



**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/25/1467**

**Re: Property at 6 Springfield, Dundee, DD1 4JE (“the Property”)**

**Parties:**

**Sean Lewis Properties, 26-28 High Street, Dundee, DD1 1TA (“the Applicant”)**

**Mr Andrew McMahon, Miss Esther Vincent, 1 Norwood Terrace, Dundee, DD2 1PB (“the Respondents”)**

**Tribunal Members:**

**James Bauld (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is refused, and the tribunal makes no order for payment against the respondents**

**Background**

1. By application dated 26 March 2025 the Applicant sought an order under section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 18 June 2025 the application was accepted by the tribunal and referred for determination by the tribunal.

3. In the application, the Applicant sought payment of a sum of £2798.36. The sum reflected the rent arrears which the Applicant claimed were outstanding at the end of the tenancy between the parties.
4. That tenancy had run from 4 September 2023 to 16 February 2024. The monthly rent for the property was £1400.
5. Effectively, the Applicant was claiming two months' rent from the respondents.
6. A Case Management Discussion (CMD) took place on 27 October 2025. The tribunal issued a note after the CMD and it was determined that a hearing should take place.
7. The respondents' position as set out in the CMD was that during the tenancy, the property had suffered from a number of repairs issues. They indicated that when they had initially moved into the property, the heating system did not work and they had reported that to the landlord's agent. Thereafter there had been serious issues with a leaking roof and there had been a considerable period of time for repairs to be effected.
8. The respondents' position was that they were entitled to an abatement (or reduction) of rent owing to the landlord's failure to carry out repairs and to provide a property which was in an appropriate and habitable condition. It was their position that the level of abatement should be two months' rent and that effectively the tribunal should simply refuse to make an order for the sum claimed.
9. A hearing was set to take place on 29 April 2026 at 10.00

### **The Hearing**

10. The Hearing took place on 29 April 2026 via Webex video conference. The Applicant was represented by their letting agent, Ms. Aimi Lewis from Belvoir, Dundee. The Respondents were both present.
11. Prior to the hearing the respondents had lodged representations which included their statement of evidence and a timeline of events relating to the history of the tenancy. Their representations included copies of numerous emails between the parties and photographs which had been taken during the tenancy. At the CMD, it was noted that the Applicant's agent was willing to reduce the sum claimed but had not been in a position to do so at the CMD.
12. It should also be noted that the Note issued after the CMD directed both parties to lodge relevant supporting documents in support of their claim,

including a statement of evidence to be put forward at the hearing, and a timeline of what they believed to be the history of the tenancy and attempts at communication between the parties.

13. Parties were asked to lodge a paginated and indexed bundle of all the documents to be relied on at the hearing.
14. The Applicant did not lodge any additional documents after the CMD.
15. The tribunal commenced the hearing by asking the Applicant's agent whether the Applicant was now willing to reduce the sum claimed.
16. It was indicated that the Applicant was willing to reduce the sum claimed to £1500. The Applicant's agent submitted that the failure to carry out repairs, particularly to the roof, was a matter outwith the control of the landlord. The agent effectively blamed the weather for the lack of progress.
17. The respondents indicated that the reduced claim was not acceptable to them.
18. The tribunal very briefly explained to the Applicant's agent the concept of abatement of rent and asked whether she was willing to take further instructions from the Applicant. She confirmed that she was willing to do so and the tribunal adjourned to allow that to be done.
19. When the hearing reconvened the Applicant's agent indicated that she had instruction to reduce the sum claimed to £750.
20. The respondents again indicated that they were not willing to accept that amount. It was their position that they had not simply failed to pay rent. They had reported significant repairs issues with the tenancy, and they were seeking a reduction in rent equivalent to two months' rent.
21. The legal member of the tribunal referred the Applicant's agent to the case of ***Renfrew District Council v Gray*** (1978 SLT 70) and read a passage from Sheriff Principal Caplan's judgment dealing with the question of abatement of rent. That passage was in the following terms:-

***“On my reading of the authorities there are three remedies open to a tenant who does not get full or effective possession of the subjects leased. In the first place he can retain the rent. However, this measure is to secure performance or secure against the rent such rights as may ultimately be established and does not by itself govern the eventual obligation to pay rent. Secondly, the tenant may be able***

***to claim damages if loss is incurred due to the landlord's breach of contract. Thirdly, the tenant may claim an abatement of the rent on the basis that he has not enjoyed what he contracted to pay rent for. Rights to abatement of rent and damages for loss due to breach of the lease may in many cases be equivalent in practical terms but they are different concepts. It is a prerequisite of damages that there has been a breach of contract and the quantification is based on established loss flowing from the breach. Abatement of rent as illustrated by the authorities is an equitable right and is essentially based on partial failure of consideration. That is to say, if the tenant does not get what he bargained to pay rent for it is inequitable that he should be contractually bound to pay such rent. This position results even if the failure to enjoy the subjects is through accident rather than breach of contract and the abatement really is based on the fact that the tenant should not pay for rights he never enjoyed rather than loss suffered although in certain cases loss sustained may be a suitable measure of the abatement due.”***

22. The agent confirmed she was not aware of this case.

23. The tribunal then asked the agent whether she accepted that the timeline of events provided by the respondents was accurate and she confirmed that it was. The Applicant's agent also confirmed that the emails submitted by the respondents were accurate and fairly reflected the correspondence between the parties during the tenancy.

