

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: PRHP/RT/16/0372

Title number: Subjects registered in the Land Register of Scotland under title number KNC9688

Property address: 5 Thomson Terrace, Stonehaven, AB39 2LX ('the Property')

The Parties:-

**Aberdeenshire Council, Gordon House, Blackhall Road, Inverurie AB51 3WA
represented by Ms Julia Leonard ('the Third Party Applicant')**

Ms Helen Knight, 8 St Kieran Crescent, Stonehaven, AB39 2GQ ('the Landlord')

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) in relation to the Property, determined that the Landlord had not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

1. By application submitted 24th November 2016, the Third Party Applicant applied to the Private Rented Housing Panel for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').

The Third Party Applicant stated that they considered that the Landlord had failed to comply with her duty to ensure that the Property meets the repairing standard, in that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the Property (including drains, gutters and external pipes) was not in a reasonable state of repair and in proper working order. In particular, the application stated:-

The Property has a significant issue with damp. The cause is not clear but a subfloor investigation has been recommended by a damp specialist. Mould has formed on furniture, on the lower walls and under the carpet. Environmental Health and the damp specialist employed by the Landlord have indicated that they do not believe the tenant's lifestyle is contributing as they heat the Property well and ventilate and run a dehumidifier.

It was further stated that:

The damp problem is most notable in the bedroom of the Property, particularly to the front of this room. A cot that was situated there grew extensive mould underneath it, and under the mattress. Other furniture is also affected, as is anything left in the room. There is damp visible on the lower walls and in the wardrobe. Soft furnishing and clothes have been affected. There is also signs of damp around the skirting in the living room. Photos are included.

At the time of making the application, there were tenants in the Property. The tenants were Ms Edyta Kranz and Mr Lucasz Ulatowski ('the Tenants').

2. The Tenants raised the issue of damp with the Landlord's agent in September 2016. On 17th October 2016 a complaint was made by the tenants to Environmental Health at Aberdeenshire Council. A visit was made to the Property and a report compiled by James Logue, Environmental Health Officer, dated 19th October 2016. The report is attached hereto (Appendix 1).
3. The Landlord's agents arranged for an inspection to be carried out by Peter Cox Ltd, property preservation specialists. The report dated 22nd October 2016 is attached hereto (Appendix 2).
4. The Tenant, Ms Kranz, emailed the Landlord's agent, James & George Collie on 21st October, complaining about a visit to the property by the Landlord and members of her family on 20th October 2016. She mentioned that the Landlord was 'rude and not fair' and that the Landlord 'still blames us for all of this.' She mentions stress caused by the problem with mould, and that they had to discard their child's cot due to the mould damage. She mentioned mould damage to furniture and asked the Landlord to 'give us a notice ASAP'. A further email, outlining the alleged defects was sent to the Landlord's agent on 27th October 2016, by Ms Kranz, who said that they were unable to sleep in the bedroom of the Property due to problems with mould on their furniture, and they were unable to use the wardrobe in the bedroom, due to damp and mould. Ms Kranz mentioned that she was on antibiotics due to the problem with damp, and she listed items of furniture, bedding and toys that had been 'destroyed by mould'. She said she was not happy about paying the full rent. She mentioned getting notice from the Landlord, and she asked to be reimbursed by the Landlord for the damaged items. The Landlord's agent responded by email on 27th October, stating that matters had been passed to the Landlord, and that parties might wish to discuss ending the tenancy without notice, stating that this would not reflect badly on the tenants, and that it would not affect any future reference.
5. On 9th November 2016, the Third Party Applicant wrote to the Landlord to inform her that a referral would be made to the PRHP if it was felt that she was not taking action 'to resolve the condensation damp problem.' On 16th November 2016, the tenants provided photographs to the Third Party Applicant of the mould damage in the Property and to their furniture and furnishings. The Third Party Applicant forwarded the photographs to the Landlord.
6. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22(1) of the Act to a Committee. The Committee members were Ms Helen Forbes (Legal Member) and Mr Angus Anderson (Surveyor Member).
7. On 1st December 2016, the functions and members of the Private Rented Housing Panel transferred to the First Tier Tribunal for Scotland, with allocation to the First Tier Tribunal for Scotland (Housing and Property Chamber).

