



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/3482

Re: Property at 2 Scotswood Terrace, Dundee, DD2 1PA (“the Property”)

Parties:

Ms Susan Rhodes, 16 Brompton Terrace, Perth, PH2 7DH (“the Applicant”)

Ms Tacko Daffe, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs H Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £3910 with interest on the sum of £3510 at the rate of 5%.

Background

1. This is a Rule 111 application received on 22nd September 2022 whereby the Applicant was seeking an order for payment in the sum of £3600 in respect of rent arrears arising from a private residential tenancy in respect of the Property which commenced on 5th August 2021. Rent was due in the sum of £900 per month. The Applicant representative lodged a copy of the tenancy agreement and a rent statement.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 28th February 2023. It was continued to a further CMD to allow service upon the Respondent, who had left the Property in December 2022.
3. By emails dated 19th April and 3rd May 2023, the Applicant representative made an application to amend the sum sought to £5638.50 in respect of rent arrears and £2800 in respect of works required to the Property.

4. By email dated 3rd May 2023, the Respondent lodged written representations and productions (56 pages).
5. By email dated 9th May 2023, the Applicant representative lodged photographs taken at the end of the tenancy (5 pages).
6. By email dated 9th May 2023, the Respondent requested permission to lodge video evidence.
7. A CMD took place by telephone conference on 10th May 2023. The Applicant was not in attendance and was represented by Mr Paul Letley, Letting Agent. The Respondent was in attendance. The application was amended in terms of the Applicant's application for amendment. A further CMD was scheduled to allow both parties to lodge further documentation.
8. By email dated 5th June 2023, further representations and productions were lodged by the Applicant's representative including an inventory report dated 23rd July 2021 (17 pages), a check-out report dated 23rd July 2021 (17 pages), contractor invoices, and two files of photographs (4 pages and 13 pages).
9. A CMD took place by telephone conference on 8th June 2023. Both parties were in attendance. The Applicant was represented by Mr Letley. The Respondent was represented by Ms Rebecca Falconer, Dundee Law Centre. Mr Letley explained that, as set out in the recent representations, the Applicant was seeking the sum of £1,136.28 for garden work and cleaning of the Property, as the other works previously referred to were carried out on an informal basis. The tenancy deposit has been applied to this sum, leaving a balance of £236.28. Vouching has been lodged in respect of the sums claimed. The tenancy deposit had previously been deducted from the rent arrears. The sum due in rent arrears with the tenancy deposit reapplied was £6538.50. The CMD was continued to an evidential hearing.
10. On 21st June 2023, the Applicant's representative lodged further representations and productions (29 pages).
11. On 26th June 2023, the Respondent's representative lodged further representations and productions (44 pages).
12. On 7th July 2023, the Respondent's representative lodged a further production number 6.

The Hearing

13. A hearing took place by telephone conference on 29th September 2023. Both parties were in attendance. The Applicant was represented by Mr Letley. The Respondent was represented by Mr Kenneth Marshall, Solicitor.

Preliminary Issues

14.

Format of hearing

The Tribunal noted that a request for an in-person hearing by the Applicant's representative had been made within an email sending written representations. The request had not been picked up earlier. The Applicant confirmed they were content to proceed by telephone conference.

Video evidence

All present confirmed they had watched the videos submitted by the Respondent.

Procedure

Mr Letley confirmed he would be giving evidence on behalf of the letting agent, as well as representing the Applicant.

The Applicant's position

Evidence of Mr Letley

15. The witness said the Respondent breached the tenancy agreement by withholding rent, failing to maintain the Property, and failing to rectify issues that arose. The Applicant has a record of calls and work orders for works carried out. There is no invoice for plumbing works on 21st September 2022 as the heating was found to be working when the plumber attended. It was excessive for the Respondent to withhold 100% of the rent, as the Respondent was in residence for the whole period of the tenancy.
16. Under cross-examination, the witness said the Respondent had previously rented another property through the same letting agent for around 14 months with no issues. Consequently, no reference would have been required for this tenancy.
17. On 21st July 2021, the letting agent had agreed to cut back trees in the garden of the Property. The trees were cut back, despite the Respondent saying they were not. It is a busy garden and the trees grow quickly. The Respondent may also have trimmed them as part of the ongoing maintenance of the garden. The witness was not involved in this matter. He had watched the video which the Respondent said was taken on the day of moving into the Property. He noted it was not dated and was only 13 seconds long. It shows lots of shrubs, and the path looks tidy. The garden probably looks similar now. The video said to be taken at the end of the tenancy shows the garden has been weeded. It is not dated. It was the responsibility of the Respondent to maintain the garden. The Respondent ought to have approached the letting agent

under the correct procedure to ensure any work required was carried out. The garden was tidied prior to the commencement of the tenancy to a degree that was acceptable to the Applicant. It is a wild garden that will never look tidy.

