



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/3279

Re: Property at Flat 2/1, 1152 Argyle Street, Glasgow, G3 8TE (“the Property”)

Parties:

Mr Andrew Murray and Miss Anelis Gaina, sometime Flat 2/1, 1152 Argyle Street, Glasgow, G3 8TE (“the Applicants”)

Mr Emilio De La Cerda Lopez and Mrs Marina Castano Aniceto, both 103 Rue Saint Charles Etage 4 75015, Paris, France (“the Respondents”)

Tribunal Members: George Clark (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The Tribunal determined that the Respondents had failed to comply with their contractual obligations under a Tenancy Agreement between the Parties and ordered them to pay the sum of £250 by way of compensation.

Background

1. By application, originally dated 7 September 2022 and, after revisal, dated 4 January 2023, the Applicants sought an Order for Payment against the Respondents. The sum sought was £7,150.
2. The Applicants contended that there had been an ongoing lack of repairs since the beginning of their tenancy. This had resulted in their sending more than 140 emails in their attempts to engage the letting agents and the Respondents to enact repairs to return the Property to the repairing standard. There were 34 separate repairing issues across the Property and externally. Some of these had been resolved when reported, so did not form part of the claim, some issues, although resolved, were included within the calculation of compensation, as they had not, in the view of the Applicants, been dealt with as quickly or as effectively as they should have been, and others remained unresolved at the end of the tenancy. They set out their issues on a “room by room” basis in an email to the letting agents of 24 July 2022, which was

provided with the application, but the summary which follows is restricted to the items which formed part of the compensation claim, as the Tribunal is unable to consider issues that are not included in the claim.

3. **Living room.** There were draughts emanating from windows lacking full wind and water proofing. This was notified to the letting agents on 8 January 2021 (the commencement date of the tenancy) and had not been resolved. The Applicants had overpaid on their heating bills as a result. They had notified the letting agents numerous times. There were cracks in the walls, first notified on 8 January 2021. This issue had not been addressed until 19 July 2022. There were also draughts and a smell emanating from the unsealed former fireplace, again notified on 8 January 2021, which were not resolved for 17 months.
4. **Bedroom 1 – including the “en-suite”.** Cracks in the walls were first notified on 14 February 2022 at an inspection visit by the letting agents. The issue was partially resolved on 27 June 2022, five months later, but the Applicants were not notified as to what had been repaired and they believed it might simply have been cosmetic work.
5. The extractor fan in the “en-suite” bathroom had no cover, resulting in draughts and smells from takeaway establishments, as it constituted a hole in the wall of the Property. This issue, reported on 18 January 2021, was not resolved for 17 months. There was no heating in the “en-suite” and the windows in the bedroom lacked full wind and water proofing, so the room and the “en-suite” were both extremely cold over the winter months. The matter of the windows had been reported on 8 January 2021 and remained unresolved 18 months later.
6. **Main bathroom.** This room has a Saniflo toilet which was reported as broken on 18 January 2021. It remained unresolved 19 months later. The bathtub has rust around the plughole and the shower apparatus leaks profusely. These matters were reported on 18 January 2021 and no attempt had been made to repair them in 19 months. The Applicants had been unable to use the bathtub since they moved in.
7. **Kitchen.** The Applicants had been unable to use the clothes pulley since reporting on 11 February 2021 that it required to be repaired. 19 months later it remained unresolved. On 8 January 2021, the Applicants reported to the letting agents that the windows were not fully wind and water proofed. They remained in that condition 19 months later and had resulted in higher heating bills. On 27 May 2022, they reported that the fridge was not working properly. A specialist had looked at it, but the issue remained unresolved.
8. **Bedroom 2.** There were draughts emanating from the windows lacking full wind and water proofing. Again, this was reported on 8 January 2021, but no action had been taken 18 months on.
9. The Applicants also included Inconvenience as a head of claim. They had sent 139 emails and there had also been telephone calls and time taken out of the Applicants’ busy schedules to facilitate contractors and property managers

attending the Property. This had been a massive expense to their time and warranted compensation, which they assessed at £500.

10. The Applicants were seeking monetary compensation in respect of each repair which was not completed within a reasonable timeframe along with those still incomplete. The compensation sum they were seeking was based on a formula of their own devising and took into account the percentage of the rent for the particular room that they regarded as a reasonable reflection of their loss of enjoyment and the period over which the alleged defect persisted. The total sum sought was £7,150.
11. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 8 January 2021 at a rent of £1,000 per month, and a large number of emails, extending to several hundred pages, between the Applicants and the Respondents' letting agents.
12. A Case Management Discussion was held by means of a telephone conference call on the morning of 30 May 2023. The Applicant Ms Gaina was present. The Respondent Mrs Aniceto was present and was represented by Mr Greg Cunningham, Advocate, and Ms Joyce Horsman, solicitor, Lyon & Davidson Scotland LLP, Edinburgh.
13. The Tribunal reminded the Applicants that it could not make any finding that the Property at any time failed to meet the repairing standard. The Tribunal could only do this following a separate application under Section 22 of the Housing (Scotland) Act 2006, an inspection and a Hearing. The Applicants accepted that position and that the application could only be considered in relation to possible compensation for breach of contract arising from delays in attending to items of disrepair reported to the Applicants' letting agents.
14. As a matter of report, the Applicants confirmed that the Saniflo toilet in the bathroom was fixed in July 2022 and that most of the repairs reported by them have now been carried out.
15. For the Respondents, Mr Cunningham advised that they would wish to make written representations. As there were so many individual heads of complaint, with the case papers running to more than 800 pages, he indicated that a full evidential Hearing would be preferable to the matter being decided at a Case Management Discussion. He was also unsure as to whether he had a full set of papers. He advised that he had paginated and, for his own purposes, indexed his set of papers.
16. It was agreed that the best way forward was to fix a full evidential Hearing and that, given the volume of paperwork, it should be an in-person Hearing at Glasgow Tribunals Centre, with a video link facility to enable the Applicants, who live abroad, to participate. Mr Cunningham anticipated that he would be calling 4 witnesses and suggested the case be put out for a 5-day Hearing, but, based on its experience, the Tribunal was only prepared at this stage to allocate two successive days.

