

# 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(1)**

**Chamber Ref: FTS/HPC/RP/17/0400**

**Title no: AYR 34841**

**41D Glebe Road, Kilmarnock, KA1 3DJ ("The Property")**

**The Parties: -**

**David Hunter, 41D Glebe Road, Kilmarnock, KA1 3DJ ("the Tenant")**

**Robert Bould, Meikle Carleith, Galston, KA4 8NW ("the Landlord")**

Whereas in terms of their decision dated 23 January 2018 the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and that the Landlord had failed to ensure that the property meets the repairing standard with reference to the following provisions of Section 13 of the Act, as amended: -

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation, and
- (b) 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 Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the property concerned 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 timber damp specialist and building contractor to prepare a detailed survey of the property, with specific reference to the rear facing accommodation, to identify the cause and full extent of the dampness, damp staining and any remedial action. The report should include both the internal and external fabric of the building, specifically around the affected areas. Thereafter to carry out all recommended repairs to remedy the dampness and any associated defects, and any resultant decoration made

good.

(2) To repair the defective bathroom window, or to replace the window.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of six weeks from 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 typewritten on this and the preceding page are executed by Josephine Bonnar, Solicitor, Legal Member and Chair of the Tribunal at Motherwell on 23 January 2018 before this witness: -

J Bonnar

Witness

Gerard Bonnar \_\_\_\_\_ Name in full

1 Carlton Place

Glasgow

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

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

**Chamber Ref: FTS/HPC/RP/17/0400**

**Title no: AYR 34841**

**41D Glebe Road, Kilmarnock, KA1 3DJ ("The Property")**

**The Parties: -**

**David Hunter, 41D Glebe Road, Kilmarnock, KA1 3DJ (" the Tenant" )**

**Robert Bould, Meikle Carleith, Galston, KA4 8NW ("the Landlord")**

### **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 had failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

**The Tribunal comprised: -**

**Mrs Josephine Bonnar, Legal Member**

**Mr Donald Wooley, Ordinary Member**

## Background

1. By application received on 30 October 2017 the Tenant applied to the First-tier Tribunal for Scotland (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 Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Tenant stated that the Landlord had 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 (iii) Any fixtures, fittings and appliances supplied by the Landlord under the tenancy are in a reasonable state of repair and in proper working order. Specifically, the Tenant stated that there is dampness in the bedroom, that the windows are not watertight, that the washing machine is broken and that there is no ventilation in the bathroom or kitchen.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 22 November 2017. The parties were notified that an inspection and hearing would take place on 12 January 2017.
4. Following service of the Notice of Referral the Tenant lodged a bundle of documents. The Landlord lodged detailed written representations and a bundle of documents. Both parties confirmed that they would attend the hearing.
5. Prior to the inspection and hearing the Tenant requested a change of time, due to work commitments. The Landlord's agent opposed the request. The Tenant subsequently confirmed that access to the property could be provided by his partner and uncle. The Tribunal therefore refused the request for a change of time.
6. The Tribunal inspected the property on the morning of 12 January 2018. The Tenant was present, together with his partner Shannon Cooper. The Landlord was also present accompanied by his wife, Jane Bould. The letting agent Tim Williamson was also present, accompanied by another member of staff from Key Lets, Maxine Roberts.

7. Following the inspection of the property the Tribunal held a hearing at North West Kilmarnock Area Centre, Western Road, Kilmarnock. The Tenant attended, accompanied by Shannon Cooper and his uncle, Brian Hunter. The Tenant confirmed that both were attending as witnesses. The Landlord also attended, accompanied by Jane Bould, Tim Williamson and Maxine Roberts. It was confirmed that Mr Williamson would take the lead in terms of evidence being given but that additional evidence would also be provided by Mr Bould and possibly Mrs Bould. Two additional witnesses also attended with the Landlord – Euan Hart and Kenneth McAlpine.