18. The witness said if the letting agent had been told that the Property was not clean at the start of the tenancy, they would have rectified this. They do not present dirty properties. It is possible it was not to the standard the Respondent expected, but it was clean in terms of the inventory. The letting agent would not have phone records to show whether the Respondent had contacted them about this. They rely on the inventory.
19. The heating system had a problem in June 2022 where it would not turn off. The letting agent arranged for it to be repaired. The Respondent bought a fridge, which she left and it had to be disposed of. The letting agent was aware of wet rot on the window sills and eaves, but not that the windows were rotten and screwed down. It is a large old building which was reflected in the low rent. The issue of windows being nailed down was never raised with the letting agent. Only the corner of the sills was rotten. A contractor was instructed to release the windows on 17th September 2020 and they were all opening in December 2020. Asked whether the Respondent had replied to the email of 6th June 2022, the witness said there had been a telephone discussion, and possibly some text messages.
20. Although a Notice to Leave had been served, that was on the grounds of unpaid rent. The Applicant relied upon the rent. From the date of moving in to 6th June 2022, the Respondent had missed one rent payment. She had emailed on 17th May 2022 to state she was withholding rent because she had not been reimbursed for works to the garden. The correct procedure for withholding rent was not followed. Asked by the Tribunal if a Notice to Leave had been served after one missed rent payment, the witness said the Applicant may have thought the Respondent was not the right tenant for the Property. The witness said the Respondent did not pay rent until 19th December 2022 and no explanation was given. The witness had visited the Respondent in November 2022 and she had Covid. He asked her to pay something as a gesture of goodwill, but she refused, saying she wished to take advice. There had been some text messages and the Respondent had said she would wait for the Tribunal. The letting agent thought she was just avoiding paying rent.
21. The witness said a work order was raised on 23rd September 2022 following the Respondent's complaint the previous day that the heating system was not working. The heating engineer attended again the following month, and the Respondent had no credit in her pre-payment electric metre. The witness denied knowing anything about a complaint in October 2022, when an engineer who had been called out did not turn up. The witness said the plumber used by the letting agent kept records of calls, but these had not been lodged.

22. Responding to questions from the Tribunal, the witness said the charge for cleaning was not unusual. Two cleaners would be required for a house of that size, and items had to be removed. The previous tenant left in July 2021. There was no formal check out report carried out, as photographs had been taken. Photographs of the garden had been taken in November 2022.

Evidence of the Applicant

23. The Applicant said the state of the windows was not relevant. The sum of £6538.50 is outstanding in respect of rent arrears and late payment charges. The total cost in relation to cleaning, gardening and removal of belongings is £1136.28. There was no cold, hard evidence that the repairing standard had been breached.
24. The Respondent claimed to have been without heating and hot water for four months, but it was three months from September to December 2022. No evidence had been lodged by the Respondent to justify the claim that she could not stay in the Property. The heating was in working condition at the start of the tenancy. The letting agent immediately responded to reports of faults, sometimes to the chagrin of the Applicant, for instance when reports were made regarding a light bulb. Where no fault was found, there was no invoice. In November 2022, the Respondent reported an issue with the main fuse box and the electrician attended the following day, only to find the Respondent had run out of credit. The Respondent never pays her utility bills. The Respondent was clearly living in the Property. The heating was working.
25. As for the heating being on constantly, there is a single plug in the hall, and the heating could be turned off. The Respondent did not report any issues after 23rd September. The Respondent did not make a repairing standard application. The Respondent withheld rent in breach of the tenancy agreement. The Notice to Leave was served because the Applicant was in ill-health and keen to move back into the Property. The Applicant continues to be unable to move in due to the issues caused by the Respondent. The Respondent is not entitled to an abatement.
26. The Applicant said there was no year on the texts lodged regarding the payments made by the Respondent for the garden work. There was no agreement between the parties that the Respondent could incur costs. It was the Respondent's responsibility in terms of the tenancy agreement to look after the garden.
27. The Applicant said the Property was decorated before it was let out. She would never have agreed to the Respondent decorating the Property, particularly in garish colours. The tenancy agreement states that prior written approval is needed. No approval was given. Production 4 mentions decorating costs relating to another property. There is no evidence the Respondent incurred costs at the start of the tenancy. The Property had been immaculate at the start of the tenancy. The Respondent left food and belongings everywhere.