17. Mr Cunningham agreed to assist by providing a copy of his papers, paginated and indexed. This would allow the Applicants to confirm that the set of papers that he had included everything that was attached to their application. The Applicants should also specify beside each item of complaint the specific clause of the tenancy agreement they believe has been breached.
18. Mr Cunningham expressed the view that it might be useful for the Tribunal to inspect the Property. The Applicants were not comfortable with that and felt that it would result in further delays in determination of their application. The view of the Tribunal was that it would not be necessary to inspect the Property, as its condition was not relevant to the application, which centred on allegations that the Respondents and their letting agents delayed in dealing with items of disrepair reported by the Applicants. The nature of the items of disrepair was not relevant and, in any event, it appeared that most of them had now been dealt with.
19. Consideration of the application was adjourned to a Hearing, the date of which was subsequently set for 28 and 29 November 2023. Both Parties provided further written representations, the Applicants on 13 November and the Respondents on 21 November 2023.
20. In their submissions, the Applicants referred to the clause in the Tenancy Agreement which required the landlords to ensure the Property met the repairing standard and then detailed elements of the repairing standard with which, they contended, the Property did not comply. This evidence could not be considered by the Tribunal, for the reasons set out in Paragraph 13 of this Decision. The remaining documents in the submissions were already part of the case papers.
21. In their written submissions of 21 November 2023, the Respondents commented on each head of claim. They said that the unsealed fireplace had not been reported to them until 14 June 2022 and they gave permission to proceed on the following day. Based on their records, it was resolved by 8 July, so within a reasonable period. The unsealed windows issue was also not reported to them until 14 June 2022. They gave permission to proceed on the following day and it was resolved within a reasonable period, as on 22 August 2022, the appointed contractor said they could not complete the repairs and a new contractor had to be instructed. The issue of the missing extractor fan cover was not reported to the Respondents until 13 May 2022, and they gave the letting agents authority to proceed on the same day. The Applicants' claim for compensation for these items was based on increased heating costs, but they had provided no information to support this.
22. The cracks in the walls were aesthetic, but the Respondents had put measuring devices on the walls to confirm that view. The Saniflo toilet problem was not reported when other toilet issues were brought to the attention of the Respondents, but on each occasion the Applicants complained about it, the Respondents agreed to send out a plumber. In the end it was replaced, and the plumber's report suggested to the Respondents that the damage was caused by the Applicants. The first report of the lever on the tap to switch between

shower and bathtub not working was 26 February 2021 and the Respondents gave the letting agents authority to go ahead on the following day. An email of 30 August 2021 from the letting agents referred to the fact that the plumber was recommending that it be replaced, and the Respondents asked the letting agents to get a price for this. Another issue was reported by the letting agents on 30 November 2021. At that point, the Respondents started to consider a full renovation, but were under the impression that the bathroom was still usable as well as the shower in the en-suite. The contractor selected to investigate the Saniflo was requested to assess the bathtub and he confirmed it was working fine.

23. The clothes pulley was reported when the Applicants moved in. A repair was done, but, as it did not appear to be fruitful, the Respondents approved another repair on 27 February 2021. The Respondents became aware of another issue with the pulley on 8 July 2022 and gave their authority to proceed with work. The repair was included in an Invoice from GSR Building Services of 23 July.
24. The Respondents became aware of an issue with the fridge on 15 June 2022 and the letting agent booked an engineer to check it. The Invoice from DG Appliances of 18 June confirmed that the issues arose from bad maintenance by the Applicants, who had, in any event, not sent any proof of loss due to food having been wasted.
25. The submissions included copies of all the emails from the letting agents as evidence of when the Respondents said they became aware of defects, their responses to the letting agents and Invoices in respect of the various repairs and replacements that were instructed. They also included two Affidavits.
26. The first Affidavit, dated 20 November 2023, was from Mr Bobby Howitt. He stated that he had been recommended to the Respondents by a friend of Mr Lopez, for whom he had worked previously. Mr Lopez had said that he wanted a new bathroom to be installed. When he visited the flat, he could see that the bathroom was in fact the secondary toilet, as it was a Saniflo, so did not meet the requirement that at least one toilet in a flat must be connected to the soil/mains pipe. The main toilet was located in the bathroom which had been converted into an en-suite. The other bathroom was much bigger than the en-suite, but had to be the secondary toilet. On this visit, the Applicants told Mr Howitt that they could not use the Saniflo. Mr Howitt noted that it was operating at around 50% capacity, but he pointed out to the Applicants that the primary toilet was in full working order. There was minor rust at the bottom of the trap where the bath water drains. The Applicants claimed that they could not use the bath, but Mr Howitt told them that it was a tiny area of rust and that the bath was perfectly useable. There was a problem with the flexible shower tap, which he fixed on the spot.
27. Mr Howitt stated that the flat was in immaculate condition when he visited. On a return visit, he told the Applicants that he thought the Saniflo was broken. He reported it to Mr Lopez and received instructions to replace the pump, at a cost of £900 for parts and labour. The Applicants had been fully informed of what was happening. Mr Howitt ordered the part, contacted the Applicants and

arranged to go back to the flat to install the new pump. When he opened up the Saniflo unit after removing it, it was clear that it was tangled up with tampon strings. He showed it to the Applicants and explained why the unit was not working, but did not accuse them of anything. He replaced the pump and it worked fine after that. He also left literature on how to use the Saniflo correctly. He then produced a report, dated 17 March 2023, for Mr Lopez.

28. The second Affidavit was by Mr Scott McKinnon of Zone Lettings and was dated 3 November 2023. He confirmed that they look after the Property, providing a full management service. They always found the Respondents to be on hand when they needed to speak to them. They had managed other tenants in the Property and had never encountered any problems before. Mr McKinnon understood that the Applicants moved in around 6 January 2021. They had 7 days to return the check-in Inventory and when the letting agents chased the Applicants on 14 January, Ms Gaina said she wanted to be in the flat for a few days to see if there were any issues. She said they were very pleased with the flat and both of them felt they could make it a home, so asked the letting agents to pass on their thanks to the Respondents. They did, however, list 14 points requiring attention. Insofar as they refer to the present application, they included the washing machine and the clothes pulley. The letting agents visited the Property on 20 January 2021 and reported back that the Applicants had commented that the washing machine worked brilliantly, but it rattled slightly when operational and one leg seemed short. Overall, the only points to address were blinds (not part of the present application) and the pulley. The Applicants later had a major complaint about draughts in the Property and Mr Murray tried to say that this had been notified in the Inventory and visit, but Mr McKinnon stated that this was never mentioned at that time.
29. On 29 April 2021, the letting agents received an email from the Applicants regarding the Saniflo. A plumber was instructed, and he confirmed on 5 May that the job was completed. On 11 October 2021, Mr Murray reported further problems with the Saniflo and on 13 October he reported that it was missing a lid. On 14 October, the plumber provided an Invoice for capping off an open end on the Saniflo unit.
30. On 2 December 2021, the letting agents emailed the Applicants to confirm that the Respondents had given the go ahead for a new bathroom. They explained that the work would probably not be done until the New Year. Quotes were then sent to the Applicants on 31 January, 5 February and 7 February 2022. The Applicants asked for a cost breakdown. Mr McKinnon stated that, in his opinion, the bathroom was not run down.
31. On 11 May 2022, the letting agents received an email from Mr Murray, extending to a number of pages, describing problems around the Property, some of which were previously raised and others which had recently arisen. He contended that the bathroom with the Saniflo was unusable, as the Saniflo and shower function were not working. He detailed draughts from windows not being properly sealed, and a massive external commercial extractor vent which was carrying food smells into the bedroom. He said that the second bathroom was not wind and water tight because of a draught at the extractor fan. He

contended that they had no fully functioning bathroom. In Mr McKinnon's opinion, both bathrooms were working. He stated that the letting agents have a paper trail showing that issues were raised by the Applicants, contractors were called out to fix things and the contractors provided Invoices confirming what work was done.

