



**Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Sections 26 (1) and 60 of the Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/PR/23/0468**

**Re: Property at The Bungalow, The East Renfrewshire Golf Club, Newton Mearns, Glasgow G77 6RT (“the Property”)**

**Parties:**

**Mrs Lauren Findlay, The Bungalow, The East Renfrewshire Golf Club, Newton Mearns, Glasgow, G77 6RT (“the Tenant”)**

**The East Renfrewshire Golf Club, Ayr Road, Newton Mearns, Glasgow, G77 6RT (“the Landlords”)**

**Tribunal Members:**

**George Clark (Legal Member) and Greig Adams (Ordinary/surveyor Member)**

**Decision**

The First-tier Tribunal for Scotland Housing and Property Chamber, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 determined that the Landlords have not failed to comply with that duty. The Tribunal also decided that the Landlords have complied with the Repairing Standard Enforcement Order made on 16 May 2023 and that a Certificate of Completion of Works should be issued.

**Background**

1. Following an Inspection and Hearing on 16 May 2023, the Tribunal decided to defer a Decision as to whether the Property is wind and watertight but decided

that the installations in the Property for the supply of water were not in a reasonable state of repair and in proper working order. Accordingly, the Landlords had failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act and the Tribunal decided to make a Repairing Standard Enforcement Order (“the Order”) requiring the Landlord to repair/replace and upgrade as required the existing water supply and distribution pipework serving the Property to ensure that an adequate flow rate is provided and maintained to the Property without intermittent flow reductions and at all times ensuring that the flow rate does not drop below a minimum of 10 litres/minute. The Tribunal ordered that the works required by this Order must be carried out within six weeks of the date of service of the Order on the Landlords.

2. The Tribunal also issued a Direction to the Landlords to advise Richardson & Starling Ltd of the Tribunal’s requirements, namely:
  1. A salt analysis test is required to be undertaken in order to determine the presence/contamination due to nitrates and chlorides such as a Protimeter Salt Analysis Test in order to establish any possibility of contamination by “ground salts” by either scraping a sample of plaster from the top 3mm or from taking a 50mm square section of lining paper and carrying out the chemical test in accordance with Manufacturer’s Guidance.
  2. In order to determine whether any elevated moisture is present solely to the surface or alternatively at depth within the wall, one of the following tests will require to be undertaken:
    - i) 2 No. 6mm holes will require to be drilled at Bedroom 1 within the area of damp staining affecting the internal corner at low level and moisture meter auxiliary deep wall probes inserted to obtain “at depth” readings; or
    - ii) Slow drill and obtain a suitable sample at depth from the wall (taken from Bedroom 1 within the area of damp staining affecting the internal corner at low level) and carry out a calcium carbide meter test on the sample obtained in order to obtain the moisture content at depth within the wall.
    - iii) Within Bedroom 1 to the corner affected by visual dampness, obtain a Relative Humidity reading from the sub-floor below this area such as from levering or drilling a floorboard and inserting a humidity sensor.
3. The Landlords were directed to provide all test results following completion of Items 1-3 in the Direction along with any further specialist damp reports for further consideration by the Tribunal.
4. On 30 June 2023, the Tenant requested a postponement of a reinspection scheduled for 2 August. The Tribunal agreed to that request. On 6 July, the Tenant confirmed to the Tribunal that the loft had now been insulated and work to fix the bathroom leak had started but was not finished. No other work had been done. On 4 July, she had expressed the view that the Landlords were being given more and more time to escape any type of Order.
5. On 28 August 2023, the Landlords’ solicitor provided the Tribunal with copies of a number of documents. The first of these was a report from Dig-it, following the installation of a new water supply connection. It confirmed that the flow rate exceeded 10 litres per minute.

