the failure to deal with the repair issues.

**26.** Mr Gallacher did not dispute that he had been difficult about access. He said that during the visit on 28 December 2017 Mr Calveley had been threatening and he hadn't wanted him back in the house. He too had lodged letters from a solicitor, in which it is stated that he did not think Mr and Mrs Calveley were entitled to access, and that he was only prepared to allow the Landlord herself and tradesmen to enter the property. He advised the Tribunal that he has always been willing to allow proper tradesmen into the house, and that he would have allowed access for morning appointments had they been arranged. He accepted that he had not allowed the electrician into the house when he recently attended, explaining that he had not been given much notice of the visit and had clearly stated that he didn't want them there at the same time as the house is too small.

## **Findings in Fact**

**27.** The property is a two bedroom detached dwellinghouse in Biggar.

**28.** The Applicant is the tenant of the property.

29. Mrs Mary Calveley holds power of attorney for the Landlord
30. There are gaps around pipes leading to the drain in the front wall, a small hole in the right hand gable wall and uncovered vents in both the front and rear walls at the property.
31. There are defects in the doors and some windows at the property.
32. The hall radiator at the property does not work.
33. There is no carbon monoxide detector in the property.
34. The drainage of water in the shower unit is slow.
35. There is mould on the shower room and bedroom blind.
36. The external window sill of the shower room is damaged.
37. The shed windows are damaged.
38. Slabs in the garden are cracked and uneven.
39. There are loose electrical sockets in the bedroom and kitchen, loose wires in the kitchen and a leaky tap.
40. The surface of the cream leather chair in the living room is damaged

#### **Reason for decision**

41. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection and the evidence led at the hearing.
42. Section 14(1) of the 2006 Act states "The landlord in a tenancy must ensure that the house meets the repairing standard – (a) at the start of the tenancy, and (b) at all times during the tenancy." In terms of Section 3 of the 2006 Act " The duty imposed by subsection (1)(b) applies only where – (a) the tenant notifies the landlord, or (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it" The Tribunal is satisfied that the tenant made the Landlord aware of the repairs issues at the property, except the lack of smoke and heat detectors. The notification letter of 29 June 2018 which lists the various repairs issues makes no mention of this issue and therefore does not form part of the application before the Tribunal.
43. The Tribunal found the Tenant and Mr and Mrs Calveley to be both credible and reliable. For the most part they were in agreement about the facts of the dispute. Some factual differences arose, such as whether Mr Calveley told the Tenant that he would arrange for a

plumber to fix the tap. However, the Tribunal notes that the parties were giving evidence about events which occurred some 9 or 10 months ago and some differences in recollection are to be expected. The Tribunal notes that Mr Calveley and the Tenant disagree about which of them behaved in an unreasonable way to the other during the visit on 28 December 2018. The Tribunal did not consider this to be relevant to the application.

44. The Tribunal is satisfied that there has been a failure by the landlord to meet the repairing standard in relation to the following; - radiator in the hall, lack of CO detector, shower drainage, defective windows and doors, shower room window sill, bedroom and bathroom blinds, kitchen tap, loose electrical sockets and wires, windows in the main shed and cream leather chair. These defects were evident at the inspection of the property.
45. From the evidence led at the hearing the Tribunal is also satisfied that an investigation is required into the possible rodent infestation. Droppings were noted during the inspection in both the kitchen and roof space, although it was not possible to determine the age of these. The Tenant stated that he finds droppings in the property on a regular basis. The Tribunal is also satisfied from the Tenant's evidence that the effectiveness of the extractor fan in the shower room requires to be investigated and the electric fire checked to ensure that it is safe to use. Also, that the loose electrical sockets need to be fixed. It was established at the hearing that no EICR was obtained in relation to the property prior to the tenant moving in or subsequently, and this requires to be addressed. The electricity supply to the shed should be checked as part of this inspection.
46. Section 13(2) of the 2006 Act states "In determining whether a house meets the standard of repair mentioned in (1)(b), regard is to be had to – (a) the age, character and prospective life of the house, and (b) the locality in which the house is situated." The Tribunal noted during the inspection that there are cracked and slightly uneven paving slabs at the property. The Tribunal is of the view, taking into account the age of the property, that some cracked and uneven slabs are to be expected and did not consider them to be dangerous for a person exercising reasonable care. No breach of the repairing standard was therefore established in relation to same. The ridge in the flooring next to the broken radiator is very slight. The Tribunal notes that this area was flooded by the defective radiator and may have been damp for a period of time thereafter. However, it has now dried out and does not smell. No breach of the repairing standard is established in relation to this issue. The Tribunal noted that the gate post is only slightly loose. Again, taking into account the age of the property the Tribunal did not consider this to amount to a breach of the repairing standard and noted that

the gate is still in full working order. The Tribunal is also not persuaded that the condition of the decking gives rise to a breach of the repairing standard. On inspection, it appeared to be in reasonable condition, and the Tribunal were persuaded by the evidence of Mr Calveley that wood of this type is likely to be slippery following rainfall and that it should be kept clear of moss and debris. Lastly, the Tribunal noted that the appearance of the sheds could be improved by being painted, but that this is not required for the sheds to meet the repairing standard.