32. On 15 June 2022, Mr McKinnon received an email from Mr Murray, stating that he would need a log of all communications from that point onwards, so telephone calls would no longer be suitable. Mr McKinnon knew from that point that there was only one way the matter was going and that the Applicants were looking for compensation.
33. Mr McKinnon stated in his Affidavit that Mr Lopez always paid timeously and never refused any of the repairs or works, but the fact that the Applicants were promised a new bathroom and that this was never pushed through seems to have been a major issue for them, when all that was forthcoming was a new Saniflo. On the other hand, he could see it from the Respondents' point of view, as the Applicants had done nothing but complain and list issues in infinite detail that was completely off the scale, compared to anything he had ever experienced in 20 years in the letting industry.
34. Mr McKinnon had responded to Mr Murray on 15 June 2022, confirming he had spoken directly to Mr Lopez, who had given approval for the work and listed jobs to go ahead. He confirmed that Mr Lopez had confirmed final costings for the bathroom refurbishment but that the work could take around three months to start, due to the amount of work the contractor had on at the time.
35. In relation to the draughty windows, the instructed contractor came back to Mr McKinnon saying that it might be better to have a double glazing contractor look at them, and this was to be arranged.
36. On 22 June 2021, Mr Murray emailed to say he was pleased to note that some concrete action was on the horizon. He mentioned the Saniflo toilet repair and said that they did not have access to the facilities in that room and would not have moved in if it had been advertised as one en-suite with the main toilet out of order. He added that they were looking into options for compensation as there was a mismatch between what they were paying for and the condition of the flat. He quoted from Shelter Scotland's advice pages regarding abatement of rent and compensation.
37. On 24 July 2022, Mr Murray outlined the components of the Applicants' compensation claim. Mr McKinnon discussed this with Mr Lopez and replied to Mr Murray letting him know that, as a gesture of goodwill, Zone Lettings would offer them £500 and the Respondents would offer one month of free rent in full and final settlement and with no admission of liability. That offer was not accepted.
38. On 2 August 2022, the Respondents confirmed that the Saniflo had been replaced and on 5 August, Mr McKinnon let Mr Murray know that they were

seeking legal advice and the landlord was looking to appoint a mediator to resolve the ongoing complaints of the Applicants. On 21 September, the Group Managing Director of Zone Lettings emailed the Applicants offering them £2,000, stating that this was a fair offer in consideration of all factors and considering the likely value of the claim if they were to be successful.

39. On 3 October 2022, Mr McKinnon emailed Mr Murray explaining that the landlord Mr Lopez wanted to visit the Property himself for inspection. On 10 October, this request for access was declined by the Applicants.
40. On 26 October 2022, Superfix confirmed that the window seals had been completed. Zone Lettings had instructed this work with the consent of the Respondents.
41. On 22 November 2022, Mr Murray emailed the letting agents seeking clarification of the offer and asked if it was in addition to the £500 and one month's rent. He said that the offer came nowhere near meeting their compensation expectations.
42. The check-out date following notice given by the Applicants was 22-23 August 2023. The flat was re-let very quickly, and new tenants moved in on 18 September. The only work carried out between tenancies was cleaning, and the letting agents have a perfect relationship with the new tenants.
43. Mr McKinnon's Affidavit ended with him saying that in almost 20 years, he had never dealt with tenants who had complained on the scale that the Applicants had. The Respondents had spent significant funds in meeting the issues and complaints and had never disputed anything apart from the refurbishment of the bathroom, but that was an extra and was not part of the lease.

The Hearing

44. The Hearing took place over two days, at Glasgow Tribunals Centre, on 28 and 29 November 2023. The Applicants were both present. The Respondents were also both present and were again represented by Mr Cunningham and Ms Horsman.
45. The first witness to give evidence was the Applicant Mr Andrew Murray. He told the Tribunal that the Applicants had rented a two-bedroom and two-bathroom flat, one of the bathrooms being en-suite to the master bedroom. They regarded the bathroom with the bathtub, shower head and Saniflo toilet as the main bathroom. Shortly after moving in, they noticed it was making a large amount of noise, was not flushing properly and was leaking. After two unsuccessful attempts at repair, it was replaced 18 months later, only after the Applicants threatened to apply to the Tribunal. The lever to switch the bath and shower function was broken throughout the tenancy. When they raised the issue in November 2021, the Applicants were told that the Respondents intended to refurbish the bathroom. Mr Murray referred the Tribunal to emails

of 29 November and 2 December 2022, the latter of which related to contractors attending to take measurements. The Respondents stated again in May 2022 the intention to fully renovate the bathroom, but did not do so. Accordingly, they had failed to carry out the necessary repairs as soon as was reasonably practicable.

46. The kitchen pulley broke when the Applicants tried to use it. The response of the letting agents was that it was ornamental, but it was the only means of drying clothes in the Property, so was not merely cosmetic.
47. The issue of the fridge had first been raised with the letting agents on 27 May 2022. It was finally replaced in May 2023, but the replacement was 25% smaller. The Applicants complained, and a larger one was installed.
48. The cracks in the living room walls were reported in January 2021 and were constantly flagged up at inspections, but not fixed until July 2022. The draught from the unsealed fireplace in the living room was flagged up on 16 February and 27 May 2022 and the Applicants were assured by the letting agents that the Respondents would be told about it.
49. Just after they moved into the Property, the Applicants told the letting agents about the problems with draughts coming in through the windows. Repairs were done but not to a good standard, until the problem was fixed on 14 August 2022. The extractor fan in the en-suite was not fixed for 17 months. These issues were not remedied within a reasonable time.
50. Mr Murray said that there had been a lot of anti-social behaviour happening in the vicinity. They were not able to deal with the property factors, so were very limited in what they could do. Smells came into the Property through the broken fan in the en-suite and through the unsealed windows. The ceiling of the common close had come down and there had been a sewage leak to the rear of the tenement, which also could be smelled inside the Property, because of the defective windows.
51. Mr Murray concluded by saying that the Applicants had paid £31,000 in rent. They did not expect any of these issues and did everything in their power to report them in timely manner.
52. In cross-examination, Mr Murray confirmed that the Applicants have relocated to Bristol, for work and family reasons. They had wanted to stay in the Property until Mr Murray obtained his ICAS qualification, but decided to move earlier as they could not face another winter in the Property. Mr Cunningham challenged this, asking why they had stayed in the Property for 31 months if they were unhappy with it. He also put it to Mr Murray that later evidence would be led that the previous tenants and the tenants who had moved in after the Applicants left have had no complaints about the Property. Mr Murray responded that work may have been done to the Property before the present tenants moved in and the Respondents may now be looking after the Property better.

