

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24(1) of the Housing (Scotland) Act 2006

Re: 38 Tiree Court, Irvine, North Ayrshire, KA11 (“the House”)

Title number: AYR 45712

Chamber Ref: FTS/HPC/RP/23/3360

Mr Martin Grant, residing at the House (“the Tenant”)

Mr John Scott, 8B Park Terrace, Ayr, KA7 2AN (“the Landlord”)

Tribunal Members:

Nicola Weir (Legal Member) and Donald Wooley (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 house, and taking account of the evidence presented and the written and oral representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received on 22 September 2023, the Tenant applied to the Tribunal in terms of Section 22 of the 2006 Act claiming breach of the Repairing Standard by the Landlord in respect of various repair issues affecting the House. The application was submitted on behalf of

the Tenant by Mrs Andrea Gibson, Advice and Information Officer, of CHAP who is representing the Tenant in these proceedings. The repairs issues identified in the application and which had been notified to the Landlord using the standard template letter on 27 July 2023 (copy produced with the application, together with proof of posting), were as follows:-

- ‘Security buzzer broken. This requires repair.
- Issues in bathroom; crack in bath, crack on bath panel. Repair attempted but not sufficient and requires further repair. Dripping tap, requires repair. Floorboards warped due to water damage and require replacement.
- Boiler issue; not operating correctly and heating system running constantly. This requires diagnosis by a qualified engineer and repair carried out.
- Lower walls outside bathroom; water damage due to bathroom issues. Requires inspection and appropriate repair.
- Dampness – throughout tenancy; this requires investigation by qualified damp specialist. Dampness has been building up even though client has been ventilating the tenancy.’

The application paperwork advised that these repairs were outstanding, despite having been notified to the Landlord previously. It was also explained that the tenancy agreement was not being produced as the Tenant did not have a copy but that it was understood to be a standard Private Residential Tenancy which had commenced on 10 February 2020.

The Tribunal obtained a copy of the title deed and Landlord Registration details in respect of the House and it was noted that both are in the name of the Landlord and appeared to be in order.

2. On 9 October 2023, a Legal Member of the Tribunal, acting under delegated powers in terms of Rule 9 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) issued a Notice of Acceptance of the Application. Notice of Referral to the Tribunal, Inspection and Hearing was issued to the parties on 16 November 2023, requesting that any written representations should be lodged with the Tribunal by 7 December 2023.
3. Detailed written representations were lodged by the Landlord on 20 November 2023, attaching the following:-
 - A Damp Report from Kerelaw Preservation dated 15 December 2020
 - Two photographs, said to show a bath repair, both before and after
 - An invoice from O’Neills dated 10 August 2023 in the sum of £403.28 in respect of gas boiler repairs

- An invoice from Rogerson Flooring dated 3 August 2023 in the sum of £110 in respect of new lino being laid in the bathroom

The representations provided some additional background details concerning the condition of the house when the Tenant moved in, the repairs carried out, an additional repair carried out in replacing the shower head and hose in the bathroom, investigations and background in respect of the door entry system/North Ayrshire Council's involvement in that as property factor and the previous findings of Kerelaw Preservation.

These representations were circulated to the Tenant's representative but no further representations were received in response on behalf of the Tenant other than confirmation that the Tenant only would be present at the Tribunal Inspection and CHAP only would be present at the Hearing.

4. In advance of the Inspection and Hearing due to take place on 11 January 2024, the Landlord requested a postponement of the Hearing due to a conflicting personal commitment. The Tribunal decided, rather than postponing at short notice, that the Inspection would proceed as scheduled but that the Hearing would take place at a later time and be by telephone conference call, rather than in-person at Ardeer Community Centre in Stevenston.
5. The Tribunal Members inspected the House on 11 January at 10am. Both the Tenant and Landlord were in attendance.

Findings on Inspection

6. A Schedule of Photographs taken during the Inspection by the Ordinary Member and dated 11 January 2024 is attached to this Statement of Decision. Site observations were as follows:-

Description

The property comprises a ground floor self-contained flat within a four storey building originally built by and on behalf of the former Irvine Development Corporation and now in private ownership. Access is taken via a communal entrance shared with seven other occupiers. The outer walls are brick construction finished externally with a lathe render and the roof is mono pitched, clad with concrete tiles. The accommodation comprises living room, one bedroom, kitchen and bathroom.

Site Observations

Weather conditions at the time of inspection were dry, dull and relatively cold.