### **The Inspection**

8. At the time of the inspection it was cold and dry with little wind. The Tribunal inspected the property which is a first-floor self-contained purpose built flat, estimated to be in the region of 120 years in age, within a two storey tenement comprising four individual flats all with shared common close and or stair access. The property is of traditional construction with sandstone and brick outer walls under a pitched roof clad externally with slates. The accommodation, located entirely on the first floor, comprises, entrance hall, living-room, front bedroom, rear bedroom, kitchen and bathroom. The kitchen and bathroom are separated by a small non-ventilated lobby. There is gas central heating and the property has the benefit of PVC clad double-glazed fittings estimated to be in excess of 20 years in age. There is within the living-room a bay window in three sections. The windows are capable of being opened although there are no functioning safety catches. The central section of the bay window displays evidence of minor condensation between the panes suggesting a defect in the “seal”. Around the base of all three windows there was evidence of historic damp staining, dry at time of inspection, specifically affecting the sealant around the sills. There was no sign of water ingress. The windows do not incorporate trickle vents and the only means of ventilating the room is by the top hung window hoppers.
9. The windows were tested to determine the presence or otherwise of draughts. None were noted nor were there any obvious gaps surrounding the window frame or operating mechanism. The window at the front bedroom is of similar construction and design to the side panels at the bay window of the living room. There are, as a result of its age, no trickle vents and ventilation is provided to the room by the top hung double glazed hopper which, like the living-room, has no safety catch. Historic damp staining at the base of the window similar to that identified in the living-room was evident.

There was no sign of penetrating damp. The window was tested for the presence of draughts. None were evident and there were no noticeable gaps surrounding the frame or working mechanism. Staining was evident on the outer wall of the bathroom, specifically around exposed plumbing, the cistern and the wc. This wall is of brick construction with a lathe and plaster internal lining. Readings were taken and identified a moisture content of between 25% and 30%. Ventilation is provided to the bathroom by a top hung double glazed window hopper. There are no trickle vents. The handle of the hopper is broken and there are no other means of ventilation within the bathroom. In the rear bedroom, significant staining was evident at the external wall and internal party wall with the adjoining property. The wall paper was, in places, no longer secured to the wall plaster. Moisture readings taken on both of the affected walls identified a relatively low moisture content, at the upper levels. The moisture content at the lower levels and, in particular, on the outer wall increased significantly when tested, to 50% - 60%.

10. Externally there is evidence of badly weathered and deteriorating brickwork at the rear wall with surrounding areas of defective and missing pointing. This is particularly evident around the rear bedroom window. The kitchen and bathroom are separated by a small non-ventilated lobby. While there is no direct natural ventilation to the kitchen, mechanical ventilation is provided by an extractor fan/hood and associated trunking which extends into the attic. No access was gained to the attic and the Tribunal could not confirm that, within the roof void, the extractor fan is ducted either through the roof or to an external wall. The extractor fan mechanism was tested and established to be functional. There is at the kitchen ceiling what appears to be a ventilator cover. There was however no functioning operating mechanism and this ventilator appears to be redundant. The Tenant confirmed to the Tribunal that the washing machine situated within the kitchen has recently been replaced by the Landlord and is in working order. A schedule of photographs taken at the inspection is attached to this decision.

## **The Hearing**

11. At the hearing the Tribunal first heard evidence from the Tenant, Shannon Cooper and Brian Hunter. Thereafter, the Tribunal heard evidence from Mr Williamson, Mr McAlpine, Mr Hart and, to a limited extent, the Landlord. Before any evidence was heard Mr Williamson indicated that he had not been notified that Brian Hunter would be attending, and that he wished to object to him giving evidence.

Following discussion, he withdrew his objection. During the hearing the Tenant indicated that he did not think that he had been sent a copy of the Landlords bundle of documents. The hearing was adjourned for a few minutes for investigation. It was established that the documents had been sent to the Tenant. He had not brought the documents with him to the hearing but confirmed that he was happy for the hearing to proceed.

