



**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/24/3691

Re: Property at 18 Albert Den, Albert Lane, Aberdeen, AB25 1SY (“the Property”)

Parties:

Mr Michael McLeod, Ms Ailsa Fyfe, 18 Albert Den, Albert Lane, Aberdeen, AB25 1SY (“the Applicant”)

Aberdeen Leasing Investments Ltd., Aberdeen Leasing Investments Ltd., 162 Anderson Drive, Aberdeen, AB15 6FR (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Applicants)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.

Background

1. On 1st August 2024 the Applicants lodged an Application with the Tribunal under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order for payment of compensation.
2. The Application went through the Tribunal’s sifting process, with further information being sought on several occasions, and the case was, on 24th February 2025, finally accepted to proceed to a Case Management Discussion.
3. The Application was served on the Respondents by Sheriff Officers on 10th April 2025.

4. On 26th April 2026 and 20th May 2026, the Respondents lodged Written Representations.
5. The case called for a Case Management Discussion (“CMD”) on 14th July 2025. At that point a Repairing Standards case in relation to the property, reference RP/24/3702 was progressing through the Tribunal system. The CMD was therefor adjourned pending the outcome of RP/24/3702.
6. Case RP/24/3702 concluded on 1st August 2025, when the Tribunal members in that case were satisfied that the Repairing Standards Enforcement Order had been complied with.
7. A new CMD in this case was scheduled for 31st October 2025 but was adjourned to allow all relevant cases to be heard together, and a fresh CMD was set for 14th April 2026.
8. On 13th April 2026 the Second Named Applicant (“AF”) sent an email to the Tribunal which began:

Dear Tribunal Team, I am writing to confirm my intention to join tomorrow's hearing call at the scheduled time for the case mentioned above. I am currently out of the country in Zambia due to essential work commitments, and my phone plan may not support a reliable international connection. I will make every effort to dial in and will notify you immediately if technical issues prevent this.

The email went on to set out further Heads of Claim and also detailed various medical and health issues in relation to AF.

The Tribunal could not consider the parts of the email not already narrated here as:

- It was sent less than 24 hours before the CMD was due to call and therefore did not give fair notice to the Respondents, nor did it allow the Tribunal sufficient time to assess it.
- AF did not give consent for the email to be shared with the Respondents.
- The email sought to introduce new matters at a late stage. Rule 14 should be followed by the Applicants if they wish to introduce new matters at this stage.

Case Management Discussion

(This section is copied from the Case Management Discussion Note issued on 14th April 2026)

9. The Case Management Discussion (“CMD”) took place by teleconference on 14th April 2026. It had been listed to call along with the eviction action raised by the Respondents by the Applicants, reference FTS/HPC/EV/3853, an accompanying application for payment of rent arrears, reference

FTS/HPC/CV/25/3895, and an application by the Respondents against the guarantors of the Applicants, reference FTS/HPC/CV/24/4359.

10. The Respondents joined the call and were represented by Miss Reid and Miss Ogston of Caroline Walker Property Limited. Also in attendance were Ms McLeod and Mr Fyfe, Respondents in case FTS/HPC/CV/24/4359. There was no attendance by the Respondents or any representative on their behalf. The Tribunal Clerk sent an email to AF and received an email in reply, the first paragraph of which read:

Dear Tribunal Team, I have made repeated attempts to join today's hearing using both my UK number (+44 7340 114633) and Zambian number (+26 076 377 4515) across multiple devices and SIMs since 09:50 UK time. Unfortunately, none of the calls have connected due to international connection issues from Zambia.

The rest of the email cannot be copied here due to the issues mentioned in relation to the email received from AF the day before.

11. The Chairperson noted that it was extremely disappointing that the Applicants had not joined the call. They were notified of the date for the CMD on 21st February 2026 and they did not make any representations to the Tribunal that the date was not suitable. The onus is on them to ensure that they can attend, and proper arrangements should have been made by them to attend. It was open to the Chairperson to dismiss the Application, but she decided that it would not be in the interests of justice to do so, and that the potential for the Applicants to apply for recall would only prolong reaching a final determination.
12. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson considered the overriding objective of the Tribunal, as laid out in Rule 2 of the Tribunal's procedural rules, which can be accessed via the Tribunal's website. The Chairperson decided that to avoid delay, so far as compatible with the proper consideration of the issues, and to deal with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties, that all four cases should be dealt with at a Hearing.
13. Some of the purposes of the CMD are to identify the issues to be resolved, identify what facts are agreed between the parties, raise with parties any issues the Tribunal requires to be addressed and discuss what witnesses, documents and other evidence will be required. Obviously it was not possible to raise issues the Tribunal requires to be addressed in the absence of the Applicants, and the Chairperson will issue a Direction laying out what is required of the Applicants.
14. The Chairperson identified that through the sifting process the case had been amended several times and the final version, to be dealt with at the CMD, was the Form F dated 14th September 2024 and Additional Information document lodged with it (page 177 in the Tribunal's papers).