28. Under cross-examination, the Applicant accepted there had been an issue with mice droppings. She said the Property was old, and this was reflected in the level of rent. She was not aware of burn marks on the wall, and refuted that she had given the Respondent permission to decorate the Property.
29. Asked whether the Respondent had paid for her electricity, the Applicant said she had paid nothing while in the Property. The Applicant said she was not aware there was a top-up meter.
30. The Applicant accepted some windows were difficult to open. She said this was irrelevant. It was a very low rent and the Respondent knew about the issues with the windows.
31. The Applicant said the garden had been done by a nursery at great expense. There are mature shrubs and trees, and a lawn. Someone had attended to the garden before the tenancy commenced.

Evidence of the Respondent

32. The Respondent confirmed she had been a previous tenant of the letting agent for 14 or 15 months. She had to leave the previous property during Covid. When she viewed the Property in July 2021, she was concerned about the garden, so she asked the letting agent if they were planning to carry out any work. The Property was spacious. There was nothing wrong with it, except it was old. Her daughter and son were moving in with her. Referred to an email dated 3rd August 2021 (p 30/44), the Respondent said she mentioned cleaning the Property in advance because there were a lot of items in the cupboards, such as boxes of clothes, and old appliances. She was told these items would be removed, but they were not. The Property was part-furnished. She had her own belongings. She took some items out of the Property and they were collected. A fridge was left in the garden and removed six weeks after the tenancy commenced. At the end of the tenancy, a sofa was removed, as there was a big hole under it. A couple of mice came out of the hole. The Respondent put the sofa in the garden and it was uplifted by the council.
33. The Respondent said she hired a cleaning company to clean the Property at the start of the tenancy. Two cleaners came for five hours and the Respondent paid around £160 in cash. The Respondent did not ask for a receipt. The Property was not obviously dirty, but it was an old house and it smelled dusty. The units in the kitchen were smelly and had mice droppings and dirt. They had to be cleaned. The Respondent cleaned the wooden floors for her own peace of mind. One carpet was all right. The bathroom had to be cleaned. The walls were all right, but there was a burn mark in the hallway and another room. It looked as if there had been a fire or a burst light bulb. The Respondent mentioned these issues to the letting agent, but they said it was clean.

34. The Respondent said she asked about the update on the garden in the email of 3rd August because there had been previous emails and conversations about this. She had been told the trees were to be trimmed down. She had asked if the letting agent would do something to bring the garden to a standard that she could maintain. Nothing was done by the letting agent, and the Respondent had to spend two days cutting the garden back with shears to make a path for the removal company. They used the back entrance for much of the furniture. The Respondent said she made a video of the garden at the start of the tenancy to send to her daughter who was at university. The letting agent had said that the previous tenant did not use the garden. The Respondent tried several gardeners during the tenancy and most did not want to touch the garden. She got one gardener eventually. Production 6 (p5/5) showed correspondence with him, and sums paid to him on various dates, totalling £610. The gardener charged £20 per hour. He cut an ivy bush down. A neighbour was complaining about it. There had been prior neighbour issues with trees.
35. The Respondent said she paid at least £1000 to two men for gardening. Some of this work was maintenance work, but no work was done by the landlord at the start of the tenancy. The Respondent sent the videos to the letting agent and told them she had found a gardener. She wanted to show them that the work had been done. The letting agent said there was no response from the landlord, who the letting agent described as being very distant. The Respondent had hoped to be paid for the initial work in the garden.
36. The Respondent said she informed the letting agent on 17th May 2022 (p47/56) that she was withholding rent until she received money due for work carried out. She paid the rent the following month. (See p44/56) She informed the letting agent on 7th June 2022 (p44/56) that it was not just the garden that was a problem. She listed the problems for the letting agent. She was then served with a Notice to Leave.
37. Asked why she had not paid rent since 7th June 2022, the Respondent said she thought the Notice to Leave was retaliation by the landlord. There had been no response to her concerns. The letting agent was overlooking everything. The Respondent thought if she withheld the money, she could use it to rent elsewhere. She did not expect it to take so long to get another property. There were delays due to Covid, and then the council advised her to stay in the Property.
38. The Respondent said she paid £3000 in gas after moving in, so she had an electric pre-payment meter installed. It was very hard to keep the house warm and her daughter had to move out because it was too cold. The heating was always troublesome. A neighbour came and showed her how to reset the system. She managed for the first winter and the issues started the following year. The heating kept going during the summer. When it was cold, the Respondent spent most of the time in one room. She made the letting agent aware. Sometimes the engineer would contact her directly and sometimes

they cancelled scheduled visits or did not turn up. The engineer told her they could only do so much for the boiler. The boiler did not work from July to December 2022. The heating engineer called out in September 2022 did not attend, despite the Applicant's production (p2/29) showing that an engineer was asked to attend, and despite Mr Letley's evidence that there was an email from the engineer stating that he attended on 23rd September 2022. The Respondent said she used the heating with a timer.

