

# 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/24/2769**

**Title Number: AYR53872**

**43 Bilby Terrace, Irvine, KA12 9DP (“the Property”)**

**Parties:**

**Isobel Smith, 43 Bilby Terrace, Irvine, KA12 9DP (“the Tenant”)**

**Easton Property Ltd, 2 Newfield Drive, Dundonald, Kilmarnock (“the  
Landlord”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Lorraine Charles (Ordinary Member)**

Whereas in terms of their decision dated 6 February 2025, 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 2006 Act”) and in particular, 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, and

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property 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 dampness/condensation specialist to investigate the areas affected by mould, condensation and dampness and thereafter carry out all necessary repairs to ensure that the property is free from water ingress, dampness and mould,
2. To replace the defective extractor fan in the bathroom with one which is in proper working order.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of twelve weeks of 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 are executed by Josephine Bonnar, Legal Member of the Tribunal, at Motherwell on 6 February 2025 the presence of the undernoted witness:-

**J Bonnar**



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

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

**Chamber Ref: FTS/HPC/RP/24/2769**

**43 Bilby Terrace, Irvine, KA12 9DP (“the Property”)**

**Parties:**

**Isobel Smith, 43 Bilby Terrace, Irvine, KA12 9DP (“the Tenant”)**

**Easton Property Ltd, 2 Newfield Drive, Dundonald, Kilmarnock (“the Landlord”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Lorraine Charles (Ordinary Member)**

**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 not complied with the duty imposed by Section 14(1)(b) of the Act.**

**Background**

- 1. The Tenant applied to the Tribunal in terms of Section 22 of the Housing (Scotland) Act 2006. The application states that the Landlord has failed to meet the repairing standard in relation to the property. In particular – all walls are wet, living room ceiling and wall are affected by water damage, bathroom ceiling, both bedrooms and kitchen cupboards are affected by mould, electric box keeps fusing,**
- 2. On 2 August 2024, a Legal Member of the Tribunal with delegated powers of the President accepted the application and referred it to a Tribunal.**
- 3. On 19 November 2024, the parties were notified that the Tribunal would inspect the property on 16 January 2025 at 10am and that a hearing would take place**

at Russell House, Ayr at 11.45 am on the same date. On 10 December 2024, the Landlord lodged written submissions together with a bundle of documents including a "Dampness Inspection Report" which is not on headed paper and an EICR from a NAPIT accredited electrician dated 8 June 2024

4. The Tribunal inspected the property on 16 January 2025 at 10am. The Tenant was present. Her son Craig Smith and his partner Ms Conway were also present. Mr Easton, the director of the company, represented the Landlord. The Tenant attended the hearing, accompanied by her son. She was represented by Ms Gibson from CHAP. Mr Easton also attended.

### **The inspection**

5. The property is a two storey end terraced house with roughcast finish front and rear and a facing brick finish to the gable. The weather was cold and dry at the time of the inspection. The Tribunal noted that the property was cold and the heating was not switched on during the hearing. In the living room, the Tribunal noted water staining on the wall and paintwork flaking. There were areas of localised high moisture readings along with readings within normal range. Areas of water staining were also noted at the skirting boards next to the front window with moisture readings within a high normal range. Cracking and evidence of historic water ingress were noted on the ceiling and an area of the ceiling has been painted over where an incomplete repair was carried out. In the front bedroom the Tribunal noted high moisture readings and mould on external gable wall and in the cupboard. Below the bedroom window there were readings fluctuating from normal to mid and high. In the rear bedroom the Tribunal also noted extensive mould on all external walls and moisture readings ranged from normal to high. In the bathroom, the Tribunal noted extensive mould on the ceiling and moisture readings were medium/high. The extractor fan in the bathroom was not working. High moisture readings and mould were also noted in the kitchen, particularly in the kitchen and scullery cupboards. None of the windows at the property have been fitted with trickle vents. The Tribunal also noted that the kitchen cupboards and bedroom wardrobes are full to capacity. A new consumer unit has been fitted at the property. During an inspection of the exterior, the Tribunal noted that areas of pointing are missing from the gable and cracking is visible. Areas of roughcast are coming away from the wall and some of the roughcast is discoloured.
6. At the request of both parties, the Ordinary Member, Mr Easton and Mr Smith briefly inspected the loft. As this is not part of the application, no comments on the condition of the loft or the loft insulation are made.

