

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/23/2422

Re: Property at Glenside Farm, Tower Road, Torrance G64 4DS ("the Property")

Parties

**Mrs Janis Ralston, Mr John Ralston, Melville House, 70 Drymen Road, Bearsden,
Glasgow, G81 2RH ("The Applicant")**

**Tavis Tennant McCabe, Hilton View, Craigton, Milngavie, 082 7HQ ("The
Respondent")**

Tribunal Members:

Ms V Bremner (Legal Member)

Mr A Khan (Ordinary Member)

Background

1. The Applicant submitted an application under rule 111 of Schedule 1 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 seeking a payment order in respect of rent arrears arising under a Private Residential Tenancy relating to Glenside Farm, Tower Road, Torrance. The application was first lodged with the Tribunal on 20 July 2023 and accepted by the Tribunal on 11 August 2023.
2. A Case Management Discussion took place on 9 October 2023. The Applicant was represented by Mrs Saddiq, solicitor, and the Respondent represented himself. The Respondent accepted that rent arrears were due but indicated that he wished to discuss repayment proposals. The Respondent also advised that he considered he had a counterclaim arising from damage allegedly caused to his possessions following flooding and ceiling collapse within the Property. The Tribunal continued the application to allow parties an opportunity to discuss repayment proposals and to allow the Respondent an opportunity to formulate and lodge a counterclaim.
3. A further Case Management Discussion took place on 24 January 2024. The Tribunal had before it the application, tenancy agreement, inventory disclaimer, rent statement, updated rent statement, medical documentation lodged by the Respondent, lists of repairs said to be required at the Property, photographs, receipts, written representations, text messages, emails regarding repayment

discussions, documents relating to leaks and repairs at the Property, and further written submissions lodged by both parties.

4. At that Case Management Discussion, the Applicant sought amendment of the application to increase the sum sought to £19,932.55. The Tribunal allowed the amendment. The Respondent agreed that the Tribunal could consider the amended sum but disputed that it was due.
5. The Respondent advanced a counterclaim arising from flooding and ceiling collapse within the Property. The Respondent maintained that a leak associated with the jacuzzi bath had caused damage to personal possessions and that the Applicant had failed to address known defects affecting the Property. The Respondent indicated that he was seeking damages in the sum of approximately £12,799 in respect of damage to personal possessions including a television, painting, sofa and rug, together with a claim relating to heating oil.
6. The Respondent further maintained that the Applicant had been aware, or ought to have been aware, of longstanding issues relating to leaks affecting the Property. He referred to communications with a previous tenant, Mr Martin Gallacher, and lodged documents, photographs and other productions in support of that position.
7. The Applicant disputed liability for the losses claimed and maintained that the jacuzzi bath had been disconnected prior to commencement of the tenancy and that the Respondent had been advised not to use it. The Applicant also disputed the extent of the losses claimed and the evidential basis upon which the counterclaim was advanced.
8. The Tribunal determined that there were material disputes of fact requiring determination following a hearing. Directions were issued requiring the Respondent to provide further details of the basis of the counterclaim, the losses claimed, the amount of rent arrears accepted by him, details of any witnesses to be called and the productions upon which he intended to rely. The Applicant was directed to lodge responses to the counterclaim and further information regarding the tenancy deposit and rent arrears.
9. The matter thereafter called for a hearing on 17 January 2025. The Applicant was represented by Ms Campbell Hynd, solicitor. The Respondent attended and represented himself. The Tribunal heard submissions regarding the Respondent's position that he had suffered losses arising from flooding and ceiling collapse and that such losses should be set against any rent arrears due. The Tribunal also heard submissions regarding the Applicant's position that the Respondent had been advised not to use the jacuzzi bath and that the losses claimed had not been established.
10. As Applicant witnesses were unavailable and further evidential issues required to be addressed, including matters relating to the Respondent's productions, videos, photographs, receipts and witness evidence, the hearing was adjourned to a later date. The Tribunal fixed a further hearing for determination of the application and counterclaim.