12. The Tenant started by advising the Tribunal that he has been the tenant of the property since May 2013. He has recently been served with a notice to quit and intends to vacate the property over the next few days. He confirmed that he lives at the property alone. He stated that he has reported the repairs issues in his application, by telephone calls to the letting agent, on various occasions over the last 2 years. He stated that the first report was in February 2016, by telephone. He complained about dampness in the property. He also brought the matter to the agent's attention when the property was inspected, also in February 2016. He stated that he was told to keep an eye on it and wash off any mould. He was also told to heat the property more. Despite following this advice, the problem got worse. He confirmed also problems with the bathroom window were also mentioned in the phone call and both the draughts and the broken handle were pointed out during the inspection in February 2016. The problems with the living room and bedroom windows were reported during the inspection which took place in February 2017. He did not report any of these issues in writing until a he sent a detailed email to the letting agent on 23 October 2017. In this he also complained about the broken washing machine. He referred the Tribunal to a letter from Elaine Cavanagh, Environmental Health Officer, dated 30 October 2017. It was sent to the Landlord following her visit to the property and mentions penetrating damp, a defective window in the bathroom, the lack of trickle vents and the lack of ventilation in the bathroom and kitchen Mr Hunter advised the Tribunal that the bathroom has no extractor fan and, although he does open the window, the room suffers badly from condensation. The kitchen has no window and only a cooker extractor which leads up into the roof space. There is an internal window in the kitchen which is affected by condensation when he is cooking. The cooker extractor does work, and he uses it. Mr Hunter advised the Tribunal that the letting agents carry out property inspections at least twice a year, four times in 2017. He has always been present during the inspections. He further advised that since he lodged his application, the letting agent has been more responsive to his complaints. The washing machine was replaced, the gas inspection carried out, Mr McAlpine has been out to inspect and Rowallan Specialist Surveys instructed to do a survey in relation to dampness. In response to questions from the Tribunal Mr Hunter stated that he has always

been cooperative with the letting agent in relation to access, until early December 2017. At that point he decided that he had given them every opportunity to attend to matters and did not see why he should allow any more access. In any event, the covering letter with his notice to quit, and lodged by him with the Tribunal, clearly states that work in relation to the damp in the bedroom and condensation in the bathroom was to be dealt with after he had vacated the property. He confirmed that he was contacted by Mr Williamson and Mr Hart about the bathroom window being replaced but refused to provide access for this. Mr Hunter stated that, although it was not evident at the inspection, the windows are draughty during windy weather. Furthermore, the lack of safety catches on the windows can be problematic. Although he does not think this issue was ever specifically reported, he believes that the letting agent must have been aware of it. He pointed out that Euan Hart applied sealant to the bathroom window in June 2017 and should have noticed at that time. He concluded by saying that he has fulfilled his duties, as tenant, by reporting the repairs issues. He also advised the Tribunal that another resident in the block has confirmed to him that the block is affected by dampness, not condensation.

13. Miss Cooper advised the Tribunal that she was present at all the property inspections which took place during 2017. She thinks these occurred in February, April or May, the summer, September and December. She stated that Mr Williamson carried out one of these, in May 2017, and she recalls that the dampness was specifically discussed. He took photographs. She thinks that the bathroom handle was also mentioned. Mr Brian Hunter advised the Tribunal that he is a builder. He said that he took damp meter readings at the property in November 2017 and that there were high readings in the bedroom, in the corner. He also noticed, from a visual inspection of the outside, that there is work required to the external wall which seemed to him to be the source of the dampness.
14. Mr Williamson had lodged detailed written representations, and these were referred to when he was giving evidence. He started by referring to the legislation, and, in particular, sections 13 and 14 of the 2006 Act, stating that the evidence would not support a finding that the Landlord had failed in his duties in terms of the Act. He advised that his agency had been managing the property since 2004. The agency has a procedure in place for dealing with maintenance issues. All reports are recorded and acted upon. By way of example, Mr Williamson referred to a section of his documents bundle, marked file 5. This comprises an email from an employee of the letting agent to the Landlord, dated 16 February 2016. The email advises that an inspection had been carried out at the property and issues noted. Two of these issues are described as



follows; "In the bathroom, there is dampness and mould occurred by the window, which we have attached photos of" and "The main bedroom is in reasonable condition, apart from the window area and wall surrounding window is damp with signs of mould also. Photographs also attached". He then referred to the reply received from the Landlord, on the same date. The reply recommends that the Tenant be advised to "clean off the damp and maybe open the windows more often" and further states "in my experience the damp is usually caused by lack of ventilation".