6. The Landlords' solicitors also provided a copy of a Report by Richardson & Starling (Northern) Limited dated 25 May 2023. They confirmed that they had carried out a calcium carbide test to the brickwork at the corner of the bedroom front left and had concluded that there was not an issue of either rising or penetrating damp to the masonry at that location and that the loose and stained wallpaper in this area was the result of moisture condensing on the wall, rather than permeating through the masonry. They took a plaster sample from the area for testing and the later tests showed no significant levels of chloride or nitrate, establishing that no rising damp was present. They lifted a floorboard at the front corner area of the room, to access the sub-floor, and found the solum, sub-floor wall and timbers to be damp. They recommended that certain external defects be addressed (mainly defective mortar pointing and open expansion joints and the uncovering of sub-floor vents). This should allow the area to dry out through natural ventilation. They also recommended that the extract fans and trickle vents in the windows should be serviced and that adequate insulation be laid within the roof void. In addition, decay in the pass door standard frame of the shower room should be repaired.
7. The further documents provided by the Landlords' solicitor on 28 August 2023 confirmed that the open expansion joints and windowsills had been sealed with external sealant, that brickwork had been repointed, fascia renewed where defective, roof tiles and ridges repaired, debris removed from the lead valley gutter and additional insulation installed in the loft.

## **The Reinspection**

8. The Tribunal reinspected the Property on the morning of 4 September 2023. The Tenant was present. The Landlords were represented by Ms Rhona Wark of BTO Solicitors LLP, Glasgow and by Mr Craig Henderson. A Schedule of Photographs, taken at the reinspection, is attached to and forms part of this Decision. The following, prepared by the Ordinary/surveyor Member of the Tribunal is a summary of the findings at the Reinspection.

### ***“Shower Room***

*The Shower Room was reviewed to investigate reported water escape from the shower enclosure and timber decay. It was noted that repairs had been progressed to the pedestrian pass door frame. Moisture meter readings were obtained to the timber elements abutting the shower tray including the exposed platt frame and the door frame. Quantitative moisture readings obtained were within a normal range. Basic water testing was undertaken utilising the electric shower with spray diverted to low levels of the wall panels and the silicon sealants. A snake camera was utilized to review the void area below the raised shower tray. There were various stains evident to timbers whilst there appeared to be an area of mould to the base of the wall adjacent to the drainage outlet. As best can*

*be determined from the inspection, however, there was not any obvious active water penetration from the basic testing undertaken.*

### **Bedrooms 1 and 2**

*Various measurements were recorded regarding the environmental conditions prevalent at the Property in order to assess any “active” condensation. An example data set from Bedroom 1 outlines various environmental data recorded within this area at the time of inspection such as Relative Humidity of 71.2%, Ambient Temperature of 20.5°C and Dewpoint of 15.2°C. The Relative Humidity was considered to be relatively high. Infra-red images were also recorded utilising a Thermal Camera which allows surface temperatures to be recorded and any areas falling below dewpoint to be highlighted. Surface temperatures were all above the dewpoint i.e., condensation was not actively occurring to the surfaces exposed and visible.*

*Elevated moisture meter readings were recorded within the Bedrooms at the problematic corner locations to the tongue and grooved floorboards using quantitative readings. Elevated qualitative readings were also obtained to the plaster at low level to these corners.*

### **Water Supply**

*The Tribunal carried out a very basic water test by turning on the kitchen tap and the flow rates visually assessed was considered to be adequate following the water supply pipework upgrading works undertaken by the Landlord.*

### **External**

*The Tenant outlined various concerns relating to the condition of the external fabric including the condition of the mortar pointing to the exposed brickwork. The Tribunal reviewed each of these visually in turn.”*

The Tribunal had previously directed that various investigative tests be progressed in order to aid the dampness diagnosis.

The Salt Analysis test results were provided to the Tribunal and the results confirmed that the chloride and nitrates were “not significant”. Such is the nature of Rising Damp, natural salts present within the ground would rise and contaminate the wall plaster, if Rising Damp was occurring. Given the absence of any significant concentration of salts to the plaster taken from the affected area, this provides evidence that Rising Damp is not the cause of the dampness evident within this area.

A calcium carbide test had also been carried out. This is a disruptive test where the actual moisture content of the drilled material collected is obtained. The Richardson & Starling Report provided to the Tribunal detailed that the moisture content recorded to the brickwork was 0.1%. This is a very low moisture content for brickwork. If Penetrating Dampness was the cause of the dampness affecting the brickwork/plaster then this

reading would have required to have been significantly higher. On the basis of the test results provided to the Tribunal, the reasonable conclusion to draw from this is that the cause of the dampness is not penetrating damp.

