



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/25/1391

Re: Property at 2 LOTHIAN STREET, BURNTISLAND, FIFE, KY3 0BA (“the Property”)

Parties:

MISS ALEXANDRIA BIGGAM-GALLAGHER, 2 LOTHIAN STREET, BURNTISLAND, FIFE, KY3 0BA (“the Applicant”)

MISS TAMARA STUART, 72 High Street, Kinghorn, KY3 9UE (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Angus Lamont (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of ONE HUNDRED AND FIFTY POUNDS (£150) to the Applicant

Background

- 1. On 7 May 2025, the Applicant submitted an application to the First-tier Tribunal for Scotland seeking payment of the sum of £1225 in respect of rent arrears. The Applicant was also seeking interest on £1225 at the rate of 10.5% from the date of any decision.**
- 2. A case management discussion was held by teleconference on 16 October 2025.**

3. Subsequent to the case management discussion, a Direction was issued and both parties submitted representations and documentation.

The Hearing

4. A hearing was held by teleconference on 10 March The Applicant was present and was represented by Ms Jenna Thorpe, trainee solicitor, of Jackson Boyd, solicitors. The Respondent was present.

Preliminary Matters

5. Ms Thorpe confirmed that the Applicant was still seeking a payment order of £1225 together with an award of interest.
6. Ms Thorpe said that the application before the tribunal was a replacement for one which had been seeking a payment order for £1900. She said that the Applicant had increased the rent from £400, which had been the rent since the start of the tenancy, to £475. She said that the Applicant now accepts that she had not dealt with this in the correct manner. Ms Thorpe said that the rent statement submitted with the second application reflects that the correct monthly rent was £400. She said that there had been credits applied to the rent statement to refund the Respondent in respect of overpayments of rent which had been made as a consequence of the Respondent making some payments of £475 per month, following upon the defective notification with regard to the rent increase.
7. It was noted that parties had entered into a tenancy agreement dated 2 November 2022 for a tenancy commencing 2 November 2022 “expiring 2 May 2023 but renewable on said date.” The tenancy agreement was titled “Assured Shorthold Tenancy Agreement.” The Applicant insisted that she had got this agreement from the Scottish Government website despite the tribunal pointing out that no such agreement exists in Scotland. Ms Thorpe conceded that it was an inappropriate style of lease and the tribunal dealt with the tenancy as if it was a private residential tenancy agreement in terms of the Private Housing (Tenancies) (Scotland) Act 2016.

Matters not in dispute or not challenged

8. It is useful to set out matters which were either not in dispute or which were not challenged.
9. The central heating boiler in the Property had failed on 29 November 2023 and, on 30 November 2023, a gas engineer had stated the boiler beyond repair and had, for safety reasons, intimated that it could not be used.

10. The Applicant explained that the Property consists of a two bed roomed maisonette flat in an old building, and that the vent of the gas fired central heating boiler opened onto a common close. The Applicant's central heating engineer had advised that this did not meet current regulations and that the replacement boiler should be relocated to the kitchen. The Applicant said that the advice she received was that the complete heating system should be replaced. She also said that the Property needed to be rewired.
11. The Applicant made the decision that it would not be possible to carry out the extensive work required while the Respondent was in the Property and that it would be better if the Respondent moved out. A notice to leave was served on the Respondent on 4 December 2023. The ground of eviction in the notice was that the landlord intended to carry out essential repairs. The notice period was eighty four days.
12. As a consequence of the failed boiler, the Property had no heating or running hot water from 29 November 2023 until 29 May 2024.
13. The Applicant's position was that, although the Property did not have a functioning central heating system, it did have an electric shower and she had offered electric heaters to the Respondent.
14. The Respondent said that she got heaters from family members and that the gas contractor had provided some.
15. The Applicant accepted that the Respondent would have increased electricity charges for the Property and she reduced the rent in recognition of this.
16. In November 2023, the Applicant understood the monthly rent lawfully due to be £475 and applied a discount of £125 which reduced it to £350.
17. The Respondent paid the rent for December, January and February at £350 per month and then stopped payment.
18. The Respondent left the Property on 29 May 2024 when she received tenancy of a Council property.

