

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Note to Parties relative to an application made to the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 26 (1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/23/3479

Property: 26F Forrester Park Loan, Edinburgh EH12 9AG (“the property/house”)

Title Number: MID12316

The Parties:-

Mr Ian McFarland and Mrs Bobbie McFarland, Spouses, both 26F Forrester Park Loan, Edinburgh EH12 9AG (“the Tenants”)

Mr Robert Dick, 24 Venturefair Drive, Edinburgh EH17 8WD (“the Landlord”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Greig Adams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber decided that the Landlord has not failed to ensure the Property complies with the Repairing Standard.

Background

1. By application, received by the Tribunal on 3 October 2023, the Tenants applied to the Housing and Property Chamber of the First-tier Tribunal for Scotland for a determination of whether the Landlords 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 Tenants considered that the Landlords had failed to comply with the duty to ensure that the house meets the Repairing Standard. In particular, the Landlords had failed to ensure

that the house is wind and watertight and in all other respects reasonably fit for human habitation, that 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, the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order and that the house meets the tolerable standard.

3. The Tenants stated that there is considerable damp/mould in the Property which has not been fully fixed. This has been brought to the attention of the landlord multiple times. There is not correct insulation/ventilation in the Property, impacting multiple rooms.
4. The Tenants provided the Tribunal with copies of emails between them and the letting agents, including confirmation that Damp Doctors had, on 5 May 2023, cleaned the walls in the living room and bedrooms and painted over the affected areas with mould paint. They had also changed the old vents. On 19 December 2023, they made written representations in which they said that they had made the Landlord aware multiple times of the damp and mould, but little or no effort had been made to fix it and the blame had been put on them. Temporary fixes were carried out at the beginning of 2023, but they only involved covering it with mould paint. Mould was now seeping through that paint. The Tenants' youngest child suffers from a heart condition which makes this detrimental to his health, and the children cannot sleep in a bed in their bedroom because of the mould that had appeared on the carpet. The Landlord's wife had told them to scrub the bleach to get rid of it, but their own research has shown that that would be a massive health risk, putting themselves and their children in further danger,
5. On 28 December 2023, the Landlord provided written representations to the Tribunal. He attached a report from Damp Doctors, indicating that the damp issues were caused by internal atmospheric issue rather than any external issues and suggested a range of solutions to remove the damp. The Landlord elected to carry out the remedial actions which would have the biggest impact, namely reinstating the vents throughout, cleaning the damp and treating all affected areas with ant-mould paint. The view of the Landlord was that the Property is overcrowded, with 2 adults and 3 children in a two-bedroom flat. The problem of condensation was entirely due to a failure to ventilate the room(s) in

which damp washing is habitually left to dry. The Property had been in immaculate condition when it was let out.

6. The Landlord stated that the work was carried out on 5 May 2023 and he heard nothing further from the Tenants, directly or through the letting agency, until October. His wife visited the Property on 29 November 2023 to discuss the damp. She identified a large quantity of water on windowsills and questioned whether this was regularly cleaned. It appeared to be the result of condensation on the windows dripping down and pooling. In the main bedroom it was then dripping on to the carpet. Adding to the damp issues in that room. The Landlord's wife gave the Tenants 8 damp traps and explained how to use them. A dehumidifier was also suggested, as was using bleach to clean the bathroom ,w here there was mould on the tiles and silicone surrounding the bath.
7. In relation to the other heads of complaint, the Landlord said they lacked any specification. No evidence had been adduced of water ingress. The Landlord concluded that the complaint was vexatious in response to ongoing proceedings to terminate the tenancy on the ground that the Landlord requires to sell the Property.

The Inspection

8. The Tribunal inspected the Property on the morning of 23 January 2024. The Tenant, Mrs McFarland, was present. The Landlords were not present or represented. A Schedule of Photographs, together with a Table of Environmental Readings, taken at the Inspection, is attached to and forms part of this Decision.