39. There was no checkout procedure when the tenancy ended. It was her position that, although she did not go out of her way to clean it, she left the Property in a better state than it was when she moved in. Moving out was stressful for her. She left two rugs, a bin, a cardboard box, flowers, trophies, a white unit, and a black unit. Some of the furniture was in use when she returned to the Property in January 2023. It had not been thrown out. Some of the items shown in photographs from the end of the tenancy were there at the start of the tenancy, including a printer box, and cushions with no covers. The Respondent said she kept the Property clean, although it may have been messy.

40. Under cross-examination, the Respondent said she had read the tenancy agreement and knew she had the responsibility to maintain the garden as long as it was done before she moved in. The garden was not done prior to moving in. The Respondent had taken the letting agent's word in good faith, having had a tenancy from them before, and she did not keep receipts for the work carried out. There was a hole behind the washing machine, rather than the fridge. It caused cold air in the kitchen. Asked why she had taken the Property as it was, the Respondent said she hoped to make it her own home. She expected the Applicant to play her part. She had always been a good tenant, and the Applicant was not helpful in carrying out repairs. The Respondent said there was a trail of emails asking for work to be done.

41. The Respondent said the letting agent agreed that the Property required decorating. The Respondent had no intention of reclaiming the cost, but the Applicant was a rogue landlord, and the Respondent was forced to wait months for repairs. The Notice to Leave was served in retaliation. The Respondent said she had not realised there was no electricity in her meter until the engineer came out. It was an honest mistake. Asked whether contractors were lying about the position at the Property, the Respondent said she did not know.

42. In re-examination, the Respondent said she decorated the dining room, hallway and one bedroom wall.

Further procedure

43. At the close of evidence, the hearing was adjourned to another hearing for closing submissions.

44. On 29th September 2023, the Tribunal issued a Direction ordering parties to lodge written closing submissions.
45. By email dated 27th October 2023, the Applicant's representative lodged written closing submissions.
46. By email dated 1st November 2023, the Respondent's representative lodged written closing submissions.

The hearing

47. A hearing took place on 16th January 2024. The Applicant was in attendance and represented by Mr Gordon Wilson. The Respondent was not in attendance and was represented by Mr Kenneth Marshall.

Submissions for the Applicant

48. The Applicant's written submissions stated that the Applicant was due the sum of £5400 in unpaid rent, the tenancy deposit of £900 having been deducted from the rent arrears, late payment charges of £238.50 and costs of £1136.28. The Applicant's position was that the Respondent accepted by signing the tenancy agreement, with particular regard to clause 17, that the Property was clean at the start of the tenancy. The Applicant stated that the Respondent did not notify any problem with cleanliness until some months after she vacated the Property. There was no evidence to corroborate the Respondent's claim that she had paid cleaners. The Respondent's actions in allowing an infestation of mice in the Property and maggots in a fridge showed she had not complied with her contractual obligation. The Respondent agreed, and failed, to maintain the garden in terms of clause 30 of the tenancy agreement. The Applicant's costs are reasonable and a fair representation of her losses. The Respondent's claims to have notified issues with the heating and to have received no response was not correct. A contractor was instructed on 23rd September 2021 and he attended and dealt with the issue. The claim that the Respondent could not live in the Property due to low temperature and lack of heating was not accurate. The letting agent had attended the Property on two occasions in November 2021 and the Respondent was there. The heating was working manually at that time but the timers were not working properly. The Respondent ought to have reported issues with the repairing standard and discussed these with the Applicant, after which she could seek recourse from the Tribunal. The Respondent was not entitled to withhold rent. The period for which she is seeking an abatement, which should be refused, is three months, and not four months, as stated by the Respondent. The evidence of gardening costs submitted by the Respondent were in respect of April, November and December, with no mention of work carried out in August 2021. The email exchange regarding the trimming of trees suggests the handyman did attend in August 2021 and dealt with the matter. The Applicant had not agreed to contribute to any gardening costs, which were the responsibility of the Respondent. The Respondent's claim for contribution towards decorating works of £1305 was

not supported by evidence. Clause 28 of the tenancy agreement provides that the tenant agrees not to carry out any internal decoration without the prior written consent of the landlord. No such consent was sought or given. The sum of £540 included within the Respondent's claim referred to a different address. The claim should be denied.