19. Findings in Fact

- 19.1 The Applicant and the Respondent entered into a private residential tenancy for the Property on 2 November 2022.
- 19.2 The lease commenced on 2 November 2022 and was terminated on 29 May 2024.
- 19.3 The rent lawfully due during the tenancy was £400.
- 19.4 The gas fired central heating boiler in the Property failed at the end of November 2023 and was not repaired or renewed prior to the termination of the tenancy.

- 19.5 As a consequence of the failure of the gas boiler, there was no running hot water or central heating.
- 19.6 The Property had a shower which was powered by electricity and provided hot and cold water.
- 19.7 The Applicant offered electric heaters to the Respondent when the gas boiler failed.
- 19.8 The Applicant reduced the rent to £350 for the months of December 2023, January 2024 and February 2024.
- 19.9 The Applicant reduced the rent to compensate the Respondent for increased electricity costs as a consequence of her being unable to heat the Property by gas and not having hot water.
- 19.10 The Applicant considered that the Respondent would have increased electricity costs of approximately £125 per month.
- 19.11 The Applicant decided to replace the central heating boiler and heating system, and rewire the Property when it was vacated by the Respondent.
- 19.12 The Applicant served a notice to leave on the Respondent on 4 December 2023. The notice period was eighty four days.
- 19.13 The Respondent did not leave the Property at the expiry of the notice period.
- 19.14 The Applicant paid £350 rent for each of the months of December 2023, January 2024 and February 2024.
- 19.15 The Applicant paid no rent for March, April and May 2024.
- 19.16 The Respondent is entitled to abatement of rent of £200 per month for the six months from the beginning of November 2023 to the end of May 2024.

20. Ms Stuart said that she had withheld payment of rent because the Property was not of a tolerable standard. She said that the Council had confirmed this and that it was because of the lack of a hot water supply.

21. Ms Stuart said that, because of the state of the Property, the Council had managed to find accommodation for her.

22. Ms Biggam-Gallagher did not accept that the Property was not of a tolerable standard. She said that hot water was available from the electric shower and that it was possible for the Respondent to boil kettles.

23. Ms Stuart said that, at no time, did her landlord suggest that the work to replace the boiler could be carried out when she was still residing in the Property.

24. Ms Biggam- Gallagher said that her “hands were tied” and that she could do nothing else but pursue eviction so that the necessary work could be carried out when the Respondent had vacated the Property.

- 25. In response to questioning to the Applicant with regard to whether she had explored other options to alleviate the position of the Respondent or to facilitate her moving out while the work was being done, she responded that she had not.**
- 26. Ms Biggam- Gallagher's evidence was clear in stating that she had done everything possible to assist the Respondent by reducing the rent and by offering her electric heaters. She said that she had an experience as a Council tenant some years previously when her heating system failed and the Council gave her one heater.**
- 27. Ms Biggam- Gallagher said that she accepted that the increased electricity costs from electric heaters would be "burdensome" for the Respondent. She said that she calculated that this would probably amount to around £30 per week and that a reduction in rent of £125 per month was reasonable.**
- 28. Ms Biggam- Gallagher was referred to the rent statement which showed that, according to it, £350 was due for the months of December 2023, January 2024 and February 2024. She said that £400 was due for the remaining months of the tenancy. She said that it was a matter of agreement that the discounted rent of £350 was only for the winter months.**
- 29. Ms Thorpe conceded that there was an error in the rent statement because it showed a payment in December 2023 of £400 when it was £350. Ms Stuart agreed that she had paid £350 in December 2023.**
- 30. The Applicant had submitted a copy of an email to the Respondent dated 30 November 2023 in which it stated that using electric heaters "will incur extra electricity costs. Therefore, proposal to reduce rent payment from £475 to £350 for December 1st, 2023 payment."**
- 31. In evidence, Ms Biggam- Gallagher said that the discounted rent was only until British Summer Time started.**
- 32. Ms Biggam- Gallagher was questioned about whether it would have been appropriate to apply the discount of £125 to the rent of £400, rather than £475 and she insisted that, at that period of the tenancy, she had been entitled to charge rent at the rate of £475.**
- 33. Ms Biggam- Gallagher said that the Respondent could have gone to live with her mother. Ms Stuart said that this had not been possible and that she had nowhere to go.**
- 34. Ms Stuart said that she had lived in the Property with her son, who is now sixteen. She said that she had decided to withhold the rent when she had been told that the Property did not meet the tolerable standard.**

She said that she put the money in her savings account. She was referred to the documentation which she had submitted from TSB Bank which did not give any detail of moneys paid in. She accepted that this did not show that she had paid the rent money into her savings account. She said that she no longer had the money because she had needed it for her new property.