The results of compliance with the Direction suggests that there is Condensation dampness rather than Rising Damp or Penetrating Damp.

Condensation occurs due to various moisture imbalances. Moisture imbalances may occur from high moisture levels and the following casual factors:

- Poor Building Thermal Envelope Performance as a whole and/or related to the presence of thermal bridges (cold spots with low surface temperature, e.g. concrete lintels, etc.). This involves environmental parameters such as low temperature factors (poor thermal behaviour) and high water activity values (high surface Relative Humidity).
- Inadequate Heat-Moisture Regime caused by insufficient or irregular heating, heat loss and/or infiltrations, such as cold air entry through gaps and around thermal bridges. This relates to low indoor air Temperature and high indoor air Relative Humidity levels.
- Insufficient Ventilation related to high indoor vapour pressure excess (VPE), from internal and external vapour pressure differentials, and high surface Relative Humidity.”

## **The Hearing**

9. On the afternoon following the Reinspection, a Hearing was held at Glasgow Tribunals Centre. The Tenant was accompanied by her husband as a supporter. The Landlords were represented by Ms Wark, Mr Henderson and Mr Iain Russell.
10. Ms Wark asked the Tribunal to make a finding that the Landlords have complied with the RSEO, as the new water supply has been installed. She added that, as the Tribunal could only make findings in relation to matters included in the application, the only matter outstanding was the question of dampness in the Property. There was no evidence of rising or penetrating damp, so the cause appeared to be condensation, which might have arisen from a number of causes, but there was no evidence that there was anything that the Landlord should be required to do. The Tribunal could not make an Order when it did not know the cause of the condensation. She referred to a report, dated 15 April 2023, prepared by Dr Stirling Howieson, and submitted to the Tribunal by the Tenant. She contended that this was no more than a high-level summary and it was clear from it that further investigation would be required. This investigation had been carried out by Richardson & Starling and their conclusion was that rising and penetrating damp could be excluded as the cause of the high moisture readings, leaving condensation as the cause.
11. The Tenant told the Tribunal that the sub-floor element was still concerning her. On the day she and her family moved in, the Landlords' handyman was treating mould and applying anti-fungicidal paint in one of the bedrooms. When the Tenant

complained about this area later in the year, she was told that it was condensation. More recently, the area had been repainted, but the paint would not dry.

## **Reasons for Decision**

12. The Tribunal accepted that the work required by the RSEO has been carried out and decided that a Certificate of Completion of Works should be issued.
13. The Tribunal preferred the conclusions of Richardson & Starling, following a disruptive inspection and plaster sample testing, to those of Dr Howieson, which were based on a visual inspection only, and the Tribunal accepted the Richardson & Starling conclusion that rising and penetrating damp could be excluded as the cause of the high moisture readings and that the problem was, therefore, condensation. There had been little technical collected data provided to the Tribunal to assess the cause(s) of condensation adequately. At both inspections the Tribunal had not recorded "active" condensation, although the inspections had been undertaken outside of normal "condensation season" conditions. It was, therefore, not possible for the Tribunal to determine as a finding of fact, even on the balance of probability, what the underlying cause of the condensation is. Accordingly, the Tribunal could not make a finding that the Landlords have failed to ensure the Property meets the repairing standard.
14. The Tribunal accepted that the readings taken at the reinspection were such as to cause concern. Whilst the Tribunal is not issuing a Direction or any compulsion on any of the Parties to progress with further investigative works, it would offer a suggested methodology, set out in the following paragraph, should either of the Parties wish to investigate matters further to attempt to find the underlying cause(s).
15. The installation of environmental sensors for a number of weeks within the winter period would be beneficial as follows:
  - A Surface Temperature Sensor installed within Bedrooms 1 and 2 (at low level to the problematic corners).
  - Ambient Temperature and Relative Humidity Sensors installed above the doorways to both Bedrooms 1 and 2.
  - An External Sensor (recording Ambient Temperature and Relative Humidity) placed outdoors in an open-air protective case to register weather conditions during the monitoring period.
16. It would be open to the Tenant to make a further application to the Tribunal if and when the cause(s) of the condensation had been identified.
17. The decision of the Tribunal was unanimous.

## **Right of Appeal**

**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.**

G Clark

**Legal Member**

**21 September 2023  
Date**