15. Mr Williamson then referred the Tribunal to a document headed "Inspection Sheet" 11 February 2016, also within file 5. This is a single sheet of paper attached to 2 pages of photographs, signed by Kenneth McAlpine. Mr McAlpine, present at the hearing as a witness, confirmed that this was his report following upon an inspection at the property. In the report he describes the bathroom as being in "reasonable condition apart from the window area, photographs attached" and the main bedroom as being in "reasonable condition apart from window area and wall next to window, photographs attached" The report concludes with the statement "Water around the bathroom and bedroom window area would appear to be caused by condensation". The photographs are of the bathroom window and area next to the bedroom wall, showing marks on same. There is no reference in the report to the bathroom window handle and Mr McAlpine advised that he has no recollection of this being mentioned by the Tenant. He then referred the Tribunal to a letter dated 20 February 2017, on Key Lets letterhead, addressed to the Landlord. He advised that this letter is his inspection report following an inspection the previous day. He states in the letter that "The flat is much the same as last year. The couple of stains on the back bedroom wall have not changed". Later in the report he states "I have pointed out to him that the detector will need to be replaced and to keep an eye on the back wall in case any further marks appear. I pointed out to him the stains can be washed off with a mild bleach solution or he could buy something from the shops for it. He will let us know if it gets worse and I suggested he puts the heating up and ventilates the flat more". In response to questions from the Tribunal Mr McAlpine confirmed that, he has no recollection of the bathroom window handle being mentioned during this inspection either and that and would not have tried to open the window unless the Tenant had mentioned it. Mr McAlpine confirmed the Tribunal that he is employed by letting agents to carry out property inspections on their behalf. He has no relevant professional qualifications or building trade experience. He explained that his use of the word "reasonable" to describe the condition of the room was based on the categories stipulated by the letting agent, and, in his opinion, he considered the room to be "reasonable" rather than

“poor”, which would have been the next alternative. He confirmed also that his role in relation to properties is solely to inspect, take photographs and report back.

16. Mr Williamson then resumed his evidence and confirmed, in response to questions from the Tribunal, that neither of Mr McAlpine’s reports in 2016 or 2017 resulted in further investigations being carried out into the dampness or condensation. Furthermore, no damp meter readings were taken. However, he was satisfied from the reports and his own inspection in May 2017, that the issue was condensation, not penetrating damp. Until recently, the paper was not peeling from the wall, and that is something he would expect to see in a property affected by penetrating damp. He also stated that the walls felt dry to the touch during the inspections by Mr McAlpine and his own visit and advised that he has considerable experience of managing properties and dealing with such issues. It was only when the Landlord received the letter from Environmental services, in October 2017, that he became aware that the problem might be more than just condensation. This led to the instruction of Rowallan Specialist Surveys. Mr Williamson acknowledged that damp meter readings taken at the property during the Tribunal’s inspection of the property indicated high levels of damp. He also accepted that the Rowallan survey report states that “condensation would appear to be being aggravated by a build up of debris behind wall linings allowing moisture to bridge from external masonry onto internal surfaces. Externally, some defective pointing and spalling brickwork was noted, and remedial works would be prudent”. However, his interpretation of the report as a whole, is that the problem is predominantly condensation. He advised that the Landlord’s intention is to instruct Rowallan to carry out the recommended work.
17. Mr Williamson advised that the letting agents have acted upon all complaints from Mr Hunter during his tenancy. He referred to his written representations in which he lists the reports which he says have been received from Mr Hunter during his occupation of the property. He explained that these were recorded on their maintenance log. He stated that no other reports were received from the Tenant. The Tribunal noted that the list does not include any reference to dampness, broken window handle or ventilation. The only problem with windows is noted as a complaint about a leak from the bathroom window, in March 2017. Mr Williamson stated that as the other matters had not been reported, no breach of section 14 of the Act is established. When asked about the window leak, Mr Williamson confirmed that Mr Hart could provide evidence in relation to that matter. Mr Hart advised the Tribunal that he is a trained joiner and has also had some training in relation to dealing with damp. He is employed by Key lets to carry out maintenance at properties