53. Mr Cunningham referred Mr Murray to the Applicants' original email to the letting agents of 14 January 2021 and put it to him that the letting agents had copied it on 15 January to the Respondents, who had, two days later, told the letting agents that they were "ok with all the ones requiring attention", but not with the disposal by the Applicants of certain items. This, he contended, was a timely response. He also pointed out to Mr Murray that the issue of draughts had not been raised in that email. Mr Murray accepted that, but stated that they had raised the matter in an email of 16 February 2022. Mr Cunningham referred him to an email from Mr Lopez to the letting agents on 6 May 2022, in which he said that the Applicants' email of 2 May was the first time they had been made aware of this problem and that they were happy for the letting agents to organise the required fittings. Mr Cunningham put it to Mr Murray that the pattern was that the Respondents were responding quickly to emails sent to them by the letting agents and he referred to an email of 15 June 2022, in which Mr Lopez authorised the letting agents to proceed with works raised by them in an email of the previous day, apart from an issue of a radiator, as the Respondents were working on the renovation of the bathroom. Mr Murray's response was that the Respondents were not addressing the larger issues that had been reported to them. The toilet repairs were not done for 7 months after the complaint and the leaking bathtub was not repaired for more than a year. Mr Cunningham referred Mr Murray to an email of 21 October 2022 from the letting agents to the Respondents, in which they confirmed that an appliance engineer had found that there were no leaks coming from the washing machine and that Superfix were attending that morning in relation to the windows. Mr Murray replied that they had first raised the windows issue with the letting agents in February 2021 and it had still not been resolved by October 2022. He accepted that the fireplace draught complaint, which, according to the letting agents, had not been reported until 2 May 2022 had been resolved on 8 July. The Respondents had authorised this to be attended to in their email of 6 May.
54. In relation to drains and gutters, Mr Murray accepted that it would be for the property factors to organise such communal repairs. The Applicants, however, had not been made aware of a meeting, on 21 December 2022, of owners with the property factors and that matters had been slowed down as there was a problem regarding some owners' shares of the costs not having been paid. Mr Cunningham pointed out to Mr Murray that the other owners had agreed to split the cost of the missing shares amongst themselves, in order to progress with the work, a positive step taken by the Respondents. They had also taken steps at the meeting to have the common close cleaned more regularly. This was the responsibility of the Applicants in terms of their lease. Mr Murray confirmed that they had never been asked to pay for stair cleaning.
55. Mr Cunningham then turned to the complaints regarding the bathroom and pointed out that the Saniflo toilet problem was not mentioned in the email of 14 January 2021, so must have been operating to a reasonable standard when the Applicants moved in. Mr Murray said that it had been raised at the inspection in February but had not been mentioned in an email to the letting agents until 29 April. He rejected completely a contention by Mr Cunningham that the Applicants or anyone else in the Property had put female hygiene products into the toilet.

56. In relation to the washing machine, the Applicants had said that they had first reported issues on 14 January 2021. The Respondents had stated in their written representations that a leg support was reported at the check-in, and the landlords agreed to a repair, but added that it did not affect the functioning of the machine. Following a report by the letting agents on 13 April 2021 that it was not working, the Respondents authorised a repair and a new door was fitted, the Invoice being dated 3 May. On 5 July 2021, it had been reported to the Respondents that further issues had occurred, and, on the next day, they authorised the purchase of a replacement washing machine. In October 2022, a potential leak had been reported and swiftly investigated but it had been established that there was no leak from the washing machine. Questioned on this by Mr Cunningham, Mr Murray told the Tribunal that the Applicants had not arranged for the leg to be adjusted.
57. Mr Murray denied a suggestion put to him by Mr Cunningham that the problem with the fridge was that the Applicants had not been defrosting it, causing it to ice up and operate below par. He also disagreed with the assertion by Mr Cunningham that the replacement fridge, although smaller in dimension, had a greater capacity than the previous one.
58. There was a discussion about a curtain pole and about light bulbs and about a gas leak, but that was not regarded by the Tribunal as relevant, since they did not form part of the compensation claim.
59. Mr Murray accepted the comment made to him by Mr Cunningham that the Applicants had, throughout the tenancy a functioning shower, toilet and sink in the en-suite bathroom and that any requests in relation to these items were acted upon and fixed.
60. Asked by the Tribunal why the Applicants had not gone down the route of applying to the Tribunal for a Repairing Standard Enforcement Order, Mr Murray said they were not aware of the Tribunal when they moved into the Property. Their first port of call was always the letting agents and he could not understand why they did not help the Respondents to deal with the issues. The Applicants only started looking into the possibility of applying for a Repairing Standard Enforcement Order when they had exhausted their efforts with the letting agents and the landlords.
61. That concluded the evidence led by the Applicants.
62. Mr Cunningham called as his first witness the Respondent Mrs Marina Castana Aniceto. She told the Tribunal that they had lived in the Property until February 2019 and had let it out one month after they left. There had been two tenancies before the Applicants moved in and they had never had any complaints about the state of the Property. They moved to Paris in September 2021. Her husband dealt primarily with any letting issues and the process was that the letting agents would email him. She had no sense that the Respondents were not responding in a timely fashion to any matters raised by the Applicants. The area

in which the Property is situated is well known as being lively, with many bars and restaurants.

63. In cross-examination, Mrs Aniceto stated that they had at some point shortly before letting the Property to the Applicants, considered selling it, but the market was unfavourable due to the aftermath of the COVID-19 restrictions. She confirmed that, during their stay in the Property, they had contacted the Council about noise from the restaurant beneath. The Council had taken action and the problem stopped. She said that there had been no problems with a leak in the common close and confirmed that there had not been a property factor in place at that time. The Respondents had never said “no” to any request regarding repairs. They always asked the letting agents whether repair or replacement was more effective. She did not see any inspection reports from the letting agents.

64. Mr Cunningham then called the Respondent, Mr Lopez, as a witness. He confirmed that the property had been let out from February 2019 to January 2020 and, via the letting agents, from February 2020 until October 2020. They were thinking of selling and moving to Spain, but received no notes of interest, so instructed the letting agents to put it back on the rental market.

65. He received an email on 15 January 2021, following the check-in and he responded on 17 January. The process was that the letting agents contacted him and he would consult with his wife in respect of larger, but not minor, matters. In 2021, they spent about £3,000 on matters raised by the Applicants and a further £1,000 in factoring fees and work within the common close. In 2022, they spent about £4,000 on the Property and more than £1,000 on common works, covering the shares of owners who did not pay. In 2023, they changed the fridge, oven and hob and spent around £2,000-£2,500. All works were instructed by the letting agents, who had a full management contract.

66. In November 2021, they were contacted about the Saniflo and decided to investigate the possibility of renovating the bathroom. The letting agents obtained an estimate of £10,000. A colleague of Mr Lopez suggested Mr Bobby Howitt, who then took measurements on 2 May 2022. He reported, however, that everything would be fine when the Saniflo was replaced and, as by then the Applicants were threatening to make an application to the Tribunal, they decided to wait. The Report lodged with the case papers is dated 17 March 2023, but it was written up much earlier, as they received it on 14 August 2022. It stated that “all drains seem to be in perfect working order after our Saniflo replacement.”. His explanation of damage to the toilet was that it was clogged and damaged by female sanitary products having been flushed down it.