### **The Hearing**

7. The Ordinary Member of the Tribunal provided the parties with some information on the condition of the property noted during the inspection. The issues specified in the application were then discussed.

## **Living room ceiling and walls/walls in the property are wet**

8. The Ordinary Member advised the parties that moisture readings in the living room walls varied between red, amber and green and that there were localised areas where high readings were detected. There was very little mould in this room but discoloration noted in some areas. Ms Smith said that when she moved in three years ago there was a brown patch on the ceiling. It had been caused by a leak from the bathroom and she was told it would be fixed. The ceiling is cracked and other cracks have appeared. She was told that someone would be instructed to replace the whole ceiling. This did not happen and she painted over the stain with white paint. Then they had water coming down the wall from a pipe in the bathroom which took them 4 weeks to fix. The wall is cracked inside and out.
9. Mr Easton said that he accepts there are some issues and wants to work with the tenant. He said that there were no high readings at the patch on the ceiling and that this is was a historic leak. He does not believe the brown patch is a breach of the Repairing Standard. He referred to the dampness report he had prepared and lodged and said that the moisture readings were all low at that time. He told the Tribunal that he is a surveyor. He accepted that was not the case at the Tribunal's inspection. He does not think that the bathroom is the source of the dampness. It is possibly the render.

## **Bathroom ceiling**

10. The Ordinary Member again referred to the moisture readings taken in the bathroom which varied between red, amber and green. A great deal of mould had also been noted. There were no trickle vents and the extractor fan is apparently not working.
11. Ms Smith said that the fan only worked for a short period. It was reported a year ago. Mr Easton said that he believes that the mould in the bathroom is condensation and not water ingress from the roof. He said that the extensive mould has appeared since the Tenant notified him of the complaints. He said that he accepts that trickle vents are required and a new extractor. The mould needs to be cleaned off and the ceiling treated and re-painted. However, the room needs to be heated. Ms Smith responded, stating that the house is heated and she cleans the walls all the time.

## **Bedrooms**

12. The Ordinary Member noted that there was extensive evidence of mould in the bedrooms. There were also localised red and amber readings on the external walls. There are many items in the wardrobes, limiting the ventilation and airflow in the rooms, and no trickle vents on the windows.
13. Ms Smith said that there is no back on her son's wardrobe because it got damp. The items in the wardrobe are not touching the wall but are still affected by the

damp. Mr Easton said that if the bedrooms were affected by penetrating damp, you would see patches of this on the walls. He believes that it is condensation. He accepts that there are no trickle vents and said that the wardrobe should be removed, dehumidifiers put in, the mould cleaned and trickle vents installed. He also said that the furniture in the room could be re-arranged so that it is not against the external wall.

14. Ms Smith said that there is mould around the window and no furniture there. Every wall is soaking and the bedrooms are cold.

### **The Kitchen**

15. The Ordinary Member referred to the localised high readings in various kitchen cupboards and to the areas of mould.
16. Ms Smith said that the gable wall is soaking during wet weather. Mr Easton said that he believes that there is a condensation issue. He installed a radiator in the kitchen, prior to that there was no heating.

### **Electrical box and EICR**

17. Ms Smith said that before the electrician came to do the inspection the fuse box kept blowing. He fitted a new socket in the living room and a new consumer unit. The switch has only tripped a couple of times since then and that might be due to the dampness. Mr Easton referred the Tribunal to the recently obtained EICR stating that it is in satisfactory terms.

### **External inspection.**

18. The Ordinary Member advised parties that there are cracks and holes in the pointing on the gable. It is possible that driving rain could be getting in through these gaps. There are also sections of roughcast that appear to have lost contact with the brickwork (Boss).
19. Ms Smith said that when she moved into the property a neighbour said that there were issues with the gable and the roof. Initially this was denied by the Landlord. He then confirmed that some patching up had been carried out. Over time, things have become worse.
20. Mr Easton said that he accepts that work is required to gable. However, a surveyor inspected using a borescope and confirmed that there is insulation. They approached a contractor who did not want the job. This kind of work has to be done later in the year. He stated that he does not know the condition of the insulation,
21. Ms Smith said that she is frustrated by promises to do work and unhappy that so many of their possessions have been damaged by the dampness.