The Hearing

9. The Inspection was followed by a Hearing, held at George House, 126 George Street, Edinburgh. The Tenants were not present or represented, but the Landlord attended.
10. The Tribunal Members told the Landlord that they had found evidence of active condensation, indicating that the surface temperature falls below dew point, in most of the rooms, around the coldest areas, such as windows and external walls. The main problems are in the living room and the main bedroom. There were also affected areas around air vents and on the ceilings, where there may be gaps in the insulation material in the roof space above.
11. The Tribunal noted that some of the work recommended by Damp Doctors had been carried out, but that no mechanical fans have been

installed in the bathroom or kitchen. The Landlord said that he had not installed fans there as these were the rooms least affected and he did not think they would have an impact on the condition of the living room and bedrooms. He added that the Tenants had not told him that the damp had returned and he had only become aware of it when he received a letter from the Council in October 2023. He did not know what more he could do, other than to ask Damp Doctors to go back, treat the mould and out in extractor fans. The Tenants, he said, should do more to mop up the water on the windowsills.

Reasons for Decision

12. The Tribunal was satisfied that the issues in the Property are caused by condensation, rather than by water ingress from outside. There may be thermal deficiencies at the joints of the joists or between lengths of insulation material in the roof space above.

The Tribunal was unable to make a finding that the damp and mould issues in the Property were the result of any failure on the part of the Landlord. They appeared to be caused by the Tenants' use of the Property and a failure by them to ensure it is adequately heated and ventilated, especially if they are drying clothes. The Tenants should do more to mop up condensation and in particular the water that accumulates on the windowsills, to avoid aggravating the problem and should fully open all the windows for a few minutes each day.

13. The Tribunal would recommend that Damp Doctors reinspect the Property and complete any further recommended remedial works.
14. The Tribunal found no evidence of overcrowding.
15. No evidence was provided to the Tribunal in relation to complaints regarding the structure and exterior of the house (including drains, gutters and external pipes), the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water, any fixtures, fittings and appliances provided by the landlord under the tenancy, or that the house does not meet the tolerable standard, so the Tribunal did not consider these matters further.
16. The Tribunal's Decision was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

G Clark

Signed

Date: 21 February 2024
George Clark (Legal Member/Chairman)



**26F Forrester Park Loan, Edinburgh
EH12 9AG
“the Property”/ “the House”)**

Chamber Reference: FTS/HPC/RP/23/3479

SCHEDULE OF PHOTOGRAPHS



1 Front Elevation of Tenement.



2 Mould growth within Living Room.



3 Water staining to timber sill (Living Room).



4 Mould growth below Living Room window.



5 Mould growth at gasket seals of window (Living Room).



6 Basic thermal imaging showing temperature fluctuations.



7 Mould growth within Bedroom 2.



8 Mould growth within Bedroom 2.



9 Mould growth within Bedroom 2.



10 Bedroom 1.



11 Bathroom.



12 Mould within Bathroom over external wall.



13 Condensation droplets at window frame.



14 Mould to bathroom sealant of bath.



15 Kitchen.



16 Mould growth at external wall to ceiling junction within Kitchen.



17 Active condensation.

Environmental readings recorded during the Tribunal inspection included the following:

	Temperature °C Matrix	Relative Humidity % Matrix	Vapour Pressure Excess kPa Matrix	Internal Air Quality Score Matrix
Score 1 - Inadequate	<15 or >24	<20 or >80	>1.0	≤/6
Score 2 - Poor	≥/15-<16 or >23-24	≥/20-30 or >65-80	0.5-1.0	7-8
Score 3 - Fair	≥/16-<17 or >22-23	>30-40 or >60-65	0.4-0.5	9-10
Score 4 - Good	≥/17-<18 or >21-22	>50-60	0.3-0.4	11-12
Score 5 - Excellent	18-21	>40-50	≤/0.3	13 & above
PROPERTY	16.5°C ●	70.2% ●	0.47 kPa ●	8 ●

There was found to be a poor Relative Humidity (70.2%) whilst the ambient temperature was measured at 16.5°C. By increasing ambient temperature, Relative Humidity would fall to a much better value whilst the increase in ambient temperature would also influence surface temperatures and condensation risks.

Ambient Internal Relative Humidity
%

Constant Temperature °C

15.0°C	77.3%
16.0°C	72.5%
17.0°C	68.0%
18.0°C	63.8%
19.0°C	60.0%
20.0°C	56.4%
21.0°C	53.0%
22.0°C	49.8%
23.0°C	46.9%
24.0°C	44.2%