67. Mr Lopez said that the Respondents were not visiting the Property and were relying on professional tradesmen to carry out repairs and assessments. They were receiving more complaints week after week so, as he was to be in Glasgow and was concerned in case the letting agents were not doing their job properly, he asked to visit the Property himself, but the Applicants refused to agree to his request.

68. At the end of June or early July 2022, he had spoken with the letting agents to explore mediation. A mediator told him that both Parties had to agree to mediation, and he decided this would not work, as it was clear the Applicants were looking for monetary compensation and intending to go to the Tribunal. He confirmed that the Affidavits of Mr Bobby Howitt and of Scott McKinnon of Zone Lettings accurately reflected the arrangements the Respondents had with both of them. The Respondents were completely reliant on the letting agents and had no contact with the Applicants. If the letting agents failed to tell them about an issue raised by the Applicants, they would know nothing about it. When matters were reported to them, Mr Lopez's response time was 2-3 days at most and the vast majority of "green lights" they gave for work to be done were given without knowing the likely cost.
69. Mr Lopez stated that the Applicants were not making a formal claim in respect of matters relating to external issues and confirmed the Property is located in a lively area of social activities. Fly tipping was not uncommon, but the Respondents made efforts through the property factors to try to deal with the situation. Many of the invoices they paid were for removal of bulky items. At a meeting of owners with the property factors in December 2022, they had discussed how to move forward. It is an old building with a sewage system connected to the building next door, which was managed by a different property factor. As those property factors showed no interest, the owners had decided to pay for a new independent sewage system. In his view, the Respondents had taken reasonable steps with their property factors to ensure the drains were kept up to standard.
70. Mr Cunningham then referred Mr Lopez to a number of Invoices in respect of the Property, all of which had been provided with the Respondents' written submissions. Starting in March 2021, they covered bathroom and pulley repairs, £900 in respect of the Saniflo (July 2022), a replacement door for the washing machine (May 2021), provision of a new washing machine (July 2021), testing of the washing machine following a report of flooding (October 2022), a call out charge for the fridge, with a report that it required a 48-hour defrost which had never been done (June 2022) and confirmation of the replacement of the fridge freezer and oven in March 2023. There was a further Invoice dated 21 May 2023 for a large number of repairs, including filling in gaps at the fireplace and lounge window and applying filler to cracks on the bathroom wall.
71. Mr Lopez then gave evidence related to the individual heads of complaint in respect of which the Applicants were seeking compensation.
72. He had not been notified of the draughts from the windows or unsealed fireplace until 2 May 2022. He had authorised repairs on 6 May 2022. There were delays in finding contractors who could do the work on these particular kinds of window, so the work was not done until September.
73. The cracks in walls had been there when the Respondents lived in the Property. As a civil engineer, Mr Lopez understood that old buildings settle over time and

he was sure they were aesthetic, but, as the Applicants had complained about them, the Respondents had tell-tale monitors put in for a few weeks. These indicated that the cracks were of the plaster only.

74. Mr Lopez had only been told of the issue of smells coming into the Property from an external commercial extractor vent in May 2022. He had replied to suggest the Applicants contact the Council, as he was not sure what, if anything, could be done about it.
75. The complaint about draughts coming into the main bedroom via the en-suite because of the missing extractor fan cover was also intimated to him on 2 May 2022. It had been like that when the Respondents lived in the Property, but Mr Lopez had asked the letting agents on 6 May to advise what could be done to improve the situation.
76. The issue relating to the Saniflo had already been covered in earlier evidence. Mr Lopez referred to an email from the letting agents of 21 May 2021, in which they told him that the plumber had reported that there was no issue with the Saniflo and that no issue was found that had been caused by the Applicants. Mr Lopez's view was, therefore, that the blockage later reported by Mr Howitt must have happened after May 2021.
77. The lever switching the water supply from bath to shower had been investigated. The letting agents emailed Mr Lopez on 30 August 2021 to say that the plumber had got it working again but had recommended that it be replaced. Mr Lopez referred the Tribunal to an email of the following day from him to the letting agents authorising them to obtain a price for a replacement, but they had never got back to him. It appeared to the Tribunal that the securing of the mixer handle was included in a plumber's Invoice of 16 March 2021, but was not reported to the Respondents until the email of 30 August.
78. In relation to the kitchen pulley, Mr Lopez referred to his email to the letting agents of 17 January 2021, two days after he had been informed by them of the issues raised by the Applicants after they moved in. In that email, he had asked the letting agents if the handyman could attend to it and it was included in an Invoice of 16 March 2021, so he assumed the problem had been resolved. He was not aware of whether the letting agents had told the Applicants that it was merely ornamental.
79. Mr Lopez concluded his evidence by referring to the comment by the Applicants that the Respondents had only dealt with matters when the Applicants had threatened to apply to the Tribunal in July 2022. He pointed out that all works were instructed and carried out by May/June 2022. Mr Lopez's relationship with the letting agents had been good and he believed he dealt with them in a timely fashion. He also made the point that it had not been easy to get works done in 2021/2022, due to the post-COVID situation.
80. Mr Lopez was then cross-examined by the Applicants. He confirmed that he could not recall any complaints from previous tenants about fly-tipping. It had

been an issue when the Respondents moved into the Property, but they had contacted the Council, who had tidied up the bins and it was one of the reasons that Mr Lopez had worked to get a property factor in place. In 2018, he had contacted his local councillor, who had then managed to organise a complete clean-up of the lane.

81. Miss Gaina told Mr Lopez that he must realise that any cracks in walls would cause anxiety to the Applicants, as non-experts. He responded that that was why they had the monitoring done and cosmetic repairs carried out after that. The Applicants referred the Tribunal to an email of 16 February 2022, in which the letting agents acknowledged that they had noted the issues with the crack in the lounge and the draughty windows and that they would contact the Respondents on the points raised at the recent inspection and confirm as soon as possible. The letting agents had then arranged for an approved contractor to check out the crack. The letting agents had also said in an email on 17 February that they had sent a photo of the crack to the Respondents. The Respondents were, therefore, notified of the cracks and the window issues in February 2022. Mr Lopez responded that he first became aware of the windows in May 2022. The Tribunal had not been provided with any indication that the information had been passed on to him by the letting agents, who had not sought instructions from him until May. Mr Murray added that he had no way of knowing if the Respondents had provided copies of all relevant emails, but repeated that the letting agents had said on 17 February that they had sent the photograph over to the Respondents.
82. Mr Murray referred to the responsibility of landlords to comply with the repairing standard. Mr Cunningham objected to any questioning regarding the repairing standard, as the Applicants' claim is that repairs were not carried out within a reasonable time.
83. Mr Murray then referred Mr Lopez to the Affidavit by Mr Bobby Howitt. He questioned the independence of his statement. Mr Lopez answered that he had no prior knowledge whatsoever of Mr Howitt. He had simply been recommended to him by a colleague. Mr Murray noted the section of the Affidavit in which Mr Howitt had said that there had been a problem with the shower which he fixed on the spot. This confirmed that the shower had been faulty from the outset. Mr Lopez repeated what he had said in his evidence, namely that the plumber had said on 30 August 2021 that it was now working but had recommended that it be replaced, and that Mr Lopez had asked the letting agents to obtain a price but that they had never got back to him.
84. Turning to Paragraph 17 of Mr Howitt's Affidavit, regarding the Saniflo, when he stated that it was tangled up with tampon strings, Mr Murray referred to the statement by Mr Lopez that the plumber had reported in May 2021 that it was in working order, but there was no evidence that the plumber had opened up the Saniflo when he inspected it, so there was no basis for Mr Lopez's assertion that the problem must have arisen after the plumber's visit. Mr Murray repeated that the sanitary products could not possibly have been put in the Saniflo by the Applicants.