49. Mr Wilson adopted the submissions lodged with the Tribunal. He said the submissions lodged by the Respondent differed from previous representations and the Respondent was now seeking a 50% abatement of rent from May to December 2022. The Respondent had not advanced her claim in respect of repairs in accordance with the contract and should not be entitled to an abatement, The Respondent's claims for costs for cleaning, gardening, and decorating were not well-founded.
50. Responding to questions from the Tribunal as to whether interest could be awarded on the sum claimed for damages, Mr Wilson accepted this would not be appropriate. Mr Wilson said the photographs in the inventory of 23rd July 2021 would have been taken between tenancies and before this tenancy commenced.
51. It was Mr Wilson's position that any previous tenancy of the Respondent's was irrelevant. It should be remembered that from August 2021 to April or May 2022, the Respondent was fine as a tenant, apart from the fact that she had decorated without permission. This was unknown at that time.

Submissions for the Respondent

52. The Respondent's written submissions stated that the heating system in the Property was not working from around May 2022. The Respondent had notified the letting agent that she was withholding rent. In her email of 22nd August 2021, she had set out the issues that required to be addressed. The Respondent had paid £1915 to have the house cleaned. Inconsistent evidence was given as to why a Notice to Leave was served. By email dated 8th November 2021, the Respondent enquired about her request for payment for painting the Property and other issues. She made it clear in her email dated 21st September 2022 that the boiler had not worked since the engineer's last visit. The hot water and central heating were not working. From May to December 2022, the gas supply was either not working as it was constantly on, or, from September 2022, not working at all. An abatement of 50% of the rent for that period should be awarded. Late payment charges should not be awarded to the Applicant. The Applicant's assertion that she had to pay to redecorate the Property and tidy the garden were made after the Respondent's submission of 26th June 2023. This casts doubt on the credibility of the Applicant regarding costs. The Respondent was liaising with the letting agent regarding decoration, cleanliness and the garden since August 2021 and this lends credibility to her position that she had to clean the house, decorate, and attend to the garden. The Property was left in a better state than the Respondent found it. The sum of £1915 in respect of necessary works to the Property should be deducted from any rent due to the Applicant.

53. Mr Marshall adopted the submissions lodged with the Tribunal. It was his position that it was unusual for interest to be added to outstanding rent, although this was provided for within the contract between the parties.
54. Mr Marshall said there is evidence to support the Respondent's position in the form of her oral evidence, emails and photographs.
55. The Respondent was entitled to exercise the remedies of withholding rent and seeking an abatement. The heating was on constantly from May to August 2022 but there is no vouching to support this. There is email correspondence showing the Respondent was not happy with the heating from September to December 2022. There is evidence of problems not being addressed. The decision of the Tribunal on abatement depends on the loss of convenience. Loss of heating can make a property much less enjoyable.
56. Mr Marshall said the claim for late payment fees was a penalty charge upon the Respondent and such fees may be considered unreasonable.
57. Responding to questions from the Tribunal regarding the claim within the Applicant's submissions that the Respondent had allowed the Property to become infested with mice and the fridge with maggots, Mr Marshall said the Respondent's evidence had been that she kept a clean house and had found the fridge infested with maggots. Mentions of garden waste to be collected had probably been waste from a gardener employed by the Respondent.
58. Mr Marshall said the fact that the Respondent had a previous tenancy with the same letting agent without any issues lends credibility to her evidence that she had real issues with the Property.

Findings in Fact and Law

- 59.
- i. The Applicant is the heritable proprietor of the Property.
 - ii. The Property was managed on behalf of the Applicant by Pavillion Properties ("the letting agent").
 - iii. In February 2021, there were problems with the heating system in the Property. The boiler was constantly on and the system was not turning off. A motorised valve was replaced. The letting agent was informed that the boiler required an upgrade as it was over 30 years old.
 - iv. On or around 21st July 2021, the letting agent requested a contractor to attend at the Property and remove items left in the kitchen by previous tenants and clean where required.

- v. On or around 23rd July 2021, a property inspection was carried out and a checkout inventory report was compiled on behalf of the Applicant.
- vi. Parties entered into a tenancy agreement in respect of the Property to commence on 5th August 2021 at a monthly rent of £900.
- vii. By agreement between the parties, trees in the garden of the Property were to be trimmed back by the Applicant before the tenancy commenced.
- viii. The trees were not trimmed back by the Applicant before the commencement of the tenancy.
- ix. The Respondent cleared the garden leading to the back door on or around 8th August 2021.
- x. The Property was not in an acceptable standard of cleanliness at the start of the tenancy.
- xi. There were mice droppings present in the Property at the commencement of the tenancy.
- xii. The Respondent was required to clean the Property at the commencement of the tenancy.
- xiii. On or around 9th August 2021, the letting agent requested a contractor to attend at the Property as the Respondent had reported bedroom and living room windows not opening.
- xiv. The Respondent requested repeatedly that items belonging to a previous tenant and a fridge be removed from the Property.
- xv. The removal of items from the Property by contractors was delayed despite repeated requests by the Respondent.
- xvi. The Respondent repeatedly asked that a branch be cut down due to it banging on her window. This was not attended to timeously.
- xvii. The Respondent made complaints in February and March 2022 to the letting agent that rocks had fallen down the chimney. Her complaint was not attended to timeously.
- xviii. On or around 26th April 2022, the letting agent requested a contractor to attend at the Property as the Respondent had reported the heating was off but the heaters were still hot.
- xix. On 17th May 2022, the Respondent informed the letting agent that she was withholding rent.