managed by them. He also advised that he was at the property in February 2017 and was asked about the condensation. He provided some guidance, recommending the frequent opening of the window. He thought the marks on the walls were old staining. He advised that the complaint about the window related to water coming through the external mastic. He attended to this, by re-sealing the window. He attended at the property in April 2017 for this purpose. He recalls that Mr Hunter was asleep on his arrival. The window was in working order at the time, the handle not broken, although perhaps a bit loose. There was no complaint about the handle from Mr Hunter. In November 2017 he was asked by Key Lets to fit a new window in the bathroom of the property. He contacted Mr Hunter about getting access for this, but Mr Hunter refused to provide access. He went back to the property recently to fit the new window, having been told that Mr Hunter would be vacating on the 9 January 2018. However, it was evident that Mr Hunter was still living there, as his van was outside. As a result, the window has not been replaced.

18. Mr Williamson then resumed his evidence. He advised the Tribunal that the replacement window was instructed following receipt of the letter from Elaine Cavanagh, the Environmental Services officer. In her letter she stated that the window in the bathroom is defective, as it has no trickle vents and the handle is broken. This was the first knowledge he had of the damage to the window. He pointed out that the installation of the windows predates the requirement to have trickle vents, which he stated was introduced in 2009. Nonetheless he had instructed the replacement of the window and Mr Hunter had not allowed it to be carried out. He advised the Tribunal that he had offered to let Mr Hunter vacate early, because of his evident dissatisfaction with the property, but that Mr Hunter had declined. In terms of the various complaints raised, he concluded by advising the Tribunal that the condensation/dampness was not reported by Mr Hunter, and when the letting agent became aware of same through property inspections it was been dealt with appropriately; the window fault was not reported by Mr Hunter and when it came to their knowledge was acted upon; that there is ventilation in the kitchen in the form of the cooker extractor hood; the bathroom does not require an extractor because it has a window and in any event the ventilation issues were not reported, but again only came to light in the letter from Ms Cavanagh. Since the letter from Mr Cavanagh and Mr Hunter's email of 23 October 2017, attempts have been made to address all issues, including an attempt to replace the bathroom window, but that Mr Hunter has not cooperated.

## Findings in Fact

19. The property is a two bedroom first-floor tenement flat in Kilmarnock. The Tenancy commenced in May 2013. The landlord has served a notice to quit but the tenant has not yet vacated the property.
20. The Landlord's letting agent has inspected the property twice a year since the start of the tenancy and 4 times during 2017.
21. The outer wall in the bathroom is stained and is affected by condensation.
22. The outer wall and internal party wall in the rear bedroom are badly stained and are affected by condensation and/or penetrating damp.
23. The external wall at the rear of the property is badly weathered, with damaged brickwork and defective pointing.
24. The handle on the bathroom window is broken.

## Reason for decision

25. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection.
26. **Dampness in the bathroom and bedroom.** The Applicant advised the Tribunal that he verbally reported this issue in February 2016, and on several further occasions. He did not put the complaint in writing until 23 October 2017. This is disputed by the Landlord's agent who states that no complaints were received, until the said email of 23 October 2017. The Tribunal notes, from the substantial bundle of documents provided by the Landlord, that the letting agents do appear to have a procedure in place for dealing with reported maintenance issues. Furthermore, the Tenant was vague about when reports were made and would perhaps have been better advised to put his complaints in writing. However, it was evident to the Tribunal that Mr Hunter takes the repairs issues very seriously and concluded that he probably did make calls to the letting agents and certainly raised concerns during the regular property inspections. In any event, the Landlord accepts that he has been aware of a condensation or dampness problem at the property since February 2016, when the issue was noted during a property inspection, although the precise nature and extent of same is in dispute. The Tribunal is therefore satisfied that it does not require to determine when and if the matter was properly reported by the

Tenant. The Landlord, having been alerted to the problem in February 2016, chose not to carry out investigations into the nature or cause of the stains on the wall until the Tenant himself arranged for an Environmental Health officer to inspect in October 2017. The letting agent then then instructed a survey. Rowallan have recommended a course of action and further investigation. The Tribunal is satisfied that both bathroom and main bedroom are affected by condensation and/or dampness and this requires to be fully investigated and remedial work carried out to eradicate same. The Tribunal therefore concludes that a breach of the repairing standard has been established in relation to this issue.