- i. Adjacent to the communal ground floor entrance to the building there is an electrically operated door entry system with individual "buzzers" serving each flat and a separate one for service access. There is

electrical power to the panel and also to the internal communication point within the flat although the “buzzer” is not working and there does not appear to be a remote means of opening the communal entry door from the flat.

- ii. Within the bath there is no evidence of any cracking affecting the fitting and the tenant confirmed that this had been satisfactorily addressed.
- iii. The bath side panel comprises fitted ceramic tiles. Evidence of separation cracking, notably at the grouting, was noted particularly at the junction of the bath and party wall with the hall and immediately around the rim of the bath.
- iv. At the wash hand basin there is a constant drip of “warm” water from the hot water tap when in the closed position resulting in significant and semi-permanent staining to the basin.
- v. The alleged water damaged, warped flooring in the bathroom has been addressed following a recent repair and fitting of a new floor covering. The tenant is satisfied that this issue has been addressed and accepts that this aspect of the application is no longer an issue.
- vi. Following remedial action, to the boiler the issues highlighted in the application have since been repaired by O’Neil contractors and the tenant confirmed that they were no longer an issue.
- vii. While not specifically raised in the application the Tribunal noted that the carbon monoxide (CO) detector was located within the same cupboard as the boiler. This does not comply with the “Scottish Government Statutory Guidance for the provision of CO alarms in private rented housing” which states that, unless otherwise indicated by the manufacturer, CO detectors should be either:

- *ceiling mounted and positioned at least 300 mm from any wall (unless otherwise indicated by the manufacturer) or*
- *wall mounted and positioned at least 150 mm below the ceiling and higher than any door or window in the room (unless otherwise indicated by the manufacturer).*
- *If the combustion appliance (primarily boilers) is located within a small space, usually a cupboard, the detector should be sited outside the space /cupboard with the appropriate distance between appliance and detector of between 1 and 3 metres.*

A carbon monoxide detector should not be sited:

- *in an enclosed space (for example in a cupboard or behind a curtain)*

As the Carbon monoxide alarm in the Property is located in the boiler cupboard the Tribunal observed that it does not comply with the statutory requirements. The CO detector is free standing and therefore may be readily relocated in the correct position.

- viii. The lower level of the mutual wall between the bathroom and the internal hall displays evidence of residual damage likely as a

consequence of a previous water leak from the bath and shower attachment. This water leak has since been repaired although redecoration remains outstanding. There is no evidence of damp at this area although a degree of separation remains between the plasterboard wall and skirting board.

- ix. Moisture meter readings taken throughout the property were generally at an acceptable level. The exception is in the bedroom at the mutual wall with the ground floor common entrance where moisture readings are at a level likely to cause further deterioration to the internal fabric of the property should they remain.
- x. Externally residual staining is evident on the rendering close to the front bedroom. This may have been the result of rainwater cascading from the adjacent roof projection during periods of severe weather. There is also a small area of bossed, cracked and missing render towards the base of the front wall.
- xi. There is no significant evidence of mould. The tenant indicated that he “wiped down” the mould on a regular weekly basis and confirmed that he was unable to identify any during the inspection. Humidity within the kitchen was noted to be high. It is understood that this area is regularly used for drying clothes throughout the year. This, combined with a lack of ventilation, can be a contributory factor for condensation and the Tribunal noted that the trickle vents in the double glazed window were closed. The tenant suggested that the may never have been opened as he had been unaware of their purpose.

Evidential Hearing

- 7. Following the Inspection of the House, the Tribunal held a Hearing by telephone conference call at 2.30pm. The Tenant, Mr Martin Grant, and Landlord, Mr John Scott, were both in attendance, as was the Tenant’s representative, Ms Andrea Gibson, of CHAP.
- 8. Following introductions and introductory comments from the Legal Member, a brief summary of what had been noted by the Tribunal at the Inspection of the House earlier was presented, given that Ms Gibson had not been present. It was confirmed by Mr Grant that the issues with the bathroom flooring and the boiler had both been rectified, as per the written representations and invoices which Mr Scott had submitted previously to the Tribunal. Mr Scott had indicated at the Inspection that he had a Gas Safety Certificate from the contractor who had carried out the boiler repairs and confirmed that, as requested, he had emailed this to the Tribunal Administration following the Inspection. The Legal Member confirmed that this had not yet been circulated to the Tribunal but would hopefully be available shortly.
- 9. The Ordinary Member explained the Tribunal’s site observations (as narrated above) concerning the door entry buzzer system. Mr Grant