8. The Housing and Property Chamber served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties dated 21st December 2016,
9. On 23rd December 2016, the tenants moved out of the Property.
10. By email to the Housing and Property Chamber dated 12th January 2017, the Landlord made representations, outlining work that had been carried out to the Property prior to the Tenants moving into the Property in July 2016. She mentioned that the previous tenants had been in the Property for almost 10 years and 'at no time did they complain of damp'. The Landlord provided a copy of the Peter Cox report and stated that a dehumidifier had been provided to the Tenants. She stated that the Tenants 'were asked to open windows to help with ventilation but rarely did.' She said that she had continued with the use of the dehumidifier after the Tenants left, 'but there is minimal water being produced.' She said that she had requested a quote for an extractor fan to be fitted in the kitchen in early December. The Landlord provided photographs showing the condition of the Property before the Tenants moved in, and recently taken photographs of the underfloor area in the bedroom.
11. The Committee attended at the Property on 26th January 2017. It was cold and windy and dry during the inspection. Weather conditions in the fortnight preceding the inspection had been mainly cold and damp. The property is located in an urban setting, in the town of Stonehaven. The Property is a ground floor flat within a two storey purpose built block containing two self-contained flats, built around 1930. The walls are of solid sandstone and the roof is slated. The accommodation comprises entrance hall, bedroom, living room, kitchen and shower room. The Property is double glazed and has a gas fired central heating system. The Landlord was present at the inspection. The Tenants were not present, as the tenancy had ended on 23rd December, 2016. The third party applicant (Aberdeenshire Council) was represented by Ms Julia Leonard. The property was vacant and unfurnished, although floor coverings were in place. The heating was not operating and the property was relatively cold. The Committee inspected the property in respect of the alleged defects – damp and mould internally, possible rainwater goods defect externally and found as follows:-
 - 11.1 The bedroom was inspected first. A de-humidifier was present, although not operating at the time. Moisture meter readings were taken to the outer wall surfaces at various heights and locations. Generally, the readings were consistently around 18%. The carpet was pulled back at the front corner of the room, moisture readings taken at the floor surface were also around 18%. There were traces of mould residue to the skirting board inside the built-in wardrobe. There were no obvious water marks or other visible indications of water ingress. A fireplace had once been present; the opening had been boarded over and an air vent was present.
 - 11.2 The lounge was inspected. Again, moisture meter readings were taken to the outer wall surfaces at various heights and locations. Generally, the readings were consistently around 18%. There were traces of mould residue to the plaster finish beneath the front window, just above the skirting board. There were no obvious water marks or other visible indications of water ingress. The fireplace remains in position, but the throat of the fire had been sealed with scrunched up newspaper.
 - 11.3 The kitchen and shower room were inspected. No evidence of significant mould or other forms of water ingress or damp were observed. The windows were found to be relatively new PVC framed double glazed type and the opening lights were found to operate properly.
 - 11.4 Throughout the property, there was no obvious damp odour.

11.5 Externally, the front elevation was inspected. The rainwater goods appeared to be whole, but their function could not be assessed as it was not raining. There was some corrosion to the gutter joints. There was some slight green staining and moss growth to the base course of stonework below the right hand side of the bedroom window. It could not be established if this was historic or current. Some earth had been dug out recently along the front wall, adjacent to the bedroom. The lower section of the downpipe had been exposed and it could be seen that the downpipe discharged into a gully.

Photographs were taken during the inspection and are attached as a schedule to this report.

12. Following the inspection of the Property, the Tribunal held a hearing in the Credo Centre, 14-20 John Street, Aberdeen, AB25 1BT. The hearing was attended by Ms Leonard, representing the Third Party Applicant, and the Landlord, Ms Knight.

Discussion on the application

13. Preliminary matters were discussed. The Tribunal clarified that Ms Knight was the only landlord of the property. The Tribunal clarified Ms Knight's correspondence address. The Tribunal clarified that the Landlord had received copies of the photographs taken by the Tenants and Ms Leonard.
14. Ms Leonard outlined the case. She had received a complaint from the Tenants, by which time Environmental Health had already visited and reported. Ms Leonard attempted to contact the Landlord, but there was a delay of a fortnight before they were able to discuss matters.

Ms Leonard visited the property and saw the furniture that had been affected by mould, with the exception of the child's cot, which she did not see. She saw mould on a coffee table, underneath the carpet, in the bedroom wardrobe, and on other items in the bedroom. The property was well heated and ventilated on that visit. Environmental Health had said the same. The Tenants were running the dehumidifier but the accumulation of water was minimal. The Tenants' bed was not affected as it was set further back from the front wall, where the cot had been. Ms Leonard said that all who visited seemed to think that the Tenants were doing all they should to combat the condensation. They had a condensing tumble drier and they were opening the windows appropriately. She confirmed that this was an unfurnished let.