85. Mr Lopez accepted that there was some delay in replacing the Saniflo, as they were considering renovating the bathroom, but Mr Howitt had confirmed that it was functioning, albeit not at full capacity.
86. Mr Murray asked Mr Lopez if he received copies of the letting agents' inspection reports. Mr Lopez said that he did not, but that he expected that the letting agents would email him if anything had been flagged up at the inspections and that he would be notified of issues reported by the Applicants.
87. Mr Murray then put it to Mr Lopez that absolutely none of the major repairs were carried out until the Applicants told the letting agents in an email of 12 May 2022 the possibility of their withholding rent and, in an email of 24 June 2022 that they were seeking compensation. Mr Lopez responded that he had given the go-ahead for all works apart from the Saniflo on 6 May 2022. Repairs were carried out and the Invoice was dated 3 July. Most of the issues were resolved, apart from the windows, where the Respondents were still looking for a contractor.
88. Mr Murray commented on the fact that Mr Lopez had said that it was only the letting agents who had stated that the pulley was ornamental. Mr Lopez accepted that it was there to be used. That was why he had agreed to a repair when it was raised with him by the letting agents following the check-in. The letting agents had not received any further information from the letting agents that it was not working satisfactorily.
89. Mr Murray asked Mr Lopez to explain why nothing was done in relation to the fridge from May 2022 until March 2023. Mr Lopez replied that he had become aware of a problem in mid-June 2022 and the Invoice for checking and reporting on it was dated 18 June. On 20 March 2023, the letting agents reported a further issue with the fridge freezer and that a new fridge was needed. Mr Lopez authorised that by email on the same day. Mr Murray's position was that the Applicants had reported, in their lengthy email of 24 July 2022 to the letting agents, that the fridge freezer was still not working, and the Respondents must have been aware of that, because they replied to that email.
90. Mr Murray put it to Mr Lopez that he had withheld repairs to the Saniflo for 7 months because he had stated that he intended to renovate the bathroom. Mr Cunningham said that Mr Lopez had already given full answers as to what caused him not to proceed with the renovation.
91. The Parties then made their closing submissions.
92. The Applicants stated that the framework for their calculation of compensation was the only realistic way of compensating them for the stress and inconvenience they had suffered. Shelter Scotland provides this framework for tenants to calculate rent reductions where landlords are not carrying out repairs that have been reported to them. It involved dividing the rent by the number of rooms, considering how much of a room could not be used fully and applying that fraction to the room rent. That figure was then multiplied by the number of

months that the problem persisted. Thus, for the living room, they had applied a 10% compensating factor because it was not wind and water tight and multiplied it by 18 months, a further 10% because of the cracks in the walls and a further 10% for the unsealed fireplace. Mr Murray then detailed the calculations for the other rooms, applying the same formula. In each instance, he referred to repairs issues having been reported to the letting agents "and, by extension, the landlords". He then referred to general inconvenience, saying that he had referenced 139 emails, telephone calls and a number of attendances for tradesmen, the claim being £500.

93. Miss Gaina then addressed the Tribunal on the impact the whole situation had had on her. They had become engaged two weeks before moving into the Property but had been forced to postpone their wedding plans because of the issues they had with the Property. She had required therapy regarding her mental health in the summer of 2021 and had been advised to seek further support in May 2022. She was taking 7 pills a day to cope with the fallout of her experience in the Property. When they realised that they might have to face another winter with no resolution they accelerated their plans to move to Bristol. They stopped inviting guests because of their embarrassment at the condition of the Property and she now finds it difficult to trust a stranger to come into her home due to the large number of people who would not have had to come into the Property had it not been for these issues. They had not been taken seriously at all and had been left with no options. They could have withheld rent, but they decided to exercise a legal remedy.

94. Mr Murray stated that the impact on him had been massive. The stress of trying to resolve the issues had been horrible, constantly having to send emails on the same topics that were never resolved. It had an impact on his mental health as well and he could never get back the time that they should have enjoyed in the Property. The only remedy is compensation. The Applicants had pre-existing health conditions. Mr Murray's rheumatoid arthritis was exacerbated by the cold conditions due to the lack of repairs to the windows, the fireplace and the missing extractor fan cover. In trying to get justice, he had borne the burden for more than a year. The impact had pervaded all areas of their lives.

95. For the Respondents, Mr Cunningham emphasised that the application is a claim for damages for breach of contract. It is not a claim in respect of failure to meet the repairing standard. The essence of the claim is that the landlords failed to carry out repairs within a reasonable time. He invited the Tribunal to consider all the facts and circumstances that would impact the carrying out of repair works, including the huge problems during lockdown and since in obtaining contractors, a matter which he said was within judicial knowledge. He contended that the "en-suite" bathroom is in fact the main bathroom, as it is connected to the external waste pipe, whereas the Saniflo toilet is not, but stated that nothing in the present applications turned on the different nomenclature. The damages claimed are not set out in a formula that the Tribunal recognises. The approach taken by the Applicants is relevant only to seeking an abatement of rent for sums going forward. The Applicants could have applied for a Repairing Standard Enforcement Order but chose not to do so. Mr Murray had said that he did not know about that remedy, but it was

clearly set out in the Tenancy Agreement. The Applicants also did not let the Respondent, Mr Murray, into the Property to see matters for himself. There was no objective justification for the methodology the Applicants had used in calculating their claim for compensation. If satisfied that the Respondents had not completed repairs within a reasonable time, the Tribunal should be considering the claim under loss of amenity, and the sum sought was far in excess of the sum that a court would award for loss under that head of claim.

96. Mr Cunningham invited the Tribunal to consider that the Respondents had given their evidence in a calm, orderly way and had answered questions in a straightforward manner. The Applicants on their own admission did not raise repairs issues with their landlords. The process was that they advised the letting agents, who then reported to the landlords, who in turn issued their instructions to the letting agents. The documents before the Tribunal showed that Mr Murray responded timeously to all matters referred to him, the only delay being where matters required more specialist input, such as having tradesmen inspect and report.

