

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: FTS/HPC/RT/23/2130

Hillhead of Barrack, Auchnagatt, Ellon, Aberdeenshire AB41 8TR
("The Property")

The Parties:-

**Aberdeenshire Council, Infrastructure Services, Gordon House,
Blackhall Road, Inverurie, Aberdeenshire AB51 3WA ("the Third Party
Applicant")**

**Ms Sarah Wood, Hillhead of Barrack, Auchnagatt, Ellon, Aberdeenshire
AB41 8TR**
("the Tenant")

Aberdeen Endowments Trust, 19 Albert Street, Aberdeen AB25 1QF
("the Landlord")

Tribunal Members

Graham Harding (Legal Member)

Angus Anderson (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 Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by the Third Party Applicant's representative and the Landlord's representatives at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 28 June 2023 the Third Party Applicant's representative Ms Cheryl Greig applied to the 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 stated that the Third Party Applicant considered that the Landlord had failed to comply with its duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation; and
- (b) The house met the tolerable standard.

Specifically the Tenant's representative complained that:-

There was a leak coming from the chimney breast or roof above the living room despite the Landlord replacing some roof tiles.

There was mould throughout the house the cause of which had not been identified or remedied.

3. By Notice of Acceptance dated 26 July 2023 a legal member of the Housing and Property Chamber with delegated powers accepted the application and referred the application under Section 23 (1) of the Act to a Tribunal.
4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord on 2 October 2023
5. By email dated 11 October 2023 the Third Party Applicant's representative submitted written representations and photographs to the Tribunal.
6. Following service of the Notice of Referral. The Landlord's representatives, Ledingham Chalmers, Solicitors, Aberdeen, by email dated 23 October 2023, made written representations to the Tribunal.
7. The Tribunal inspected the Property on the morning of 7 November 2023. Ms Cheryl Greig and Ms Eilidh Mackay from the Third Party Applicant were present as were Ms Rebecca Walker from Ledingham Chalmers and Ms Christina Day from Savills, the Landlords Letting Agents. The Tenant was also present during the inspection. The Ordinary Member of the Tribunal took photographs of the property which are attached as a schedule to this decision.
8. Following the inspection of the Property the Tribunal held a hearing at AB1, 48 Huntly Street Aberdeen and heard from both the Third Party representatives and the Landlord's representatives. The Tenant did not attend the hearing.

The Hearing

9. The ordinary member of the Tribunal provided the parties with a brief synopsis of the Tribunal's observations at the inspection. He explained

that although there was no significant mould present in the living room of the property there was staining above the fireplace and a high damp meter reading above the fireplace which he said was consistent with rubble building up behind the gable wall. He said that there was no significant damp in the hall or in the ground floor bedroom. There was significant mould in the bathroom although damp meter readings were generally normal except around the window in the. The upstairs right-hand bedroom had some mould present and high damp meter readings again consistent with rubble build up. The left-hand upstairs bedroom also had high damp readings on the gable wall. The ground floor box room had peeling and loose plaster and signs of historic and current dampness. There were signs of water ingress with a basin being used to collect water. The kitchen had extensive mould growth on the ceiling and window wall with high damp readings around the window in the and by the entrance door. Externally the property appeared to be in reasonable condition given its age and recent work had been carried out.

10. For the Third Party, Ms Greig explained that the Tenant had reported a leak to the Landlord's letting agent and slates had been replaced but that water had still been entering the property and it appeared that the Landlord's representatives had been unsure of the underlying cause. Ms Greig said that she had asked that investigations be carried out as the property did not meet the repairing standard. She said that the Tenant had then been served with notices to terminate the tenancy as the property was to be sold. She said as there had been concerns about the Tenant's health and given the condition of the property an application to the Tribunal had been made.
11. For the Landlord Ms Walker explained that it had not been immediately clear what was causing the mould at the property and if there was an underlying problem. However, the Landlord was prepared in the immediate future to install extractor fans in the kitchen and bathroom and would also be prepared to instruct Richardson and Starling to undertake a deep clean of the property to try to remove the existing mould. Ms Greig submitted that a full investigation of the cause of the damp in the property could not be undertaken while the Tenant remained in the property.
12. Ms Day explained that a roofer had recently carried out repairs to the skews and it had been noted that the fireplaces had been taped up and this led to a lack of ventilation.
13. The Tribunal queried if the Tenant had made any progress with being rehoused and noted that she had not but that there was an eviction date of 24 February 2024.

Findings in fact

14. The tenancy is a short assured tenancy that commenced on 28 March 2008.
15. The Respondent has obtained an order under Section 33 of the Housing (Scotland) Act 1988 for possession of the property and the Tenant is due to remove from the property on 24 February 2024.
16. There are signs of water ingress at the property in the living room, kitchen, downstairs box room and upstairs bedrooms.
17. High damp meter readings were obtained in these rooms.
18. There is mould growth evident in the kitchen, downstairs boxroom, bathroom and right-hand upstairs bedroom.
19. The Landlord intends to sell the property.

