

# 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: in terms of Section 24 (1) of the Housing (Scotland) Act 2006 (“the Act”) in respect of an application under Section 22(1) of the Act

**Reference number: FTS/HPC/RP/20/2331**

**Re:** Property at Hawthorn, Shannochie, Isle of Arran, KA27 8SJ (“the Property”)

**The Parties:** George Lammie, Torran, Montrose Terrace, Whiting Bay, Isle of Arran KA27 8QW (“the Respondent”) per his agent, Mr Sean Lynch of McCluskey Browne, solicitors, 7 Portland Road, Kilmarnock, KA1 2BT (“the Respondent’s Agent”)

**Tribunal Members:** Karen Moore (Chairperson) and Mike Links (Ordinary Surveyor Member)

## **Background**

1. By application dated 24 October 2020 (“the Application”), Mr. Alister Meek of CHAP on behalf of the then tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Respondent had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in respect that the Property does not meet the Repairing Standard in respect of Section 13 (1) (a) of the Act due to dampness throughout the Property.

2. On 23 November 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and referred the Application to a tribunal. Under normal circumstances, the tribunal would carry out an Inspection and hold a Hearing to ascertain the condition of the Property. This was not possible, due to the continuing effects of the COVID-19 pandemic. In the circumstances, a CMD was arranged for 15 January 2021 by telephone conference call in order to discuss further procedure in the case. The CMD was held on 15 January 2021 and was continued for an Inspection of the Property to take place.

3. The Chamber then received intimation that the then tenant had removed from the Property. By Minute dated 16 April 2021, a tribunal member continued the Application in terms of Schedule 2 Paragraph 7(3) of the Act and an Inspection of the Property was arranged for 12 August 2021 at 11.30 am with a Hearing arranged for 20 August 2021 at 10.00 am.

## **Inspection and Hearings**

4. The Inspection took place on 12 August 2021 at 11.30 am. The Inspection was carried out by the Tribunal Members with the Respondent’s wife, Mrs. Lammie, in attendance. The Tribunal was advised that a Home Report had been obtained for the

Property before the tenancy had begun and requested sight of this ahead of the Hearing. However, the Home Report was not submitted to the Tribunal before the Hearing. The Tribunal's photo schedule of the Inspection was provided to the Respondent's Agent.

5. The Hearing took place 12 August 2021 at 10.00 am. by telephone conference call. The Respondent did not take part and was represented by the Respondent's Agent, Mr. Lynch, who was unaware that the Home Report ought to have been submitted to the Tribunal. Following discussion, it was agreed that the most appropriate course of action was to adjourn the Hearing to a later date for the Home Report to be submitted. The Tribunal issued a Direction for the submission of the Home Report which was complied with by the submission of a Home Report incorporating a Single Survey carried out by D.M. Hall and dated 18 September 2019 ("the Home Report").

6. The adjourned Hearing took place 30 September 2021 at 10.00 am. by telephone conference call. The Respondent did not take part and was represented by the Respondent's Agent, Mr. Lynch.

7. The Tribunal discussed those parts of the Home Report relating to dampness with Mr. Lynch who advised that as far as he was aware no action had been taken by the Respondent following the Home Report comment and advice that:-

"There is evidence of penetrating dampness to various walls and concealed timbers may be defective. Further investigation can be carried out by a firm of timber/damp specialists with a view to having all necessary remedial repairs implemented.....External ground levels are high in areas and this can contribute to timber/damp defects. Ground levels should be lowered to a suitable level beneath internal floor levels. A specialist contractor can advise"

8. Mr. Lynch advised the Tribunal that the Respondent's position is that, regardless of the Home Report, there is no obvious problem with dampness and that any dampness in the Property was a ventilation problem caused by the then tenant's lifestyle. Mr. Lynch referred the Tribunal to the written submissions and photographic evidence submitted on behalf of the Respondent and submitted that the pre-tenancy marketing photos evidence that the Property was in a good condition with no signs of dampness whereas the photos taken during the tenancy show the Property to be cluttered with no ventilation, and so, any dampness has been caused by lifestyle condensation. The Tribunal agreed that at the Inspection there were no visible signs of dampness such as stains at high levels, however, dampness was recorded, and coupled with the Inspection taking place after a long warm spell, penetrating damp could not be discounted.

9. Mr. Lynch reminded the Tribunal that ownership of the Property is being transferred to the Respondent's son to be his main residence. The Tribunal explained its role with reference to the Act and explained that, once an application is made, regardless of ownership, the Tribunal must decide if the Property meets the Repairing Standard, and, if the Tribunal decides that it does not do so, the Tribunal must impose a repairing standard enforcement order ("RSEO"). With reference to the Property being owner-occupied, the Tribunal explained that it has regard to the likelihood of the Property being returned to the rental market.

10. Mr Lynch suggested adjourning the Hearing to a later date to allow the Landlord to obtain a specialist report as recommended by the Home Report and moved the Tribunal to do so.

11. The Tribunal adjourned to consider this and to consider the evidence before it in respect of the Repairing Standard. The Tribunal took the view that as the Home Report

noted penetrating dampness and placed the condition of the Property as Repair Category 3, a specialist report as recommended by the Home Report at this stage would not assist as it would be unlikely to report that the Property is dry and damp free but would be more likely to recommend works to be done. Therefore, it would be unlikely to assist the Tribunal's statutory decision-making duty. The Tribunal took the view that, on balance, all of the evidence before it indicated that the Property is affected by dampness and so does not meet the Repairing Standard.

12. The Tribunal reconvened and advised Mr. Lynch of its decision that it refused his motion, determined that the Property did not meet the Repairing Standard and so would be making an RSEO.

### **Findings of Fact**

13. The Tribunal's findings in fact were made from the Application, the written representations and photographic evidenced lodged, the Inspection, the Home Report and the submissions made at the Hearings. The Tribunal's assessment of the facts was based on the balance of probability, being the standard of proof required in civil proceedings.

14. The Tribunal found the following matters established: -

a. The Respondent is the owner of the Property by virtue of Disposition in his favour and in favour of Flora Lammie and recorded in the Division of the General Register of Sasine for the County of Bute on 16 December 1999;

b. At the date of the Application there had been a tenancy between the Respondent and Christine McKelvie and

c. There is evidence of dampness in the Property.

### **Decision of the Tribunal and reasons for the decision.**

15. In respect of the complaint in terms of Section 13(1) (a) that the Property is not wind and watertight and reasonably fit for human habitation, the Tribunal found that the evidence of penetrating dampness at various locations in the Property is such that the Property is not wind and watertight and the Tribunal cannot be satisfied that the Property is reasonably fit for human habitation. Accordingly, the Tribunal found that at the date of the Inspection, the Respondent had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

16. The decision is unanimous.

### **Repairing Standard Enforcement Order**

17. Having determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b), the tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

### **Appeal**

18. 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.

### **Effect of Section 63**

19. 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.

Signed

# K Moore

Karen Moore, Chairperson

05 October 2021