agreed that there was power to the panel but that the feed does not work so the buzzer does not buzz. This causes difficulties for him if parcels are being delivered, etc. Other residents in the block were also having problems so the entry door was left open much of the time which is not ideal from a security point of view. Mr Grant confirmed that North Ayrshire Council did attend and carried out some external work to the entry system which they said had resolved the issue for other properties in the block but that Mr Grant's problem seems to be an internal one which is not their responsibility. Mr Scott explained that he has been in contact with North Ayrshire Council regarding the issue and had suggested an alternative to Mr Grant of a 'ring doorbell' type device. However, Mr Grant had refused this and the situation has reached a bit of a stalemate. Mr Grant explained that he did not want people to know that there was a video camera device at his property as he felt this could lead to him being targeted by other residents or visitors to the block. The Ordinary Member suggested some other type of doorbell device, without a camera, and it was agreed by Mr Scott that, if the existing system could not be fixed, such an alternative would be looked at.

10. The Ordinary Member explained the Tribunal's site observations in the bathroom (as narrated above). Mr Scott agreed with these observations in that there was no visible crack in the bath, it having been repaired, and that the cracks mentioned in the application as being in the bath panel were actually in the grout between ceramic tiles and the bath panel. The Ordinary Member suggested that a replacement washer may resolve the dripping hot tap. Mr Grant stated that this problem had existed since he moved in and that the tradesman had told him that a new tap entirely was required. Mr Scott said that he was not adverse to replacing the tap if the issue cannot be resolved by a replacement washer.
11. The Ordinary Member explained the Tribunal's site observations at the internal hall wall, mutual to the bathroom (as narrated above). He added that the wall is now completely dry but that there is residual evidence of water damage to the décor and skirting board and when pressure was applied, the bottom of the wall where it should meet the skirting moves by $\frac{1}{4}$ to $\frac{1}{2}$ an inch, leaving a gap. Both Mr Grant and Mr Scott agreed with these observations and Mr Scott confirmed that the source of the water damage had been eradicated by the remedial works carried out in the bathroom.
12. Finally, the Ordinary Member explained the Tribunal's site observations (as narrated above) in relation to damp and mould issues alleged by the Tenant. He added that there was no significant evidence of mould and that dampness readings taken throughout the property were generally acceptable, with the exception of the bedroom front left corner, where levels were unacceptably high and there was residual staining. He explained that the damp meter displayed a "red light", and registered a 24/25% moisture content. He confirmed that the Tribunal had noted that the Tenant had two dehumidifiers operating in the property, one in the

bedroom and the other in the living room, with the living room one visibly containing water. Mr Scott referred to the report he had produced to the Tribunal from a damp specialist who had carried out a full 360 degree inspection in 2020 and had found the integrity of the property to be intact and the interior satisfactory. Mr Scott confirmed that his specialist had reported that they considered the main issue to be lack of ventilation, that Mr Grant dried clothes in the property and there was nowhere for the damp to go. A constant through-draft was required but it had been noted by the specialist that all windows, blinds and curtains were closed throughout the property. Mr Scott explained that he is regularly at Tíree Court, as he has other properties there too, and he notes that the windows, blinds and curtains at this property are always closed, although Mr Grant has refuted this. Mr Grant confirmed that he does open the windows every day but stated that he does not do this for hours at a time, due to the cold and for security reasons as he is on the ground floor. Mr Grant confirms that he does dry clothes within the property as he has no option and that he did not open the trickle vents in the double-glazed windows as he had not known what they were for, but will now do so. As to the comments about the area of the exterior of the building which is mutual to the problematic corner of the bedroom wall, Mr Scott confirmed that the exterior of the building had been re-rendered as a common repair. He also confirmed his understanding that two of the flats within the block are privately owned, with the remainder being owned by North Ayrshire Council (who also factor the building). He reiterated that his specialist report had not identified any problems with the exterior of the building. The Ordinary Member commented that this may have been the position at the date of the report (December 2020) and that the report did not strike him as being particularly “in-depth”. There was some further discussion about the possible causes of the dampness in the bedroom, but that further investigations may be required to ascertain the cause and any remedial works required.