Findings of Fact

97. The Tribunal considered each repair item included in the application and made the following Findings of Fact, based on the evidence presented to it:

- (1) The tenancy began on 8 January 2021.
- (2) The Respondents appointed Zone Lettings Limited to undertake the full management of the letting and had no direct contact with or from the Applicants.
- (3) No evidence has been provided of any complaints by the Applicants prior to their email to the letting agents of 14 January 2021.
- (4) No matters requiring repair were reported by the letting agents to the Respondents until an email of 15 January 2021. Only 2 of the items in the application were mentioned in that email, namely the fact that one of the legs of the washing machine required to be fixed and the clothes pulley was not functioning properly.
- (5) The Respondents authorised the letting agents to deal with items requiring attention, including the washing machine and clothes pulley on 17 January 2021.
- (6) On 2 July 2021, the Applicants told the letting agents that the washing machine was very loud on its spin mode and had begun to leak. On 6 July 2021, the letting agents advised the Applicants by email that the Respondents had authorised the purchase of a new washing machine.
- (7) On 26 February 2021, the letting agents told the Respondents that the Applicants had reported that a repair was required to the ceiling attachment for the pulley. The Respondents authorised this work on the following day, 27 February. An Invoice of 16 March 2021 includes adjustment of the pulley. The Respondents became aware of another issue with the pulley following emails from the Applicants to the letting agents on 7 and 8 July 2022. The repair was completed by 23 July.

- (8) No evidence has been provided to establish that the letting agents made the Respondents aware of complaints about draughts from windows or the fireplace before their email of 2 May 2022, following an email to the letting agents from the Applicants on the same day.
- (9) The Respondents advised the letting agents that they were happy for them to organise the required fittings to the windows on 6 May 2022. In that email, they stated that this was the first time they had been made aware of the problem. On 14 June 2022, the letting agents included in their email to the Respondents a quote from a contractor for various items. The contractor commented that the Applicants had mentioned that the windows were draughty and that, whilst he could put rubber seals around the frames, it might be better to have a double-glazing contractor look at them. The Respondents authorised this on the following day, 15 June.
- (10) The Respondents were also, in the email of 14 June 2022, given a quote for fitting glass wool up the chimney opening, and they authorised the work on 15 June 2022.
- (11) On 13 April 2022, the letting agents made the Respondents aware of cracks that had been picked up on some walls "at the recent inspections." The letting agents stated that they did not think they were concerning, but the recommendation from a contractor was to keep checking to see if they got worse before repairing, by placing tell-tale monitors and comparing the situation 8 weeks later. This was authorised by the Respondents on 27 April and the Respondents were advised on 14 June 2022 that tell-tale monitors had been fitted to the lounge wall on 10 June.
- (12) The problem with the extractor fan in the "en-suite" bathroom was first reported to the Respondents on 2 May 2022 and on 6 May 2022, they asked the letting agents to advise what could be done to improve or fix the issue. On 14 June 2022, the letting agents advised them of a quote for fitting a louvred cover on the fan. The Respondents authorised this work on the following day.
- (13) On 26 February 2021, the Applicants raised the issue of the lever on the bathtub tap to switch from bath to shower. The Respondents authorised repairs on 27 February and a repair was included in a contractor's Invoice of 16 March. On 30 August 2021, the letting agents advised the Respondents that it had broken. On the following day, the Respondents asked them to obtain a price for a replacement. The Tribunal has seen no evidence that the letting agents obtained a quotation for replacement.
- (14) On 30 November 2021, the letting agents reported to the Respondents that the Applicants had raised the lever issue again. They had said the situation was becoming progressively worse and that they were unable to use the shower.
- (15) On 12 October 2021, the letting agents passed on a complaint from the Applicants that the Saniflo toilet, which, they said, had had ongoing issues since they moved in, now had a specific problem. Mrs Aniceto replied almost immediately to say that the Respondents were happy to send a plumber, but that he would have to determine whether it had been used appropriately.
- (16) In their email of 30 November 2021, the letting agents passed on another report by the Applicants that the Saniflo toilet, which they said had been checked a few times and had been fixed, now had even worse issues. On

the same day, the Respondents told the letting agents that they were considering a full refurbishment of that bathroom.

- (17) On 6 May 2022, the Respondents told the letting agents again that they were trying to get the bathroom fully renovated, but every tradesman they had tried was very busy. On 15 June 2022, they told the letting agents that they were working with their contractor to do a full renovation of the bathroom. They were hopefully at the last rounds of design, but the lead time to complete works was 3 months or so.
- (18) On 17 March 2023, Mr Bobby Howitt of Premier Property Projects stated in a letter to Mr Lopez that the bathroom was in working order now that the Saniflo had been replaced (on, he said, 29 July 2022) and that, in his opinion, refurbishment would be purely for cosmetic reasons. Upon removal of the original Saniflo it had become clear that the macerator had been clogged or damaged by female sanitary products being flushed down the toilet. His view was that a small issue of rust along one side of the drain outlet grating would not hamper the use of the bath, as it was not leaking underneath.
- (19) The issue about rust around the bath plughole was reported to the Respondents on 2 May 2022, when the letting agents forwarded to them the Applicants' email of the same date.
- (20) The complaint about the fridge was first reported by the letting agents to the Respondents on 15 June 2022. The Invoice, following inspection by an engineer is dated 18 June 2022.
- (21) The letting agents reported to the Respondents a further problem with the fridge on 20 March 2023.
- (22) The fridge was replaced on 30 March 2023.

Reasons for Decision

98. The Tribunal considered carefully all of the evidence, written and oral, presented to it. The written representations extended to many hundreds of pages and evidence had been heard over two full days. The Tribunal had to consider hundreds of emails and documents in arriving at its Decision.

99. Clause 18 of the Tenancy Agreement between the Parties states that "The Landlord is responsible for carrying out necessary repairs as soon as is reasonably practicable after having been notified of the need to do so". The complaint by the Applicants was that the Respondents had not dealt with repair requests within a reasonable timescale. The Applicants were, however, aware that their contact should be with the letting agents, as the Tenancy Agreement designed the Respondent Landlords as care of Zoom Letting (Glasgow) Limited. At no time did they correspond directly with the Respondents and the accepted process was that any reports of items of disrepair were made by the Applicants to the letting agents. They, in turn, would be expected to notify the Respondents and to seek instructions. Accordingly, irrespective of when the Applicants emailed the letting agents about necessary repairs, the Respondents would only become aware of them after they were passed on by the letting agents. The Tribunal, therefore, had to examine closely the dates on which repair requests made by the Applicants were intimated by email to the Respondents by the letting agents and the response times to these emails. Only

if the Respondents failed to reply to the letting agents as soon as reasonably practicable could the Applicants succeed in their claim for compensation. If, having been instructed by the Respondents to carry out any repairs or replacements, the letting agents failed to carry out those instructions or delayed in doing so, the Respondents could not be blamed. They had employed the letting agents on a full management basis and were entitled to assume the works they had approved would go ahead.

100. The Tribunal held from the evidence before it that no issues were raised by the Applicants before 14 January 2021. They were reported to the Respondents on the following day, and the Respondents emailed their agreement on 17 January.