## **Concluding remarks**

22. Mr Easton said that the main issue is condensation and not penetrating dampness. He is therefore not sure whether a breach of the repairing standard has been established. He also thinks that some of the complaints are not relevant – the crack in the living room ceiling, the electrical issue and the mould. He will fix these but stated that they are technically not a breach of the repairing standard.
23. Ms Gibson said that Ms Smith is happy in her home and the area. She just wants to be able to enjoy it. There has been one thing after another. She wants a resolution and an end to the damage to her possessions. It is affecting her sleep and wellbeing.
24. Mr Easton said that after the winter they could look at the gable. Ms Smith will need to make herself available for contractors. In relation to getting work carried out, he initially stated that eight weeks should be sufficient but that he was in the Tribunal's hands.

## **Findings in Fact**

25. The living room, kitchen and both bedrooms at the property are affected by dampness and mould.
26. The living room ceiling is stained as a result of a historic leak but not currently affected by dampness.
27. There are extensive areas of mould in both bedrooms, the kitchen and the bathroom.
28. The extractor fan in the bathroom does not work.
29. Windows in the property are not fitted with trickle vents.
30. Areas of pointing on the gable are missing and areas of roughcast are coming away from the wall. An area of roughcast is also discoloured.
31. The kitchen cupboards and wardrobes in the bedroom are cluttered and over full of items.
32. A new consumer unit has been installed at the property and the Landlord has provided an EICR, which is in satisfactory terms.

## Reasons for Decision

33. 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 14(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”. Section 22(3) of the 2006 Act states that an application can only be made if the person making the application has notified the landlord that work requires to be carried out for the purpose of complying with the repairing standard. The Tribunal is satisfied that the Tenant notified the Landlord of the repairing standard issues at the property prior to lodging the application.
34. The Tribunal found the Applicant to be generally credible and reliable. She was keen to tell the Tribunal the history of the repair issues although it was explained to her that the purpose of the inspection and hearing was to establish if the property currently complies with the legislation. Her evidence was generally consistent with the findings of the Tribunal at the inspection.
35. Mr Easton told the Tribunal that he is a surveyor. His evidence was also generally credible and reliable although the Tribunal did not agree with his views on the cause of the dampness and mould noted during the inspection.
36. The Tribunal is satisfied that the property is affected by dampness and not just by condensation linked to the Tenant’s use of the property. There were high moisture readings noted in parts of the living room, kitchen, bathroom and both bedrooms. The cause of the dampness and the associated mould is not clear. Mr Easton referred to the dampness report he lodged. However, this was report prepared by himself and not an independent or specialist contractor. He did not dispute that the moisture readings during the inspection included a number of very high readings. He also did not dispute that the windows at the property are not fitted with trickle vents or that the extractor fan in the bathroom is defective. He also acknowledged that there is damage to the render, which requires to be addressed.
37. The Tribunal is of the view that the Tenant’s use of the property may have exacerbated the problem with mould in the kitchen and bedrooms. However, the Tribunal is not persuaded that this is the principal cause. The house is cluttered and the bedroom wardrobes and kitchen cupboards full to capacity, restricting airflow and ventilation. However, this does not explain the high moisture readings in the walls and the Tenant is not responsible for the absence of trickle vents and a working fan in the bathroom. There was no evidence that the tenant does not open windows at the property during milder weather or fail to heat the property appropriately during the winter months. The heating was

not on at the time of the inspection but, as was pointed out by the tenant, it is not usual to heat a property 24 hours a day.

38. The Tribunal is therefore satisfied that the property does not meet the repairing standard in relation to the dampness and mould noted in the living room, kitchen, bedrooms and bathroom.
39. The Tribunal is not persuaded that the Tenant has established that the electrical installation at the property is defective. A satisfactory EICR was produced and a new consumer unit has been installed. The Tenant conceded that this had resulted in improvement. A breach of the repairing standard is not established in relation to the electrical installation.
40. As Mr Easton pointed out there were no high moisture readings noted at the discoloured area of the living room ceiling. However, although the current defect is largely cosmetic, it is clear that the repair which was carried out to fix the leak should have included a repair to the damaged ceiling. In its present condition a breach of repairing standard is not established but the Tribunal would recommend that the Landlord take steps to address the damage as it is unsightly.
41. The Tribunal concludes that the Landlord has failed to comply with the repairing standard as set out in Section 13(a) and (b) of the 2006 Act but has not failed to comply with Section 13(c).

## **Decision**

42. The Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
43. 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.**

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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

6 February 2025