13. Ms Gibson was asked if she wished to raise anything further or sum up in respect of the application she had submitted on behalf of Mr Grant, but she did not consider this necessary. Likewise, Mr Grant and Mr Scott both indicated that they had nothing further to say in summing up.
14. The Legal Member drew the Hearing to a close and confirmed that parties will be advised of the Tribunal’s decision in writing as to whether the Tribunal decided to make a Repairing Standard Enforcement Order and, if they did so, what repairs were required and the timescale for these to be carried out.
15. Subsequent to the Hearing, the Tribunal had sight of the Gas Safety Certificate submitted by the Landlord from O’Neil Gas Services Ltd dated 10 August 2023. It was noted by the Tribunal that this contractor is Gas Safe registered and that the Report is satisfactory. However, it did contain an ‘advisory’, namely that it was noted that there was “no earth bonding on meter outlet pipe work”.

Findings in Fact

1. The tenancy in respect of the House between the parties commenced on or around 10 February 2020 (tenancy agreement not seen).
2. The Tenant had notified the Landlord of repair issues outstanding prior to submitting this application to the Tribunal.
3. The Landlord had previously investigated damp issues notified by the Tenant earlier in the tenancy and had produced a Damp Report from Kerelaw Preservation dated 15 December 2020.
4. The Landlord had advised the Tenant of the findings of Kerelaw Preservation and their opinion that the issues were due to lack of ventilation of the Property by the Tenant.
5. The Landlord had previously investigated other repairs issues notified by the Tenant during the tenancy and had arranged for certain repairs to be carried out.
6. The Landlord had investigated some of the repair issues notified by the Tenant on 27 July 2023, in advance of this application, and had arranged for certain repairs to be carried out in early August 2023.
7. The application was lodged with the Tribunal on 22 September 2023.
8. The Landlord responded to the notification of the application by lodging written representations, to which he attached some supporting documentation.
9. Reference is made to the Tribunal's Findings on Inspection, which took place on 11 January 2024.
10. Some of the repair issues included in the Tenant's application had been attended to before the Inspection and Hearing but some issues were still outstanding.
11. The House does not meet the Repairing Standard in some respects.

Reasons for decision

1. The Tribunal considered the issues of disrepair set out in the Application and noted at the Inspection, the written representations and documents lodged by the Landlord prior to the Hearing and following the Hearing and the oral evidence heard from both parties at the Hearing.
2. The Tribunal was satisfied from the information before it that the Tenant had notified the Landlord of the alleged repairs issues and works required in advance of the Tribunal application being made, all in terms

of Section 14(3) of the 2006 Act and the Landlord did not dispute this. The Tribunal was also satisfied from the evidence heard that the Landlord had not carried out all works required within a reasonable period of time, in terms of Section 14(4) of the 2006 Act. The Landlord had, however, addressed some of the issues within a reasonable period of time, such as some repairs in the bathroom, including to the flooring, and to the boiler. He had also explained his attempts to rectify other issues, including contacting North Ayrshire Council, as property factor, regarding the door entry buzzer which he considered may be a common repair and also suggesting an alternative solution to the Tenant, which the Tenant had declined. The Landlord also explained that he had not sought to further address the damp/mould issues claimed by the Tenant, as he was relying on the Damp Report he had obtained from a specialist contractor previously and considered that any such issues affecting the property were due to the Tenant's own conduct, including not sufficiently ventilating it.

3. Given the present condition of the property, the Tribunal was satisfied that some remedial works were required in order to meet the Repairing Standard in all respects.
4. The Tribunal was satisfied that the door entry system buzzer was not working and that, although the issue had previously been investigated as a possible common repair by North Ayrshire Council, it appeared to be, in fact, an internal issue and therefore, the responsibility of the Landlord. It appeared to the Tribunal from discussions at the Hearing that the Landlord and Tenant were both amenable to considering alternative resolutions to this issue, if the existing buzzer system could not be fixed. The Tribunal was satisfied that the current defect was a breach of the Repairing Standard in that any fixtures, fittings and appliances provided by the Landlord under the tenancy should be in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the 2006 Act.
5. The Tribunal was satisfied, given their visual inspection and the damp readings in the corner wall area of the bedroom that further investigation is needed in order to identify the cause(s) and any remedial work deemed necessary to resolve the issue(s) thereafter carried out in order that the House is in a reasonable state of repair, wind and watertight and in all other respects reasonably fit for human habitation, in terms of Section 13(1)(a) of the 2006 Act. The Tribunal understood the Landlord's position in placing reliance on the investigations and findings of the specialist contractor in December 2020 and the fact that he understood the exterior of the property to have been re-rendered previously, as a common repair. The Landlord also considered, based on the opinion of the specialist contractor, as well as his own observations, that the Tenant was contributing to issues of humidity and dampness within the House. However, the Tribunal considered that the issue in the bedroom was more likely due to a structural type defect, which may well have arisen, or worsened, since the Landlord's contractor had investigated the matter

three years ago. The Tribunal did not see any significant evidence of mould in the House and accordingly did not propose to include this in the RSEO.