101. A request for a further repair to the clothes pulley was reported to the Respondents on 26 February 2021. They authorised the repair on the following day. The clothes pulley was mentioned again in emails from the Applicants to the letting agents of 7 and 8 July 2022. The Tribunal did not have sight of the Respondents' reply to the letting agents but noted from an Invoice that the pulley was repaired by 23 July 2022. The Tribunal held that the Respondents had not failed in their contractual duty to carry out these repairs as soon as reasonably practicable after the need was intimated to them.

102. The Respondents were made aware of a minor problem with the washing machine of 15 January 2021 and instructed the letting agents to go ahead on the following day. When a further problem was reported to them on 2 July 2022, the Respondents authorised the purchase of a new washing machine on 6 July. The Tribunal held that the Respondents had responded timeously and had not failed in their contractual duty.

103. The letting agents first made the Respondents aware on 2 May 2022 that the Applicants had complained about window draughts. They authorised repairs on 6 May. On 14 June, the letting agents advised the Respondents that the contractor was recommending they contact a double-glazing contractor. The Respondents agreed to this on the following day, in an email in which they also told the letting agents to proceed with the quote for blocking up the fireplace with wire wool. This issue had also been first reported to them on 14 June. Again, the Tribunal held that the Respondents had not failed in their contractual duty.

104. On 27 April 2022, the Respondents confirmed to the letting agents that they were happy to proceed with recommendations regarding fitting tell-tales to monitor cracks in internal walls. They had been advised of the problem on 13 April. The Tribunal did not consider that the delay in responding was unreasonable, given the fact that they understood the problem to be aesthetic and the letting agents had stated that they did not think it was concerning.

105. The problem with the extractor fan in the "en-suite" was reported to the Respondents on 2 May 2022 and 4 days later, they asked the letting agents to advise what should be done. On 14 June, the letting agents passed on a quote

for a louvred cover to be fitted and the Respondents agreed to this on the next day. Accordingly, the Tribunal held that the Respondents had not failed in their contractual duty.

106. The complaint about the fridge was first reported by the letting agents to the Respondents on 15 June 2022. The Invoice, following inspection by an engineer is dated 18 June 2022. The letting agents reported a further problem on 20 March 2023 and the fridge was replaced on 30 March 2023. The Tribunal held that the Respondents had not failed in their contractual duty.

107. The remaining complaints related to the bathroom in the Property. The Tribunal did not need to decide whether it or the “en-suite” should be regarded as the main bathroom. It was provided to the Applicants as part of the let Property and the Respondents were, therefore, contractually obliged to respond within reasonable timescales to reports of the need for repairs.

108. The Tribunal held that the report of rust around the plughole of the bath was reported to the Respondents on 2 May 2022. The Tribunal accepted the report of Premier Property Projects of 17 March 2023 that this was a very minor issue which would not hamper the use of the bath.

109. A problem with the lever which switches the water supply between the bath and the shower attachment was reported to the Respondents on 26 February 2021 and they agreed the following day to the requested repair. On 30 August 2021, the letting agents told the Respondents that it was broken and, on 31 August, they asked the letting agents to obtain a quote for its replacement. The Tribunal did not see any evidence that the letting agents obtained a quote. On 30 November 2021, the letting agents raised the matter again.

110. Also on 30 November 2021, the letting agents passed on a report by the Applicants that the Saniflo toilet, which they said had been checked a few times and had been fixed, now had even worse issues. On the same day, the Respondents told the letting agents that they were considering a full refurbishment of that bathroom. They repeated that on 6 and 15 June 2022. It was not until 29 July 2022 that the Saniflo was replaced. The Applicants had been led to believe that a full refurbishment would take place, but it did not happen during the tenancy. Irrespective of whether such a long-term solution was being contemplated, the Respondents were under a contractual obligation to ensure they instructed the letting agents to repair or replace the Saniflo when they were made aware of problems. The cause of the failure of the toilet system to function properly was not relevant. The Respondents were made aware of a problem on 12 October 2021 and responded quickly, but it was clear from the email of 30 November that the toilet was again not functioning fully. It was finally replaced on 29 July 2022, eight months later.

111. The Tribunal did not doubt that it had been the Respondents’ intention to refurbish the bathroom and noted from their email of 6 May 2022 the difficulty they had in obtaining quotes from contractors. This was a matter they took on

themselves and the letting agents were not involved. Mr Howitt of Premier Property Projects' Inspection Report, dated 17 March 2023, indicated that Mr Lopez had first contacted him on 2 May 2022. Mr Howitt explained that it had taken some time for him to carry out an initial repair to the Saniflo, due to current workload, and that it was not until 29 July that he completed initial repair work on the damaged Saniflo, which had to be replaced with a new unit. The Tribunal accepted that the Respondents had no control over the time it took for Mr Howitt to attend the Property to remedy the problems reported by the Applicants, but was of the view that the Respondents should have been much more pro-active during the period from 30 November 2021 onwards. Accordingly, the Tribunal held that the Respondents had failed in the duty incumbent on them under Clause 18 of the Tenancy Agreement to carry out necessary repairs as soon as reasonably practicable after having been notified of the need to do so.

112. The Respondents had sought compensation equivalent to the full rent they had paid for the bathroom. The Tribunal, however, did not accept the Respondents' claim that they could not use any item in the bathroom apart from the sink, for 18 months. The Saniflo had required repairs and Mr Howitt confirmed in his Affidavit that it was not operating at full efficiency, but it was functioning. He had also advised the Applicants that it was perfectly safe to use the bath. The Tribunal accepted that the Applicants had suffered considerable inconvenience as a result of the failure of the Applicants to finally resolve the issue before 29 May 2022, but throughout the tenancy, they also had full use of the "en-suite".

113. The Tribunal regarded the formula adopted by the Applicants in calculating their claim for damages to be deeply flawed. It relied on totally subjective assessments and the Tribunal had found as a matter of fact that many of the repair items had not been reported as early as was stated in the claim. The judgement that each room carried the same rental value was subjective, as was the compensation factor applied by the Applicants to each problem within a room. The issue for the Tribunal to consider was not, in any event, the length of time it took for repairs to be carried out. It was simply whether the Respondents had failed to respond within reasonable timescales when matters requiring repair were reported to them. The Tribunal found that the Respondents replied to emails from the letting agents within reasonable timescales and, in most instances, very quickly, and that they had sanctioned repair works without delay. The one instance in which they had failed to meet their contractual obligations was the issue of the Saniflo. They had led the letting agents and, through them, the Applicants, to believe that the bathroom was to be fully refurbished. The Tribunal did not doubt that this was their intention, but they had failed to instruct a repair or replacement when they knew that, admittedly through no fault of their own, the project was going to take a long time to complete. The Respondents are, therefore, entitled to compensation for the inconvenience caused by that failure.

114. Having taken into account the fact that the Saniflo was not unusable and the fact that the Applicants had throughout full facilities in the "en-suite", the Tribunal decided to award the Applicants by way of compensation the sum of £250.

115. 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.

George Clark

Legal Member

29 January 2024
Date