



**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/24/0378**

**Re: Property at 28 Lenzie Avenue, Deans, Livingston, EH54 8NP (“the Property”)**

**Parties:**

**Ms Rukhsana Kausar, 28 Lenzie Avenue, Deans, Livingston, EH54 8NP (“the Applicant”)**

**Mr Allan Wells-Jansz, Miss Chloe Thomson, 39 Rannoch Walk, Livingston, EH54 5AH (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of THREE THOUSAND FIVE HUNDRED AND EIGHTY-THREE POUNDS AND FORTY-FOUR PENCE (£3583.44)**

**Background**

1. By application accepted on 27 August 2024 the applicant sought an order for payment in the sum of £7,239.40 in respect of rent arrears, damage to the property and compensation arising from the respondents operating a business from the property.
2. The application was conjoined with 2 applications subsequently raised by the respondents under references FTS/HPC/CV/25/0020 (damages due to the

condition of the property) and FTS/HPC/CV/25/0021 (wrongful termination order).

3. Teleconference case management discussions (“cmds”) took place in relation to the conjoined applications on 22 January 2025, 8 May 2025 and 13 August 2025. The Tribunal determined to fix an in person evidential hearing to determine the 3 conjoined applications. A case management note and Direction was issued to parties after the cmd on 13 August 2025 advising parties to submit an inventory of any evidence they considered relevant to the issues in dispute. Parties were advised that the Tribunal expected all parties to be in attendance at the evidential hearing. Parties were advised to consider whether to lead evidence from any additional witnesses to support their position.
4. An in person hearing was scheduled for 9 January 2026. On the morning of the hearing the respondents emailed the Tribunal to state that they had both tested positive for Covid. The Tribunal adjourned the conjoined applications to a further in-person evidential hearing on 20 May 2026. Neither respondent attended the hearing nor provided any explanation for their absence. The respondents had been properly notified of the hearing in terms of rule 24. The Tribunal determined to proceed with the hearing in their absence in terms of rule 29.

#### **Evidential hearing – 20 May 2026**

5. The applicant attended the hearing with her brother Nazim Ali. The applicant explained that her brother had assisted her with the management of the property. She also relied on him to assist with translation as English was not her first language. The Tribunal heard from Mr Ali and the applicant in relation to each of the issues raised in the application. A summary of the evidence is undernoted. For the avoidance of doubt this is not a verbatim record of the evidence heard.
6. The applicant stated the respondents were letting agents. She had first contacted them to ask if they would assist with renting out the property. The

respondents agreed and then offered to rent the property themselves. The property is a 3 bedroom end terrace with gardens to the front and rear. As they were letting agents the respondents had prepared the tenancy agreement which specified that the monthly rent was £850. As the respondents were acting as letting agents and tenants the applicant had left the administration of the deposit to them. The applicant had understood that a deposit of £850 would be placed in a relevant deposit scheme however that had not been done. No deposit was received by the applicant.

7. Rent arrears: The applicant advised that she is seeking rent arrears in the sum of £2084. The monthly rent due for the property was £850. The rent arrears related to unpaid rent for June, July and up to the 17 August 2023. The applicant referred to photographs of an envelope received from the respondents that had been submitted, which had been taken on 17 August 2023. She stated that this was the date the house keys had been returned in the post. The applicant stated that the notice to leave had been served on 5 May 2023 and stated that the respondents should leave by 31 July 2023. The applicant stated that the respondents had stopped paying rent after the notice to leave had been served. The applicant stated that all the issues raised by the respondents in relation to the condition of the property and repairs were raised after the notice to leave was served.
8. In relation to the respondents' previous written submissions that the rent had been lawfully withheld due to the condition of the property the applicant and Mr Ali disputed that there was any basis for withholding the rent. They stated that the respondents had damaged the property and left it in a poor condition and that the applicant dealt with all repairs issues promptly.
9. In their written submissions the respondents had raised a number of repairs issues which were the basis for rent being withheld. The Tribunal heard from Mr Ali and the applicant on each of the issues identified:

10. Hole in roof/Pest issue (birds and bugs) – Mr Ali stated that he is a civil engineer. He stated that the roof had been inspected at the time an issue had been raised by the respondents. He stated that birds had been nesting in the roof however there were protections in place for them as wildlife which meant that they could not be removed. He stated that there was no structural or repairs issues with the roof beyond the fact that birds had nested.
11. Garden safety issues: The applicant and Mr Ali referred to photographs that had been submitted. They stated that the respondents had cut down trees in the garden and dug up a footpath in the garden including removing slabs. The applicant stated that any issues with the condition of the garden were attributable to the respondents' conduct.
12. Legionella: The applicant and Mr Ali stated that they had instructed a firm to carry out the usual safety checks before the tenancy commenced however they had not been provided with the certificates. They stated that when the respondents raised the issue of the water tank they had requested access to carry out an inspection however this had been denied.
13. Refusal to supply window coverings: The applicant stated that when the property was rented out there had been window coverings on all of the windows apart from the kitchen window. She stated that as there was a tree in front of the window a blind had not been necessary for privacy.
14. Faulty freezer/taps/tumble dryer/ smoke and heat alarms out of date/electrical safety issues: The applicant stated that in February 2022, £2000 had been spent on upgrading works at the tenancy which included upgrading the electrical installation, a new cooker, a replacement fridge and washing machine. In relation to repairs issues raised during the tenancy period, repairs had had been carried out despite frequent cancellations by the respondents at the last minute. The applicant stated that fire and smoke detection systems had been upgraded in 2023 after the issue was raised by the respondents. The applicant advised that the respondent raised these issues after the notice to

leave was served and that action was taken to inspect and repair each issue within a reasonable time of the applicant being made aware of the issue. Any repairs not carried out were due to the respondents refusing access.

15. The applicant stated that when the respondents advised that they intended to withhold rent they provided them with information from the Shetler website which stated that withholding rent should be a last resort and only used after a landlord and not carried out repairs within a reasonable period.

16. Costs relating to contractors and materials relating to work said to remedy wants of repair after the Respondents vacated (£2701.40): The applicant referred to invoices, photographs and written submissions that had been provided. The Tribunal heard from the applicant and Mr Ali on each of the individual items. The applicant stated that the property had been in good condition when the tenancy commenced. The applicant stated that the photographs that had been submitted showed the condition of the property before the property had been rented out and after the respondents had moved out. The photographs showed damage to the walls including an area of wallpaper that had been removed. The applicant stated that the property had not been properly cleaned when the tenancy ended and she required to instruct a deep clean of the property due to odours.

17. The applicant referred to photographs showing staining to the carpet in the property, scratches to the door caused by the respondents' cats and damage caused to the plasterwork in the property. The applicant stated that due to damage the carpet in the bedrooms required to be replaced. The other carpets were professionally cleaned. The applicant stated that the items being claimed for went well beyond ordinary fair wear and tear. She stated that towards the end to the tenancy the respondents refused access for inspections and repairs. The applicant stated that she moved into the property in October 2023 after significant works had been carried out to place the property in a reasonable condition.

18. The applicant referred to invoices that had been submitted in respect of the repairs and other works carried out after the tenancy ended. The applicant sought payment in respect of replacing carpets in the bedrooms and cleaning the carpets. In relation to the redecoration of the property the applicant had obtained a quote from NU Walls a local decorator. The estimated cost was £4780. Due to the cost the applicant and Mr Ali undertook the work themselves however they seek to recover £500 for the work. The applicant stated that materials were purchased from B&Q and the Range. She stated that receipts had been submitted which showed that £149.44 had been spend on paint, varnish and other materials.
19. £2,250, based on a figure of £150 per month damages arising due to the tenants operating a business from the property without authorisation. The applicant stated that the respondents had used the property as their business address during the tenancy. The figure sought was based on the applicant's estimate of how much the respondents might have had to pay for business premises. The applicant stated that the respondents had placed a sign in the garden advertising their business which had been taken down at the applicant's request. However, the applicant believed that the respondents did see clients from their letting agency in the property.

### **Findings in fact**

20. Parties entered into a tenancy agreement with a commencement date of 4 March 2022.
21. Prior to the tenancy commencing the respondents were operating as letting agents.
22. The applicants did not receive a deposit when the tenancy commenced and no deposit was lodged in a relevant tenancy deposit scheme.
23. Monthly rent due in terms of the tenancy agreement was £850.

24. The property is a 3 bedroom end of terrace with gardens to the front and rear.
25. A valid notice to leave was served on the respondents on 5 May 2023. The notice specified ground 4 in schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (landlord intends to live in property) and specified that proceedings could be raised after 31 July 2023.
26. The last monthly rent payment received by the respondents was received at the start of May 2023 before service of the notice to leave. No rent was paid after service of the notice to leave.
27. The applicant received the keys to the property by post on 17 August 2023.
28. The respondents were liable for rent until the tenancy terminated on 17 August 2023.
29. Rent arrears due at the date the keys were returned amounted to £2166.12.
30. The applicant carried out repairs to the property following the end of the tenancy and before moving into the property as her principal residence in October 2023. The applicant continues to reside in the property.
31. Following termination of the tenancy agreement the applicant required to replace the carpet in the bedrooms at a cost of £730. The remaining carpets were professionally cleaned at a cost of £120. The condition of the carpets went beyond damage attributable to fair wear and tear.
32. During the tenancy period the condition of the wall paper and internal doors was damaged beyond fair wear and tear. The plaster work in the property had been damaged and required to be repaired.
33. The respondents obtained a quote for the required redecoration work from a local decorator. Due to the high cost the applicant and Mr Ali carried out the

work themselves. A charge of £500 reflects the cost of materials and labour required to carry out the work due to damage to the internal decoration which went beyond fair wear and tear.