6. In terms of the dripping tap in the bathroom, the Tribunal was satisfied that this was a long-standing defect, albeit a minor one, and that this should be rectified to ensure that the tap is in a reasonable state of repair and proper working order (Sections 13(1)(c)/(d) of the 2006 Act). The Tribunal was satisfied that other matters identified in the application concerning the bathroom had either been rectified already by the Landlord or did not constitute a breach of the Repairing Standard.
7. The Tribunal was satisfied that the hall wall and skirting showed evidence of water damage, arising from a previous leak from the bathroom, the source of which had been rectified by the Landlord. Although the wall was completely dry, the damage caused to the skirting and the wall and the gap between the wall and skirting were unsightly. The Landlord's duty to repair and maintain includes the duty to make good any damage caused by repair issues which have been rectified and accordingly, the Tribunal considered that the Landlord should carry out some remedial decoration works in this area in order to comply with Section 13(1)(d) of the 2006 Act.
8. The Tribunal is accordingly of the view that it requires to make a Repairing Standard Enforcement Order ("RSEO") in respect of the outstanding matters specified in paragraphs 4,5,6 and 7 directly above. Given the nature of the required works, the Tribunal is of the view that a period of 8 weeks is an adequate and reasonable timescale for these works to be completed.
9. Although the Gas Safety Report produced by the Landlord was current and satisfactory, the Tribunal wished to raise as an observation that the Report did contain an 'advisory', namely "no earth bonding on meter outlet pipe work" and it was hoped that the Landlord would consider having this matter rectified in due course. Likewise, the Tribunal wished to raise the observation outlined in paragraph vii under the heading "Site Observations" above, concerning the positioning of the carbon monoxide detector in the hall cupboard. This issue did not form part of the application and therefore, would not be included in the RSEO. However, again, it was hoped that the Landlord would consider rectifying this issue too. Finally, the Tribunal considered that issues of humidity or condensation within the House could likely be improved by the Tenant increasing the ventilation and air circulation and opening the trickle vents on the windows, which he had indicated he would.

Decision

10. The Tribunal accordingly determined that the Landlord had failed to comply with duties imposed by Section 14(1)(a)(c) and (d) of the 2006 Act to ensure that the House meets the Repairing Standard.

11. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the 2006 Act.

12. The decision of the Tribunal was 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.

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.

N Weir

Signed.....
Nicola Weir, Legal Member of the Tribunal

Date: 29 January 2024

Schedule of Photographs
38 Tiree Court, Irvine, KA11 4JB
FTS/HPC/RP/23/3360

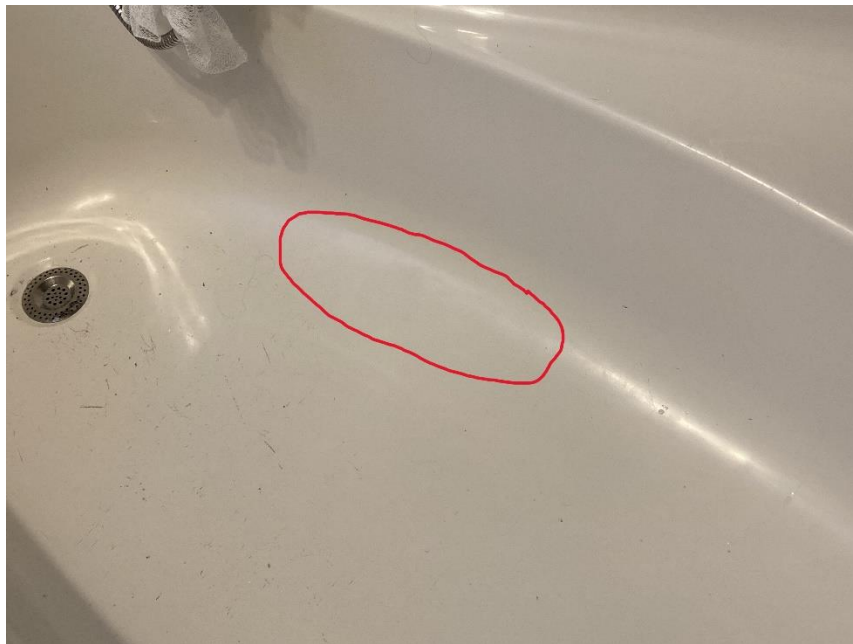
Schedule of Photographs taken at the inspection on 11 January 2024



1. "Street" View



2. Security entrance buzzer (bottom left) on communal system serving flats 38-45



3.