- xx. On 7th June 2022, the Respondent notified the letting agent that, in addition to the issue with the garden maintenance, there was a hole in the kitchen wall that caused the kitchen to be cold, increasing her energy bill, that there were ongoing boiler issues and the boiler kept going when turned off. The Respondent stated she was still waiting for a visit from an engineer after three cancellations.
- xxi. On 7th June 2022, the Respondent complained of the windows in the living room and main bedroom being rotten, and the kitchen cupboards being filled with droppings. The Respondent stated it took 5 hours for a private cleaning company to clean the Property at the start of the tenancy.
- xxii. On 7th June 2022, a Notice to Leave was served upon the Respondent.
- xxiii. In August 2022, a contractor attended the Property to repair the heating system.
- xxiv. By email dated 21st September 2022, the Respondent informed the letting agent that the gas and boiler had not worked in the Property since the last engineer visit.
- xxv. On or around 23rd September 2022, the letting agent asked a contractor to attend at the Property in respect of the hot water and heating, stating that the priority was medium.
- xxvi. On or around 17th November 2022, the Respondent reported an issue with the fuse box tripping in the Property. The letting agent asked an electrician to attend.
- xxvii. A bill from British Gas to the Respondent showed gas usage in the Property in the sum of £337.53 for the period between 2nd October 2022 and 1st January 2023.
- xxviii. The Respondent did not have full enjoyment of the Property due to the issues with the heating system from May to December 2022.
- xxix. The Respondent is entitled to an abatement of 30% of the rent for the period from May to December 2022.
- xxx. Rent lawfully due to the Applicant is outstanding.
- xxxi. The Applicant is entitled to recover rent lawfully due.

Reasons for Decision

Heating system

60. The Tribunal noted there were issues with the heating system before the tenancy commenced. It was mentioned in February 2021 that an upgrade to the boiler was required. The Tribunal found, on the balance of probabilities, that the Respondent reported issues with the heating system from late April 2022 onwards. These matters were not always attended to by the Applicant. On 7th June 2022, the Respondent stated in an email to the letting agent that she was waiting for someone to come and fix the heating. On 23rd September 2022, the Respondent informed the letting agent that three engineer visits had been cancelled. The letting agent's emails show that there was an issue with the timers on the heating system in November 2022. Although the Applicant lodged worksheets, there was no indication that the works raised were always carried out, and the evidence in other areas such as removal of rubbish and a fridge, gardening, issues with a tree branch, and concerns with the chimney indicated that often the work was not carried out despite a worksheet being compiled. It was not clear to the Tribunal why the Applicant did not lodge evidence from contractors in this regard, unless there was no such evidence available to be lodged.

61. The Respondent's evidence was that engineers had attended on occasion, but not on every occasion, and it was clear that the system did not work properly from around May 2022 to December 2022. No evidence was led to support the Respondent's assertion that she was unable to live in the Property due to the cold in the winter, and she was clearly living there when the letting agent called in November 2022. The gas bill for the Property also indicates that some gas was being used that winter. The Tribunal addresses the issue of abatement further below.

Cleaning of the Property

62. The Tribunal made no award to either party in respect of the costs of cleaning the Property. The Tribunal found, on the balance of probabilities, that the Property was not in an acceptable state of cleanliness at the start of the tenancy. The Tribunal took into account the Respondent's statement in her email of 3rd August 2021 that she wished to get a chance to clean the Property before moving in. The Tribunal considered that, on the face of it, the inventory photographs show the Property to be in an acceptable state on 23rd July 2021. However, the Tribunal accepted the Respondent's evidence that the kitchen cupboards had rodent droppings, and the Property required to be cleaned.