There was some discussion about the photographs taken by Ms Leonard and the Tenants, as these had not been provided to the Tribunal members, although they had been submitted to the Housing and Property Chamber. Ms Leonard had the photographs on her mobile phone and the Tribunal members were able to view the photographs at the hearing. The photographs indicated mould in several places including the corner of the bedroom, on the coffee table, and on the wall below the window in the lounge. The photographs from the Tenants indicated a tide mark on the lounge wallpaper, and soft furnishings affected by mould.

15. Ms Knight outlined her case. She reiterated the information in the submissions she had made to the Tribunal by email. The photographs of the Property had been professionally taken prior to marketing the property in July 2016. The previous tenants had never complained about damp. The central heating had been installed around six years ago, and new windows had been fitted around two years ago. The Property had been her parents' home and she was sentimentally attached to it, stating that her

parents had no problem with damp or condensation when they lived there. When the previous tenants moved out in April 2016, Ms Knight felt the Property looked 'tired'. It had been furnished and she decided to let it unfurnished in the future. She had a new kitchen and new carpets fitted, and the Property was decorated. The shower-room tiles were re-grouted and new vinyl was fitted in the kitchen and bathroom. There was no evidence of damp at that time. She was pleased with the look of the Property when the work had been carried out and her agents said that she could charge a higher rent than previously. The Property was re-let within two days of going on the market and the Tenants moved in on 11th July 2016.

In September 2016, the Tenants raised some concerns about damp in the Property. Ms Knight visited with her daughter and her daughter's partner, who is in the building trade. There was condensation running off the inside of the exterior door, but there were no other obvious signs of damp. She was not shown any items affected by mould. There was a disagreement between her and the Tenants. She said that the male Tenant was 'rude and obnoxious', and she had to leave.

Ms Knight agreed to the survey by Peter Cox Ltd. She was happy to agree to an extractor fan in the kitchen and to carry out some gardening works at the front of the Property in an effort to alleviate any condensation problems. The report had suggested a sub-floor examination, so Ms Knight arranged for her daughter's partner, who is a joiner, to carry out this examination in November 2016. He found nothing of concern in the sub-floor area, and he took the photographs submitted to the Tribunal. Ms Knight said that she waited some time for a quotation for an extractor fan to be fitted in the kitchen, and the work was to be completed next week. Ms Knight agreed to submit the quote for the work to the Housing and Property Chamber by email.

Ms Knight said she had a dehumidifier delivered in mid-December. Her agents asked the Tenants to record how much water was gathered. She continued to use the dehumidifier after the Tenants left the property. There was very little water in the tank.

Ms Knight said that she usually passed the Property at least twice daily when going about her business. She never saw the windows open while the Tenants were in the Property, although they said they were opening the windows all the time.

Ms Knight said that she was keen to have the problems sorted out.

16. There was further discussion and clarification. Ms Forbes mentioned that it was stated in the Environmental Health report that the previous tenants had mentioned a problem with damp. Ms Knight again said that no complaint had been made to her. Ms Leonard mentioned that the previous tenants were Polish and they had told the most recent Tenants that they had similar problems, but they had not reported them.

The Landlord confirmed to Mr Anderson that the fireplace in the lounge had not been in use for some time. There had previously been a gas fire in the living room. She believed that the bedroom fireplace had been blocked up a considerable time ago.

Ms Knight confirmed that it was a fully managed tenancy. She confirmed that she had done the garden work at the front of the Property herself. She was unaware of any previous problem with a down pipe at the Property.

17. Summary of the issues

The issues to be determined are:

17.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation; (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the problems with damp result in the Property not being wind and watertight and in all other respects reasonably fit for human habitation.

17.2 The structure and exterior of the Property (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006)

Whether the problem with damp was caused by the structure and exterior of the Property not being in a reasonable state of repair and in proper working order.

18. Findings of fact

The Tribunal determined that:

18.1 The Property is wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the Housing (Scotland) Act 2006).

Although there had clearly been a historical problem with mould, there are no signs within the bedroom, where the problem had, ostensibly, been at its worst. Any furnishings that were affected belonged to the tenant and have been removed. There is no longer any evidence of damp within the Property, and the mould evidence in the bedroom wardrobe and on the lounge skirting board was minimal at the time of inspection. The moisture readings throughout the Property were normal for an unoccupied, unheated property at this time of year. Whilst there may have been significant issues in the past, they were not evident at the time of inspection.

18.2 The structure and exterior of the Property (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order; (Section 13(1)(b) of the Housing (Scotland) Act 2006).

The structure and exterior of the Property is in a reasonable state of repair and in proper working order, as far as could be ascertained on the day of inspection. There was no evidence of any work that required to be done to the exterior of the Property that might alleviate any problem with damp.