34. The respondents incurred a cost of £149.44 for purchase of paint, varnish and materials to redecorate the property.

### **Reasons for the decision**

35. The Tribunal had regard to the large volume of paperwork that had been submitted by both parties and the evidence of the applicant and Mr Ali in reaching its decision.

36. The application had been conjoined with 2 applications submitted by the respondents. This had led to a large volume of documents copied across each of the applications.

37. The Tribunal found the applicant and Mr Ali to be credible. It was clear that they had spent considerable time on their submissions and lodging documentary evidence to support their position. The Tribunal accepted the applicant's evidence that she had at all times acted in good faith in relation to the tenancy agreement. The Tribunal accepted her evidence that the respondents attitude had changed after the notice to leave was served. It was evident from the documents submitted that from that date rental payments had stopped and complaints relating to the condition of the tenancy were made.

38. The Tribunal considered that the conduct of the respondents suggested a lack of credibility in relation to their position as set out in their written submissions. They had failed to attend the hearing to give oral evidence without explanation. This had led to 2 conjoined applications raised by them being dismissed and no oral evidence in opposition to the applicant and Mr Ali's evidence in the present application.

39. In respect of the rent arrears, the respondents had not previously disputed that rent had not been paid for the months of June and July. They submitted that the tenancy ended on 31 July – the date the notice to leave became effective and that they had lawfully withheld that rent.

40. The Tribunal determined that 31 July 2023, the date within the notice to leave was the date after which proceedings could be raised at the Tribunal and was not a termination date for the tenancy. The Tribunal had regard to the applicants' evidence and the photographic evidence of an envelope that had been posted to the applicant containing the keys to the property and accepted that the tenancy terminated on 17 August 2024. The Tribunal calculated that the arrears due at that date amounted to £2166.12 however that figure was restricted to the figure of £2084 sought in the application.

26. In relation to the respondents' written submissions that the rent had been withheld due to the condition of the property, the Tribunal had heard from the applicant in relation to each of the alleged areas of disrepair. The Tribunal took into account that the respondent had made written submissions however they failed to attend the hearing to provide oral evidence without explanation. The Tribunal accepted the applicant and Mr Ali's evidence on each of the alleged issues and found that the respondents had not shown any legal basis upon which they were not liable to pay rent for the period from June 2023 until the tenancy terminated. Withholding rent can be used as a lever to force a landlord to carry out necessary repairs however it is distinct from a counter claim for damages and/or a tenant seeking an abatement of rent due to the condition of the property. The respondents withheld the full rent however, the Tribunal determined that the applicant had responded to complaints within a reasonable time. The Tribunal determined that the respondents remained liable for rent until the tenancy ended.

27. In respect of the sums sought for damages arising from repairs carried out after the tenancy had commenced, the Tribunal had regard to the applicant and Mr Ali's oral evidence at the hearing, supported by the invoices and other evidence

that had been submitted. The Tribunal gave particular weight to the photographic evidence that had been submitted showing the condition of the property before the tenancy commenced and after the respondents had left the property.

28. The Tribunal accepted that there had been damage to the property which went beyond fair wear and tear in relation to the condition of the wallpaper, doors, plaster work and carpets. Invoices had been submitted showing the cost of replacement carpets and professional cleaning costs.

29. In relation to the charge made for redecoration including repairs to the plasterwork and internal doors an estimate had been submitted from a local decorators firm for full decoration of the property. The Tribunal accepted the applicant's submission that a charge of £500 was a reasonable charge for the repairs works carried out to the walls, plaster work and internal doors. Receipts showing payment of £149.44 in respect of outlays for redecoration materials had been submitted.

30. In relation to the charges made for replacement carpets and cleaning – the Tribunal accepted that the invoices submitted were genuine with £730 paid for replacement carpets and £120 paid for professional cleaning.

31. The Tribunal accepted the applicant's evidence that the respondents had worked from home in the property however, beyond any additional wear and tear to the property the Tribunal was not satisfied that the respondents were liable to pay the damages sought which were based on costs that might be charged for office space. The applicants' had not shown any loss incurred in relation to this item.

32. The Tribunal determined to refuse the applicant's request for interest on the award.

## **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.**

**Mary Claire Kelly**

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**Legal Member/Chair**

**20 May 2026**

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**Date**