24. It was agreed by the parties that it was a matter for the tribunal to determine whether an abatement of rent should be made in this case and, if so, that it was a matter for the tribunal to determine the extent of such an abatement and whether any amount still remained due and owing by the respondents.

25. The hearing was then concluded.

### **Agreed factual position**

26. There is almost no factual dispute between the parties.

27. It is agreed that there was a tenancy between the parties which lasted from 4 September 2023 to 16 February 2024.

28. The monthly rent due in terms of the tenancy was £1400 per month.

29. The rent statement enclosed with the original application showed that at the conclusion of the tenancy, rent arrears of £2798.36 remained outstanding.

30. The rent statement accurately showed that the respondents had paid the initial rent due in September and then the monthly rent due in October and thereafter had not paid any further amounts of rent until the conclusion of the tenancy.
31. The rent statement showed that the deposit of £2000 was returned to the landlord and was effectively to cover the rent due for the month of January and the balance of rent due for the partial occupation for the period from 4 February to 16 February 2024.
32. Effectively, the amount showing as due and owing at the end of the tenancy was almost exactly two months' rent. The difference was £1.64.
33. It was agreed that the timeline of events provided by the respondents was accurate.
34. It was therefore agreed that during the tenancy the respondents had reported issues with repairs relating initially to the boiler and heating system and thereafter relating to water ingress from a leaking roof. The water ingress persisted for a period of months.
35. It was accepted that the boiler repairs were concluded after a period of two months.
36. It was accepted that the roof repairs were not completed when they were initially reported and had not been completed by early January 2024

### **Decision and reasons for decision**

37. The only decision to be made by the tribunal is whether the respondents are entitled to an abatement of rent which either reduces the sum claimed or extinguishes it. The Applicant's agent accepted by her offer that the sum claimed should be reduced.
38. The tribunal has taken into account the opinion expressed by Sheriff Principal Caplan in *Renfrew District Council v Gray*. In addition to the passage quoted above, Sheriff Principal Caplan also commented "***while it was acknowledged that a claim for compensation would require to be constituted by separate action, a claim for abatement could be advanced by way of a defence to an action for the rent for it is in essence a claim that the rent is not due***".

39. At the end of his decision, Sheriff Principal Caplan quotes with approval from an earlier decision by Sheriff Substitute Smith in *Euman Trs. v. Smith* ((1930) 46 Sh. Ct. Rep. 165) , namely:

***“While the house is not reasonably fit for human habitation the tenant is not getting his quid pro quo for the rent”.***

40. Abatement of rent is essentially an equitable remedy in which a tenant is entitled to receive a reduction in rent based on the failure of a landlord to provide what the parties had agreed. In this case, parties contracted in respect of a tenancy of a property. The landlord has a duty in such a contract, both in terms of statute and at common law, to provide a property which is in all respects reasonably fit for human habitation and which is tenantable and habitable.

41. It is clear from the timeline of events provided by the respondents and accepted by the Applicant’s agent that for significant periods during the tenancy (indeed, if not during the entirety of the tenancy), this property was not in a proper and fit state of repair.

42. The landlord has failed to provide what should have been provided in terms of this contract. Following the logic of the decision in *Renfrew DC v Gray*, it is clear that the respondents are entitled to an abatement of rent to reflect that failure.

43. The amount suggested by the respondents, namely two months’ rent, is effectively an abatement of 40%.

44. The tribunal has no hesitation in accepting that an abatement of rent in this case of at least 40% is justified. The property was not in a fit state at the commencement of the tenancy. The property was not in a fit state during large periods of the tenancy. The respondents regularly and properly reported required repairs, but the landlord failed to complete those repairs within a reasonable period of time.

45. The suggestion by the Applicant’s agent that the roof repairs were a matter outwith the control of a landlord is not accepted by the tribunal. The roof repairs were reported in October 2023. They remained uncompleted by early January 2024. By email dated 5 January 2024, the Applicant’s agent acknowledges that their chosen roofing contractor has again failed to attend and actually asks one of the respondents (Mr McMahon) if he was able to suggest an alternative contractor. An earlier email of 12 December 2023 from the agent to the respondents indicated that the roofer will “attend this week”. Clearly he did not.

46. The tribunal takes the view that it was entirely within the control of a landlord (or the agent) in the period from October 2023 to January 2024 to instruct a competent roofing contractor to attend the property to complete and execute proper repairs. The failure to have those repairs completed is a matter entirely within the control of the landlord.
47. The tribunal accordingly finds that the respondents are entitled to an abatement of rent and accepts their proposal that the abatement amount should be the equivalent of two months' rent, thus effectively reducing the amount owed by the respondents at the conclusion of this tenancy to nil.
48. The application is therefore refused, and the tribunal makes no order for payment against the respondents.
49. The decision of the tribunal is 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.**

**J Bauld**

**29<sup>th</sup> of April 2026**

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**Legal Member/Chair**

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**Date**