19. Decision

The Tribunal accordingly determined that the Landlord had not failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated.

20. The decision of the Tribunal was unanimous.

Right of Appeal

21. 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.

Effect of section 63

22. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

H Forbes

Signed

Date

26th January 2017

Chairperson

This is the Environmental Health report dated 19th October 2016 referred to in the foregoing decision dated 26th January 2017
 H Forbes

APPENDIX 1

, Chairperson

Aberdeenshire



COUNCIL

Infrastructure Services

Complaint Enquiry Form

Date Complaint Received: October 17, 2016

Complaint Received by:	Housing
Name of Officer:	Diane Coutts Private Rented Sector
Contact Details of Officer:	01467 628008 Dlane.coutts@aberdeenshire.gov.uk
Name of Tenant:	Miss Edyta Kranz & Mr Lukasz Ulatowski
Property Address:	5 Thomson Terrace Stonehaven AB39 2LX
Tenant Contact No:	07702 049901
Tenant E-mail Address:	edytakranze@gmail.com
Name of Landlord:	Mrs Helen Knight
LRS Number: (if known)	64848/110/05520 (expired)
Landlord Contact No:	Kinnear and Falconer – Agents – 01569 763555 (Emma) No telephone number on LRS for landlord
Landlord E-mail Address:	Not known
Agent Name: (if applicable)	Kinnear and Falconer – 01569 763555 - Emma
Agent Address: (if applicable)	20 Ann Street STONEHAVEN AB39 2EN

<p>Details of Complaint:</p>	<p>Tenant phoned to complain about damp in the property in the bedroom and in the wardrobe. Property is 1 bed flat with a young baby in the cot. To ventilate the kitchen and the bathroom the windows are opened.</p> <p>Tenant advised that the previous tenants experienced damp also.</p> <p>Tenant advised that when she visited K & F in their office today she was advised that the tenancy could be terminated if not happy.</p> <p>As the tenant was agreeable I contacted Kinnear and Falconer</p> <p>Emma from K & F confirmed that the tenant had been in to report the damp today and had been told that the landlord was agreeable to ending the tenancy. I asked if K & F had inspected the property since the start of the tenancy, which they have not. K & F also advised that they had not received any previous reports of damp in the property.</p> <p>The tenant does not wish to end the tenancy but is concerned about the damp as their doctor has advised that the health of their child and herself is being caused by mould irritation.</p> <p>The landlord does not currently have a valid landlord registration, nor were K & F recorded as the agent for this property. K & F are to contact the landlord to advise that the landlord registration is required to be renewed.</p> <p>K & F confirmed that the property has smoke detection, and has been electrically tested.</p> <p>As there is a young child in the property and the possibility that this property is being let out in a damp condition, can I request a visit by EH to clarify the situation.</p>
<p>Lead Service:</p>	<p>Environmental Health</p>
<p>Is the property known/suspected to be BTS/Serious Disrepair? NO</p>	
<p>Is the property known/suspected to be falling to meet Repairing Standard YES/NO</p>	
<p>If Yes, details and actions to be taken by Private Rented Sector Housing Officer:</p>	

DATES	ACTIONS	DECISIONS
<p>Any further comments:</p> <p>This is a ground floor flat in a 1930 masonry built property. The flat comprises a living room, bedroom, kitchen and bathroom.</p> <p>The bedroom had indications of dampness on the floor boards when the carpet was lifted together with mould growth in the wardrobe in this room. Protimeter readings from the wall surface were satisfactory, the corner of the room showed indications that there may be other issues with dampness there. I understand from the tenant that there had been problems with a down pipe from the roof in the past.</p> <p>The living room is now being used for sleeping accommodation by the tenants and the wall behind the sofa is surface damp.</p> <p>The tenants appear to use the heating system, gas fired, central heating, and the house did not feel cold at the time of the visit. The boiler cupboard is directly beside the bathroom and dampness did not appear to be a major problem there due to indirect heat from the boiler.</p> <p>While not measured, I would suggest that the opening cases of windows throughout the flat may not be adequate for ventilation to at least the current Building Regulation Standards (1/30 of the floor area opening area of window). I would also suggest that apart from insulation to the external walls of the flat, positive extraction to the kitchen area may assist with this problem.</p> <p>James Logue, Environmental Health Officer 19.10.2016</p>		

This is the report by Peter Cox
dated 22nd October 2016
referred to in the foregoing
decision dated 26th January
2017

H Forbes

Chairperson

Report Date: 22/10/2016

Ref: ENQ275258



raising standards in property preservation

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SURVEY REPORT

CLIENT Kinnear & Falconer
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Kincardineshire
AB39 2EN

PROPERTY ADDRESS

5 Thomson Terrace
Stonehaven
Kincardineshire
AB39 2LX

SURVEYED BY Mervyn J Paterson

DATE OF SURVEY 21/10/2016

Directions are as if facing front elevation unless otherwise stated

PLEASE READ CAREFULLY THE CONTENTS OF THIS REPORT AND ANY ENCLOSURES.