Reasons for the decision

20. It was evident from the inspection that despite some repairs having been carried out at the property it still suffered from damp particularly around the fireplaces in the living room and upstairs bedrooms. There was also significant water ingress in the downstairs boxroom and high moisture readings were recorded near the door in the kitchen and around the window ingos in the bathroom and kitchen.
21. The Tribunal noted that the Landlord's representatives had obtained reports from Richardson and Starling, Timber Specialists and Dave Johnstone Joinery and Tiling Limited and that it was recommended that further intrusive investigations took place once the Tenant had moved out of the property.
22. The Tribunal also noted that the Landlord was prepared to install extractor fans in the kitchen and bathroom and carry out a deep clean of the property to remove the mould in the short term while the Tenant remained in the property. The Third Party Applicant's representative indicated that the Tenant would be open to agree to this proposal and the Tribunal would hope that this work would be carried out as soon as possible.
23. The Tribunal was satisfied that the property was not wind and watertight and therefore not reasonably fit for human habitation and given the obvious problems with damp the Tribunal was also satisfied the property did not meet the tolerable standard. The Tribunal determined that it was therefore appropriate to make a Repairing Standard Enforcement Order. Given that compliance with the order will involve quite major work that would not be practical to be carried out when the property was unoccupied, the Tribunal considered that a slightly longer period should be allowed for the works to be completed.

Decision

- 24. The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 25. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 26. The decision of the Tribunal was unanimous.

Right of Appeal

- 27. **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

- 28. 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.

G Harding

Signed Graham Harding

Date 20 November 2023

Chairperson

Housing and Property Chamber

First-tier Tribunal for Scotland



Housing (Scotland) Act 2006

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Initial Inspection: Schedule of Photographs

Inspection Date: 07/11/2023



Photograph 1 Front (South) Elevation.



Photograph 2 Lounge – stain to ceiling above fireplace moisture reading 99%



Photograph 3 Lounge – Typical moisture reading 17% to walls; CO alarm present.



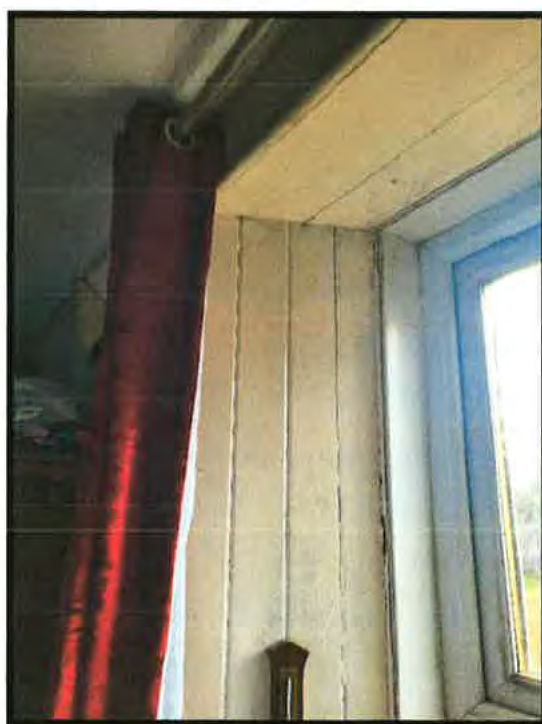
Photograph 4 Ground floor bedroom – overview



Photograph 5 Ground floor bedroom – wallpaper torn at curtain pole, moisture reading 17.3%.



Photograph 6 Ground floor bedroom -- typical moisture reading 17%



Photograph 7 Ground floor bedroom – slight mould at window ingo.



Photograph 8 Front Hall – Slight mould around door, moisture reading 17%. Traces of parcel tape around door edge.



Photograph 9 Bathroom overview – heavy mould to outer walls, slight mould to ceiling. Traces of parcel tape around window.