15. Before turning to the document, the Chairperson confirmed to the parties that the onus of proof on any issue lay on the party making the claim in relation to that issue. In addition, in any action for damages arising from breach of contract the claimant should take reasonable steps to mitigate any loss they allege that they have suffered.
16. The following paragraphs deal with the issues in dispute, and which will be dealt with at the Hearing.
17. The Chairperson noted from the Additional Information document that the Applicants state that they are withholding rent. They claim that they are lawfully exercising their right to withhold rent. They state that this right comes from section 14 of the Housing (Scotland) Act 2006. This is incorrect. Section 14 does not mention withholding rent. The right to withhold rent is an equitable remedy in contract law, and the tenant should show good faith by notifying the landlord that they are withholding rent pending repairs being dealt with and they should keep the rent in a separate bank account to be paid when the repairs are completed, or to give security for an action such as this. Documentation will be required from the Applicants to satisfy this point.
18. The Applicants are claiming in relation to increased food costs due to a broken hob and faulty fridge door. The Applicants have not provided any vouching in relation to the increased costs they allege they have incurred. The Respondents allege that the issues were not reported to them promptly and that they took action as quickly as they could. Each side will need to lead evidence to establish their position.
19. The Applicants are claiming in relation to health-related expenses. The Applicants have not provided any vouching in relation to these alleged costs. They have not provided any medical evidence to support the claims. Evidence will require to be led by them to establish their position.
20. The Applicants are claiming in relation to emotional distress and mental health impact. They have not provided any medical evidence to support the claims. Evidence will require to be led by them to establish their position.
21. The Applicants are also seeking reduction of rent in relation to various issues. These are in relation to alleged broken back door lock, mould and lack of ventilation, washing machine leak, broken hob and fridge door. The onus will be of the Applicants to establish when each alleged repair issue was reported by them to the Respondents and to quantify the loss which they have allege they have suffered.
22. The Applicants have a claim in relation to lack of garden maintenance. Given that Clause 31 of the Tenancy Agreement regulates that the tenants are responsible for garden maintenance they will need to lead evidence as to why this clause does not apply.

23. The Applicants claim interest. This will be a matter for the Tribunal to decide.

24. Having established the issues in dispute there followed a discussion about the mode of the Hearing. It was decided that teleconference would not be appropriate due to the complexity and number of documents. It was not practical to expect Dorcus McLeod to travel to Aberdeen. It was therefore decided that videoconference would be the most appropriate mode.

25. The Tribunal will issue Directions, which should be timeously complied with. The Chairperson wishes to make it clear that if time limits are not complied with documentation will not be permitted to be lodged late. This is a complex situation, and each party must be given consideration in relation to fair notice and preparation time.

26. It should also be noted by parties that if they wish to bring witnesses it is their responsibility to organise that, and to meet any costs that the witness may have.

Subsequent to Case Management Discussion

27. The Tribunal issued an extensive Direction to the Applicants, sent by email on 8th May 2026, as follows:

The Applicant is required to provide:

- 1. Details/documents to show when they advised the Respondent or the Letting Agent that they were withholding rent pending repairs being done and proof that the funds are held in a separate bank account*
- 2. Details/documents to show when they advised the Respondent or the Letting Agent that repairs were required in relation to alleged broken back door lock, mould and lack of ventilation, washing machine leak, broken hob, fridge door and garden maintenance*
- 3. Vouching to establish alleged losses in relation to food costs and laundry costs incurred and any other alleged losses*
- 4. Medical reports/vouching in relation to alleged medical expenses incurred*
- 5. Details/medical reports in relation to claims for emotional distress and mental health impact*
- 6. It is appreciated that some documentation may already be lodged but it should be re-lodged, along with any new documentation on which the Applicant wishes to rely, in one document, said document to be page numbered and the first page should be an inventory listing each item and its page number*

The said documentation should be lodged with the Chamber no later than close of

business on 14th June 2026.