In accordance with your verbal instructions received on 20/10/2016, we have reported on the following:

Dampness/Condensation

We draw your attention to the matters set out in the 'Scope of Survey' section at the end of this Report and would ask you to read those notes carefully. If you have any concerns or queries as to the effect these matters may have upon the recommendations in this report or if you believe that we have misinterpreted your survey instructions, please let us know at once.

Property Description Ground Floor Flat .

Occupied Status The property was occupied at the time of our inspection.

Weather Conditions At the time of our inspection it was showery .

The inspection of the property was generally restricted by furniture and floor coverings.

Our specialist survey was restricted to those rooms or areas indicated to us and we therefore cannot comment on the conditions, good or bad, which may prevail elsewhere in the property and any contract arising from or deemed to have been entered into by reason of this survey is limited accordingly.



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DAMPNESS/CONDENSATION

Observations

At the time of our inspection the presence of 'Black Spot Fungi' indicated a condensation problem to the property. Moisture profile readings obtained with an electronic moisture meter supported these observations.

High moisture readings were evident to top surfaces of flooring where carpets were peeled back particularly at front elevation which would suggest the sub floor may be damp.

No extractor systems were noted in bathroom or kitchen.

Condensation can be most apparent on cold surfaces e.g., windows, external walls and particularly in areas of poor air flow i.e., corners of rooms, behind furniture, in cupboards etc.

Like other sources of moisture, condensation is likely to increase heat loss from the building and can be contributable factor of fungal decay.

Mould growths associated with condensation can become damaging not only to decorations and furnishings but also to the health of occupants.

The property may be minimally insulated due to its type and construction.

Externally sub floor ventilation was partially obscured due to raised ground level again at front elevation of bedroom with downpipe at this corner also going directly in to the ground.

Recommendations

We recommend that a sub floor inspection be undertaken via possible existing hatch if location can be notified or creation of new hatch to inspect sub floor.

Consideration should also be given to the installation of extractor systems in bathroom and kitchen.

IMPORTANT INFORMATION – Client to Note

Where our survey was restricted our examination and findings are necessarily curtailed. We will be pleased to carry out another inspection when notified by you that full access is available.

A supplementary report could then be submitted together with a covering specification and quotation if applicable.

Our inspection has not revealed any visual evidence of infestation or fungal decay apart from what may have been specified in our report and so we are not recommending any treatment. We have, however, only inspected those exposed surfaces that were accessible at the time of our survey and it would not therefore be prudent for you to regard such an inspection as totally reliable. We are not commenting in any general sense on the risk of fungal decay or any other defect not evident at this time or that may develop in the future.

Should you wish to discuss this report in any greater detail, please contact me through this office or on 07775 702 852 any time up to 8:30pm.

Yours sincerely
For and on behalf of Peter Cox

Mervyn J Paterson

Mervyn J Paterson CSRT
Area Surveyor

Housing and Property Chamber First-tier Tribunal for Scotland



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

Initial Inspection and Hearing: Housing (Scotland) Act 2006

Schedule of Photographs

5 Thomson Terrace, Stonehaven AB39 2LX

Chamber Reference : PRHP/RT/16/0372

Inspection Date: 26/01/2017



Figure 1 Front Elevation

*This is the schedule
of photographs referred
to in the foregoing decision
dated 26th January 2017*

H Forbes

Chairperson



Figure 2 Front Elevation, bedroom window and downpipe



Figure 3 Bedroom, view towards window and front elevation



Figure 4 Bedroom - surface of flooring in front corner of room



Figure 5 Bedroom - Meter reading (18%) at skirting board.



Figure 6 Bedroom - Meter reading (18%) front corner wall, mid height.



Figure 7 Bedroom - Meter reading (18%) at top surface of flooring.



Figure 8 Bedroom wardrobe - Meter reading (18%) and residue of mould growth to skirting



Figure 9- Lounge - view towards front wall and window.



Figure 10 Lounge - Meter reading (18%) skirting below front window, mould residue above skirting



Figure 11 Lounge - Meter reading (18%) inside alcove cupboard at outer wall surface, above skirting



Figure 7 Kitchen - view towards window and rear elevation



Figure 8 Shower room - view towards window and rear elevation