4.



5.

3 – The area circled in red identifies the location of the alleged crack in the bath. This has since been repaired and there is no evidence of the crack

4 & 5 – The photographs illustrate cracked and missing grouting affecting the tiles on the side of the “bath panel”



6

The hot water tap has a constant drip when in the fully closed position which has resulted in staining to the wash hand basin.

The alleged water damaged warped floorboards in the bathroom has been addressed following a recent repair and the applicant is satisfied that this issue has been addressed.

Boiler

The issues highlighted in the application have since been repaired by O'Neil Gas 55 Green Street lane, Ayr and the tenant confirmed that they were no longer an issue. While not forming part of the application the Tribunal noted that the carbon monoxide (CO) detector was located within the same cupboard as the boiler. The positioning of the CO detector does not comply with the "Scottish Government Statutory Guidance for the provision of CO alarms in private rented housing" which states that CO detectors in the space containing the combustion appliance should be sited between one and three metres from the appliance at the appropriate height.



7



8



9



10



11

Photographs 7-11 all illustrate the lower level of the mutual wall between the bathroom and the internal hall. Moisture readings are low and at an acceptable level, although residual damage to the plaster wall remains as a consequence of a previous water leak at the area surrounding the bath and shower attachment. This water leak has since been repaired although redecoration remains outstanding.



12

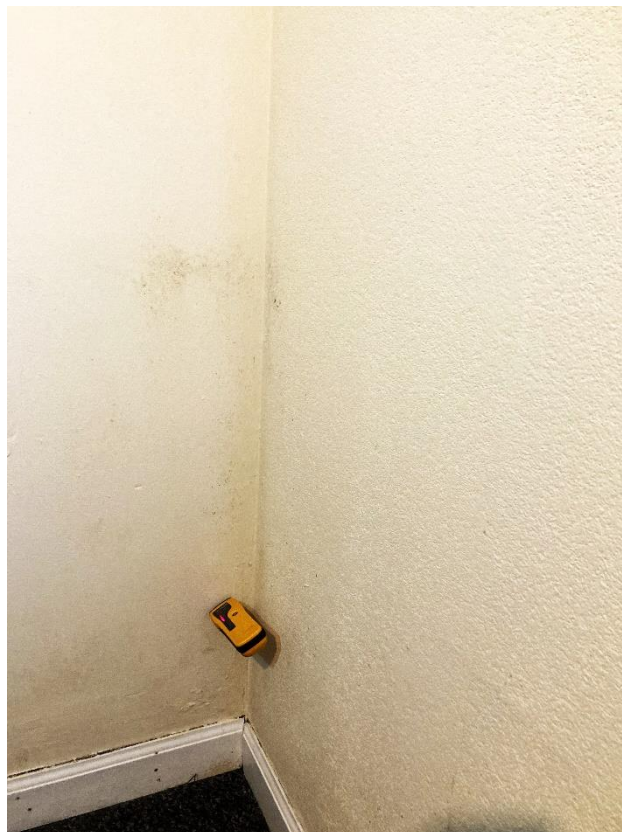


13

Photographs 12 and 13 illustrate internal doors, previously affected by condensation and mould staining of which there was no evidence at the time of inspection.



14



15

Photographs 14 and 15 illustrate moisture readings at a level likely to cause further deterioration to the internal fabric of the property should they remain. The readings were taken in the mutual wall of the front bedroom and the common ground floor entrance hall towards the front of the building and entry door.



16



17

Photographs 16 and 17 illustrate staining to the external rendering suggesting water cascading from the roof projection above the communal entrance and sections of bossed, cracked and missing rendering towards ground level. These areas coincide with the high moisture readings internally.

This schedule of photographs was taken during an inspection of the property by the First-tier Tribunal for Scotland, Housing and Property Chamber, on Thursday 11 January 2024 in connection with a Repairing Standard application under consideration.

In addition to the members of the Tribunal both the landlord, Mr John Scott and the tenant, Mr Martin Grant were in attendance throughout the inspection.

Donald Wooley MRICS
11 January 2024