47. The Tribunal makes no order in relation to the lack of smoke and heat detectors at the property as this was not part of the application. However, the Tribunal expects the Landlord to take steps to install regulation compliant smoke and heat detectors without delay as these are required. Lastly, the Tribunal does not consider the lack of an energy performance certificate to be a breach of the repairing standard, although notes that the Landlord may wish to consider obtaining same.

48. Parties were agreed that there have been access issues. The Tribunal notes that this has made it difficult for Mr and Mrs Calveley to inspect and arrange repairs. The deterioration in the relationship between the parties has been a major factor in this. The Tenant was, it appears, under the impression that he could dictate who came to the property in connection with repairs, and in particular that he could refuse access to Mr and Mrs Calveley. The Tribunal notes that Mrs Calveley holds power of attorney for the Landlord who is now unable to deal with matters relating to the property herself. However, the Tribunal is satisfied that the access issues could have been overcome and were not the only reason for the lack of repairs. Mr and Mrs Calveley did not take any action to enforce their right of access to the property and did not arrange for tradesman to attend in connection with repairs matters which had been brought to their attention. The Tribunal notes that, during the hearing, that parties indicated a willingness to ensure that appropriate access is provided and taken during the remainder of the lease.

## **Decision**

49. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

50. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

51. The decision of the Tribunal is unanimous

Right of Appeal.

**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.**

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.

J Bonnar

Signed..... 12 October 2018

Josephine Bonnar, Legal Member

Motherwell 12 October 2018

This is the schedule of photographs referred to in the decision  
of the same date

J Bonnar

# **Housing and Property Chamber**

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



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

### **SCHEDULE OF PHOTOGRAPHS**

**ADDRESS: 60 NORTHCROFTS ROAD, BIGGAR ML12 6EL**

**DATE: 28<sup>TH</sup> SEPTEMBER 2018**

**REFERENCE: FTS/HPC/RP/18/1716**



**FRONT ELEVATION**



**REAR ELEVATION**



**PIPES/GAPS IN FRONT ELEVATION**



**HOLE IN RH GABLE WALL**





**VENT IN FRONT WALL**



**VENT IN FRONT WALL**



**TWO VENTS IN REAR ELEVATION**



**HALL RADIATOR**



**HALL FLOOR "HOG'S BACK"**



**KITCHEN - CH BOILER- NO CO MONITOR**



**KIT CEILING-NO HEAT DETECTOR**



**SHOWER TRAY - HOLDING WATER**



**FRONT DOOR- FRAME AT BASE**



**FRONT DOOR FRAME AT LINTOL**



**FRONT DOOR – SEALS IN PLACE**



**KITCHEN WINDOW-GAP AT TOP**



**KIT WINDOW-BROKEN SEAL**



**WC APT WINDOW- BROKEN SEAL**



**WC APT-INTERNAL CONDENSATION**



**KIT WINDOW—MISTING**



**KIT WINDOW-DAYLIGHT AT TOP**



**KIT OUTER DOOR**



**KIT DOOR-SILICONE SEALS POOR**



**WC APT—BROKEN SILL**



**SHOWER ROOM-CONDENSATION**



**SHOWER RM-EXTRACOR FAN**



**REAR BED-CONDENSATION**



**LR- GAP IN WINDOW FRAME**





**LR- ELECTRIC FIRE**



**SLABS AT FRONT**



**SLABS AT RH GABLE/REAR WALL**



**SLABS AT REAR WALL**



**SLABS AT REAR /LH GABLE**



**SLABS IN REAR GARDEN**



**KIT SINK – LEAKING TAP**



**KIT –DOUBLE GANG SOCKET LOOSE**



**REAR BED SOCKET LOOSE**



**FRONT GARDEN GATE**



**DECKING IN REAR GARDEN**



**MAIN SHED – DEFECTIVE WINDOWS**



**MAIN SHED-FREEZER AND DRIER**



**MAIN SHED**



**LR—CREAM COLOURED CHAIR**



**LR CEILING- NO SMOKE DETECTOR**





**HALL CEIL- SMOKE DETECTORS**



**KIT FLOOR-DROPPINGS**



**KIT FLOOR-AT FRIDGE -DROPPINGS. ATTIC—BAIT DISPENSER/DROPPINGS**