63. The Tribunal took into account an email of 21st July 2021, where the letting agent had emailed a contractor to attend at the Property and remove items left in the kitchen by previous tenants and clean where required. No evidence was provided that such cleaning had been carried out, and the fact that items

left by previous tenants were in the Property when the tenancy commenced, and that it took some months before they were removed, despite repeated requests by the Respondent, tends to suggest that no cleaning was carried out between 21st and 23rd July 2021. In reaching this view, the Tribunal had regard to the considerable length of time taken by contractors to attend to other issues within the Property as evidenced by the repeated requests of the Respondent to have issues attended to.

64. The Tribunal gave no credence to the submission of the Applicant, that, by signing the tenancy agreement and binding herself to keep the Property clean, the Respondent accepted that the Property was clean at the start of the tenancy.
65. Contrary to the position adopted by the Applicant that the Respondent did not notify the letting agent of her concerns about cleanliness in the Property until some time after the tenancy ended, it is clear that the Respondent complained of the mice droppings in an email of 22nd August 2021. Indeed, on 30th August 2021, the letting agent asked a contractor to attend in regard to the droppings in the kitchen cupboards. The Respondent also mentioned the issue of mice droppings in her email of 7th June 2022, when she also stated that it took a cleaning company 5 hours to clean the Property at the start of the tenancy.
66. The Tribunal made no award of cleaning costs to the Respondent because no vouching was lodged to support her claim, and, by her own admission, she did not go out of her way to clean the Property at the end of the tenancy. The Tribunal made no award in the Applicant's favour for the end of tenancy cleaning costs because it found that the Property was not of an acceptable standard in respect of cleanliness at the start of the tenancy, and there was insufficient evidence of the state of cleanliness of the Property at the end of the tenancy, as no proper check out report was compiled.
67. The Tribunal gave no credence to the assertions of the Applicant that the Respondent had allowed an infestation of mice or maggots. The Tribunal considered this to be a particularly disingenuous claim, given the foregoing evidence that the mice infestation was there at the start of the tenancy, and the maggots were found in a fridge which the Respondent had requested be removed, and which removal was delayed. The Tribunal noted that, when it was put to the Applicant in cross-examination that there was a problem with mice, she did not deny this, and stated it was an old property.

Removal of items

68. The Tribunal made an award of £400 in favour of the Applicant in respect of the costs of removing some of the Respondent's belongings at the end of the tenancy, cleaning windows and carpets. The Tribunal considered it unfortunate that no breakdown of the handyman's costs had been provided, despite an undertaking to do so. It was, therefore, impossible to ascertain how much the removal and disposal of items actually cost. The Tribunal took into account the undisputed evidence of the Respondent that some of the furniture

she left was in use in the Property in January 2023. The Tribunal decided that the sum of £400 would be a fair sum to award in this regard.

Gardening

69. The Tribunal made no award to either party in respect of the gardening costs. The Tribunal found that the garden was not in an acceptable state at the commencement of the tenancy and that this was accepted by the letting agent on behalf of the Applicant at the time, with agreement for a contractor to carry out works to trim back trees. The Tribunal considered on the balance of probabilities that the gardening works were not arranged and carried out on behalf of the Applicant. The email of 9th August 2021 to the letting agent from the Respondent indicates that she tried to get a gardener herself. The email of 22nd August 2021 to the letting agent indicates that the Respondent had carried out the work herself, and the trees had not been trimmed back. The Respondent's email to the letting agent of 11th November 2021 states that she had cut the bushes, and that the garden waste was still in the garden. The Tribunal found on the balance of probabilities that the Respondent carried out the works to the garden at the start of the tenancy, and that the letting agent agreed that their handyman would collect the garden waste, which was not done for several months. The Tribunal did not award any sum to the Respondent in respect of works carried out at the start of the tenancy, as no vouching was lodged, and the dated information lodged regarding gardening costs did not indicate that work was carried out in August 2021.
70. The Tribunal noted that in November 2021, the letting agent stated in an email to the Respondent that, with a property of this nature, it was the landlord's responsibility to keep on top of the garden area, unless the landlord was willing to supply appropriate tools to the Respondent or arrange a regular gardener. In May 2022, the letting agent referred to awaiting a response from the Applicant regarding the issue with garden maintenance. This suggests that discussions were ongoing with regard to departing from the clause in the tenancy agreement that the Respondent would be responsible for maintaining the garden. However, there was no indication or evidence that any agreement was reached in this regard, and the Tribunal found that the Respondent was responsible for maintaining the garden throughout the tenancy, which she did.
71. The Tribunal considered that any works that required to be carried out to the garden at the end of the tenancy were the responsibility of the Applicant, given that the garden had not been in an appropriate condition at the start of the tenancy. There was no evidence that the Respondent left it in a worse state than she found it.
72. The Tribunal did not give any weight to the undated video evidence lodged by the Respondent, as it was impossible to be certain when the videos were taken.