Photograph 10 Bathroom – Mould near WC, typical moisture reading 21%



Photograph 11 Bathroom – Missing wallpaper at window ingo, moisture reading 73%



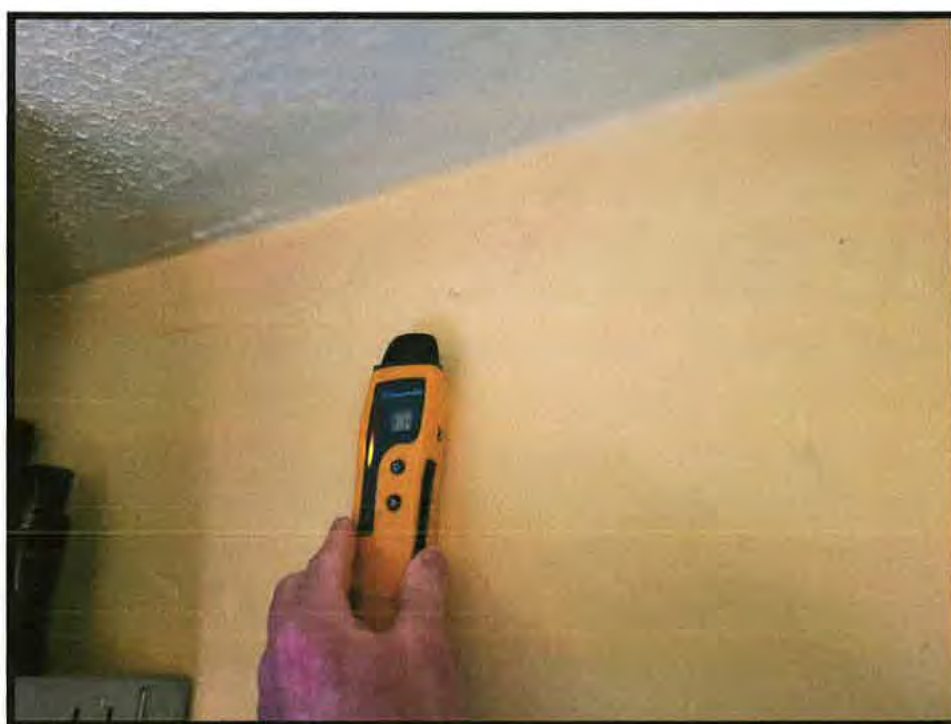
Photograph 12 Right hand bedroom 2 – Damp patch to gable wall, moisture reading 75%.



Photograph 13 Right hand bedroom – Typical moisture reading 21%



Photograph 14 Left hand bedroom - overview.



Photograph 15 Left hand bedroom -- Typical moisture reading 18%



Photograph 16 Left hand bedroom – Damp patch, moisture reading 99%



Photograph 17 Landing – Mould and dirt around velux window



Photograph 18 Ground floor Boxroom – Overview. Loose plaster at window lintol, widespread bare, crumbling, cracked and damp plasterwork.



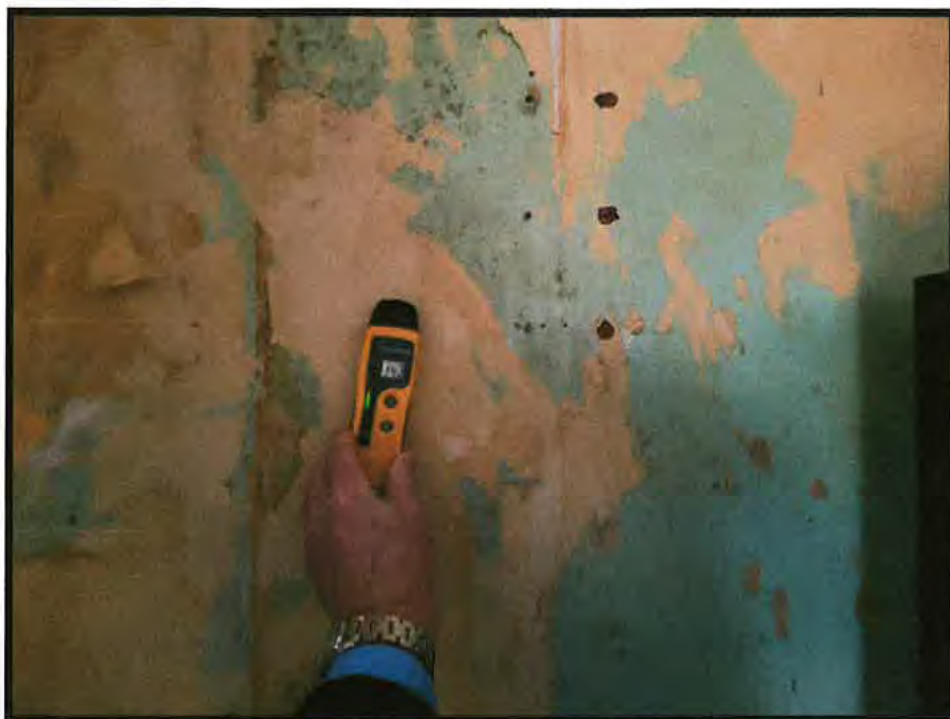
Photograph 19 Boxroom – Right hand side window, widespread high meter readings to outer wall, typical 99%.



Photograph 20 Kitchen – Overview. Widespread mould to outer walls and ceiling.



Photograph 21 Kitchen – Ceiling, typical moisture reading 13%.



Photograph 22 Kitchen – outer wall, typical moisture reading 14%.



Photograph 23 Kitchen – damp patch at window ingo moisture reading 78%.



Photograph 24 Kitchen – hard plastered stone wall, right hand side of outer door, moisture reading 99%.



Photograph 25 Rear exterior and east gable wall.