Submissions

35. Ms Thorpe invited the tribunal to find that the Applicant was due to be awarded a payment order for £1225, together with interest. She said that the rent was lawfully due and that the Respondent had not been entitled to withhold payment.
36. Ms Stuart said that she should not be found liable for payment of any arrears of rent because the Property was not in a reasonable condition because of the issue with the gas boiler. She said that the whole situation had gone on for so long.

Discussion and Determination

37. The tribunal was satisfied that the Respondent had not paid rent for the months of March, April and May 2024.
38. Notwithstanding the Applicant's evidence that she had been entitled to charge monthly rent of £475, her representative, in submitting the rent statement, had accepted that the correct monthly rent for the period in question was £400. The Applicant's insistence that she had the right to charge £475 did not enhance her reliability.
39. It was to the credit of the Applicant that, as soon as the issue of the failed gas boiler had become apparent, she had taken action and reduced the rent by £125. She had calculated that the increased electricity costs would have amounted to around £125. This calculation was not challenged by the Respondent. Both parties accepted that a discount of £125 was appropriate. The tribunal therefore determined that the rent which the Respondent should have charged, using that discount, should have been £275. She had therefore overpaid rent for three months.
40. There was no evidence that there had been agreement that the reduced rent had only been for the winter months. The Respondent's evidence was confused. She stated that the discount was only until the start of British Summer Time but that would have meant that the discount should have applied for the March payment.
41. In any event, the Scottish climate is such that the tribunal did not find that electricity charges would have been significantly reduced for the months of March, April and May.

42. Landlords have a duty of care to tenants and, in evidence, the Applicant did not demonstrate this. One example of the Applicant's failure in this regard is the fact that she considered that it was appropriate for no discount in rent to be applied when, in her view, there would not have been increased electricity charges when the weather improved. Even if this was the case, the Applicant's approach took no account of inconvenience to the Respondent who had no central heating or running hot water from taps and would have been required to boil water to wash dishes or to attend to personal hygiene.
43. A landlord has a statutory duty to maintain a property in a tenable and habitable condition. The Applicant has not done so in respect of the Property.
44. A tenant may be entitled to an abatement of rent and usually arises where there is not full possession and enjoyment of the tenanted property. In this case, the Respondent did not have full enjoyment of the Property and its facilities. She had no central heating and no running water although she had use of an electric shower.
45. Calculation of abatement of rent is a matter of judicial discretion. The Respondent did not challenge that a £125 discount on the monthly rent was reasonable to compensate her for increased electricity costs. For three months that she had paid rent, she had not enjoyed the full discount.
46. The discount of £125 took no account of inconvenience to the Respondent in not having central heating and, more importantly, running hot water. The tribunal determined that an additional discount of £75 per month would be reasonable. The tribunal noted that the tenancy agreement allowed for interest to be charged on unpaid rent. Given the particular circumstances of the case, and the fact that any interest would be *de minimis*, the tribunal took this into account when calculating the amount of abatement and made no award in respect of interest. This means that the abated rent due for the period from December 2023 to May 2024 inclusive was £200 per month.
47. The rent statement showed a balance due of £1225. The statement showed credits in respect of overcharged rent and its opening balance as at May 2023 showed a debit entry of £75. No evidence was led to show why this opening balance was due. Ms Thorpe had also conceded that the rent statement was inaccurate in respect of the rental payment for December 2023. As a consequence, the tribunal considered it appropriate to disregard the rent statement and to deal only with rent due for the six months from December 2023 to May 2024. For that period, rent of £2400 would have been due in terms of the tenancy

agreement. Following abatement, £1200 would be due. The Respondent had paid £1050 which left a balance of £150 to be paid by her.

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.

Martin McAllister

**Legal Member
10 March 2026**