Decorating

73. No award was made to the Respondent in respect of the costs of decorating the Property. Although it was clear that, contrary to the Applicant's position that no permission had been sought for decorating, this matter had been raised by the Respondent with the letting agent, and, presumably by the letting agent with the Applicant. On 8th November 2021, the Respondent emailed the letting agent to ask whether there had been any joy about the requests for painting. The Tribunal accepted the evidence of the Respondent that the letting agent had agreed that the Property required decorating, however, no evidence that permission was given by the Applicant was lodged or led, and no vouching for costs was produced. The Tribunal also took into account the Respondent's evidence that she had no intention of reclaiming the cost of decorating at the time the work was carried out, which suggested it was her choice to carry out the work, rather than necessity.

Rent arrears

74. The Tribunal considered that the Respondent was justified in withholding rent due to the Applicant's failure to observe her repairing responsibilities in terms of the tenancy agreement. The evidence shows a long and lamentable history of failure to respond adequately to repairing concerns. The Tribunal noted that the letting agent commented by email that the Applicant was difficult, and that she failed to come back to the letting agent following complaints from the Respondent. The evidence shows that the Respondent had to repeatedly report issues in respect of the Property, including cleanliness, the removal of items and rubbish, signs of rodent infestation, garden issues, windows failing to open, rocks falling down the chimney, and problems with the heating system.

75. The Tribunal did not consider that the service of a Notice to Leave justified the withholding of rent, whatever the motive of the Applicant in serving that Notice. The Tribunal was unable to ascertain the ground of eviction on which the Notice was based, due to the conflicting evidence given by Mr Letley and the Applicant in this regard, but that is of no relevance. The Respondent stated she withheld rent after the Notice was served because she did not expect to be in the Property for long, and she could use the rental money for a new property. It did not appear to be her position in oral evidence that she continued to withhold rent in order to force the Applicant to comply with her obligations, but her emails subsequent to 17th May 2021 listing various issues suggested differently.

76. In considering the issue of abatement, the Tribunal considered that the Respondent did not have full enjoyment of the Property, particularly in respect of the problems with heating and hot water for the period from May to December 2022. The Tribunal also took into account the unchallenged evidence that there was a hole in the kitchen which caused the room to be cold. The Tribunal took into account that the heating could have been switched off completely when it was running constantly in the summer

months, so there would be no need for the Respondent to incur high heating costs at that time, although there would have been the inconvenience of not having hot water when the system was switched off. The Tribunal considered that the Respondent still had electricity and could have used electric heating during the winter months. It was also evident that some gas was used in the winter months. For these reasons, the Tribunal considered an abatement of 30% of the rent for that period to be appropriate.

77. The Tribunal considered that the evidence of a previous tenancy with no issues tended to suggest the Respondent was not a difficult tenant, but she found herself in a property with significant issues, with a letting agent who, for whatever reason, was unable to progress some repairs and other issues timeously, and a landlord who did not always respond or agree to repairs being carried out. The Tribunal noted the Respondent had to ask repeatedly that a branch be cut from a tree. Her requests began in October 2021 and the work does not appear to have been carried out for some time, if at all. There was a delay in attending to the issue of rocks falling down the chimney. The Respondent requested on several occasions from the start of the tenancy that a fridge, rubbish and garden waste be removed. The letting agent emails show the Applicant was not responding to concerns. It was unfortunate that the Respondent did not raise a repairing standard application in respect of the Property, but her failure to do so does not affect her right to exercise the remedies of retention or rent and abatement.

78. The Tribunal did not consider it appropriate in the circumstances to award the Applicant late payment charges, when she had not complied with her repairing duties in respect of the legislation. The Tribunal observed, with some concern, that the Applicant appeared to have a lackadaisical attitude to repairing issues including mice infestation and faulty windows, stating that the Property was old, the rent was low, and the Respondent was aware of the window issues. Those are not reasons to ignore the repairing obligations.

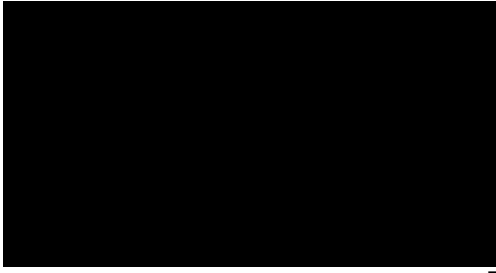
Decision

79. An order for payment is granted in favour of the Applicant in the sum of £3910 with interest on the sum of £3510 at the rate of 5% per annum running from the date of the decision of the First-tier Tribunal to grant the order until payment.

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.



Legal Member/Chair

22nd January 2024
Date