28. The Respondents were also issued with a Direction, but their compliance with it was dependent on the Applicants first complying with their Direction.
29. The Applicants did not respond to the Direction. They did not lodge any details or documents.
30. A Hearing was fixed for 21st July 2026. The Hearing date was notified to all parties by email on 19th June 2026.
31. On 14th July 2026 the First Named Applicant (“MM”) sent an email to the Tribunal seeking a postponement of the Hearing. The reasons given will not be narrated here in full, but he did state that AF is still in Zambia and not able to return to the UK at this time, and that refusal of the postponement would impact on the fairness of the Hearing as he was unable to properly coordinate with AF, gather the necessary evidence or address the Tribunal’s requests fairly.
32. The Tribunal refused the request to postpone for the reasons given in the email sent to MM on 16th July 2026.
33. On 16th July 2026 MM sent a further email to the Tribunal, again seeking a postponement. The Tribunal refused this on the same grounds.
34. On 20th July 2026 MM sent an email to the Tribunal as follows:

“Dear Alice Brown,

I am writing to confirm that Ailsa Fyfe and I will not be attending tomorrow's hearing at 10:00. As previously advised, our postponement requests were refused, and we are not in a position to join, given our reasons and circumstances.

We ask that the Tribunal treat this email as our written submission and determine the conjoined cases on the basis of the papers already lodged, along with the following points.

Repairing Standard: The Tribunal already found, in FTS/HPC/RP/24/3702 (Decision, 23 January 2025), that the Landlord breached Section 14(1)(b) of the Housing (Scotland) Act 2006 — the property was not wind and watertight, and the fridge was not in proper working order — and issued a Repairing Standard Enforcement Order as a result. This is an existing finding, not something we need to re-prove.
Rent withheld: Rent was withheld in direct response to that breach, on the basis of retention pending repairs. We note the Tribunal's guidance at the 14 April 2026 Case Management Discussion that this is properly treated as an equitable contractual remedy, and we proceed on that basis.

Outstanding heads of claim: We were unable to complete full vouching for

food/laundry costs and medical/emotional distress claims within the timescale set by the Direction of 14 April 2026, as we were outwith the UK during that period. We ask the Tribunal to determine them on what is already lodged.

Arrears and eviction: We ask the Tribunal to weigh the confirmed Repairing Standard breach against the arrears claimed, and to have regard to our actual period of occupation of the property.

We would be grateful if the Tribunal could proceed on this basis.

*Yours
Michael McLeod*

sincerely,

Hearing

35. The Hearing took place by teleconference on 21st July 2026. It had been listed to call along with the eviction action raised by the Respondents against the Applicants, reference FTS/HPC/EV/3853, an accompanying application for payment of rent arrears, reference FTS/HPC/CV/25/3895, and an application by the Respondents against the guarantors of the Applicants, reference FTS/HPC/CV/24/4359.
36. The Respondents joined the call and were represented by Ms Walker of Caroline Walker Property Limited. Also in attendance was Ms Dorcus McLeod Respondent in case FTS/HPC/CV/24/4359. There was no attendance by the Applicants or any representative on their behalf.
37. The Chairperson explained which cases were to be dealt with and also explained that the Applicants had sought a postponement, which had been refused, and that they had sent an email saying that they would not be attending the Hearing and asking the Tribunal to deal with the case on the basis of what had already been lodged.
38. The Chairperson explained that the CMD Note had made very clear to the Applicants that they had not provided sufficient evidence to back up their claim, and that the Applicants had not complied with what was quite a comprehensive Direction.
39. The Chairperson explained that the Tribunal was going to dismiss the application as the Applicants had not proved their case.

Reasons For Decision

40. It was made clear in the CMD Note that the onus of proof on any issue lay on the party making the claim in relation to that issue, and that in any action for damages arising from breach of contract the claimant should take reasonable steps to mitigate any loss they allege that they have suffered.

41. It was also made clear in the CMD Note, and appears to be accepted by the Applicants as per the email from MM dated 20th July 2026 that the right to withhold rent is an equitable remedy in contract law, and the tenant should show good faith by notifying the landlord that they are withholding rent pending repairs being dealt with and they should keep the rent in a separate bank account to be paid when the repairs are completed, or to give security for an action such as this. The Applicants have provided no evidence that the withheld rent has been held in a separate bank account.
42. The Applicants raised a Repairing Standards application. Case RP/24/3702 concluded on 1st August 2025, when the Tribunal members in that case were satisfied that the Repairing Standards Enforcement Order had been complied with. The Applicants seek rent abatement/damages in relation to breach of the Repairing Standards obligations. It is for them to prove any loss they have sustained.
43. The Applicants are claiming in relation to increased food costs due to a broken hob and faulty fridge door, health-related expenses, emotional distress and mental health impact and rent reduction in relation to alleged broken back door lock, mould and lack of ventilation, washing machine leak, broken hob and fridge door, and garden maintenance. The Applicants have not provided any vouching in relation to the increased costs they allege they have incurred nor have they provided any medical evidence to support the claims. It is not for the Tribunal to decide if any award is reasonable, or the amount of such award without having considered evidence.
44. The Applicants have failed to prove their case, and the application therefore falls to be dismissed.

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.

Alison Kelly