**27. Windows.** The Tribunal considered the condition of the windows at the inspection and the evidence of the parties at the hearing. The windows at the property were, except for the bathroom, found to be in working order. The central section of the bay window in the living room show signs of minor condensation between the panes. This suggests a defect in the seal but is not considered by the Tribunal to be of a sufficiently serious nature to impact on the enjoyment of the property or to amount to a breach of the repairing standard. There was no evidence of draughts at the windows and no obvious gaps surrounding the window frames or operating mechanisms. There are no trickle vents but that is to be expected, given the age of the windows. The Tribunal noted the absence of safety catches on the windows. However, the lack of safety catches is not part of the application before the Tribunal and accordingly the Tribunal makes no determination in relation to same. The Tribunal does however recommend that the Landlord consider having the windows checked and safety catches fitted. The Tribunal found the bathroom window handle to be defective. The Tenant states that this was verbally reported by him some time ago. The Landlord's position is that the first intimation of this issue was the email of 23 October 2017 and the letter from Environmental Services. Parties are agreed that the Landlord has attempted to replace the window but has not been given access to the property to do so. The Tribunal is satisfied that the broken handle does amount to a breach of the repairing standard and that the Landlord has known about it since at least the end of October 2017. No steps have been taken to compel the Tenant to provide access and the Landlord appears to have accepted his refusal and resolved to wait until the property is empty. In the circumstances the Tribunal is of the view that it is appropriate to make an order to repair or replace the window, noting that the Landlord has confirmed that he fully intends to do so when the property becomes vacant.

**28. Ventilation in bathroom and kitchen.** The Tribunal noted that the bathroom has no mechanical extraction, but that the window can be opened for ventilation. The kitchen is served by a functioning extractor fan/hood and associated trunking which extends into the attic. The Tribunal concluded that the Landlord may wish to investigate whether, within the roof void, the extractor fan is ducted through the roof or to an external wall, but from the information available at the hearing and inspection is satisfied that both rooms have adequate ventilation. The lack of ventilation in the lobby between the two rooms is of concern. This is not part of the application, but the Tribunal is of the view that the Landlord may wish to investigate and address the lack of ventilation in this area.

**29. Washing Machine.** The Tribunal was advised during the inspection and at the hearing that the Landlord has replaced the washing machine and the new machine is in working order. Accordingly, no breach of the repairing standard was established in relation to same.

**30.** The Tribunal accordingly took the view that the property fails to meet the repairing standard in relation to subsection 13(1)(a) and (b). The washing machine having been replaced, no breach of section 13(d) is established. The Tribunal is therefore required to make a repairing standard enforcement order in terms of subsections (a) and (b). The Tribunal concluded that it will require to make a Repairing Standard Enforcement Order in respect of the condensation/dampness in the bathroom and bedroom and the broken bathroom window.

## **Decision**

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

**32.** The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

**33.** 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.**

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.

**J Bonnar**

Signed...

..... 23 January 2018

Josephine Bonnar, Legal Member

Motherwell 23 January 2018

This is the schedule of photographs referred to  
in my decision of even date

J Bonnar

41D Glebe Road Kilmarnock

Schedule of Photographs taken at the inspection on 12<sup>th</sup> February 2018



**Photograph 1:-** Entrance & External View



**Photograph 2:-** Brickwork at rear bedroom window





**Photograph 3:-** Junction of rear/party walls back bedroom.



**Photograph 4:-** Junction of rear/party walls back bedroom.



**Photograph 5:-** Junction of rear/party walls back bedroom



**Photographs 6 & 7 :-** Back bedroom window



**Photographs 8&9 :-** Front bay window



**Photograph 10 & 11:-** Rear wall next to cistern



**Photograph 12:-** Rear wall of bathroom



**Photograph 13:-** Kitchen extractor fan/hood



**Photograph 14:-** "Redundant" kitchen vent