11. A hearing fixed for 3 April 2025 was postponed at the Respondent's request.

The Continued Hearing

12. The continued hearing took place at 10.00 am on 12 September 2025 at Glasgow Tribunals Centre.

13. Mr John Ralston was personally present and gave evidence on behalf of the Applicant.

14. The Respondent was not represented and was not in attendance at 10.00 am. The Tribunal checked with the clerk and confirmed that no request for postponement had been received. The Tribunal then delayed commencement of the hearing for approximately fifteen minutes to allow an opportunity for late attendance. The Respondent did not appear.

15. The Tribunal was satisfied that the Respondent had been properly and timeously notified of the hearing and determined that it was fair and reasonable to proceed in his absence. The Tribunal also considered that the Respondent's extensive written submissions in support of his defence and counterclaim, together with the photographs, receipts, invoices, emails, text messages, repair schedules and other productions lodged by him, provided a full account of his position. The Tribunal took full account of those submissions and productions in reaching its decision.

Evidence of Mr John Ralston.

16. Mr Ralston explained that he had built the Property in or around 2004 and subsequently let it to the Respondent in July 2021. The rent was £2,600 per month and a deposit of £3,900 was lodged.

17. Mr Ralston's evidence was that, at the commencement of the tenancy, the jacuzzi bath installed within the Property was not operational, having been disconnected and isolated. He maintained that the Respondent had been clearly advised not to use the bath. However, at a later date unknown to him and without his authority, the Respondent arranged for the isolator switch to the bath to be reconnected without his knowledge or authority.

18. Mr Ralston accepted that water ingress and ceiling damage had occurred but disputed that the Applicants were responsible for the losses claimed by the Respondent. He had visited the property shortly after the defects were notified to him and arranged for the ceiling damage to be repaired. The damage to the items now claimed by the Respondent was not notified to him at that time.

19. Mr Ralston disputed the Respondent's assertion that the Applicant had failed to address known defects within the Property and maintained that repairs had been undertaken when issues were reported.

20. Mr Ralston confirmed that the tenancy deposit of £3,900 had been released to the Applicant through SafeDeposits Scotland following termination of the tenancy. He explained that £1,152 of the deposit had been applied in respect of heating oil as the tank was left empty, contrary to the agreement with the Respondent, and that the balance of £2,748 had been applied towards the Respondent's rent arrears. Mr Ralston referred to the updated rent statement and maintained that the gross arrears amounted to £19,932.55. After deduction of the £2,748 already recovered through the tenancy deposit, he sought an amended and reduced sum of £17,184.55.
21. The Tribunal also considered the Respondent's written position, and documentation submitted in support of it, that:
- a) the Applicant had failed to repair a known defect associated with the jacuzzi bath;
 - b) the Applicant was aware, or ought to have been aware, of longstanding problems with leaks affecting the Property;
 - c) flooding and ceiling collapse had caused damage to the Respondent's personal possessions;
 - d) the Applicant had failed to fulfil repairing obligations owed to the Respondent;
 - e) the Respondent was entitled to set off losses arising from the flooding incident against any rent arrears due.
22. The Tribunal also considered the Respondent's counterclaim for damages arising from flooding and ceiling collapse said to have occurred following a leak from an upstairs bathroom, which was updated in his written submission dated 10 April 2024, from his original figure of £12,199. The heads of claim advanced by the Respondent included:
- a) £8,000 (that figure being an updated valuation on the original £6,000 purchase price claimed) in respect of alleged damage to a painting known as "The Dancing Horse";
 - b) £5,000 in respect of a sofa purchased in September 2022;
 - c) £1,799 in respect of a television purchased in August 2021;
 - d) alleged damage to a rug; and
 - e) a challenge to the Applicant's entitlement to retain £1,152 from the tenancy deposit in respect of heating oil.

Findings in Fact

23. The Respondent was tenant of the Property under a Private Residential Tenancy from 1 July 2021 until 15 November 2023.
24. The Applicant was the owner and registered landlord of the Property.
25. The contractual monthly rent was £2,600.

26. A deposit of £3,900 was paid by the Respondent and lodged in an approved scheme.
27. Rent arrears accrued between December 2022 and July 2023.
28. The Applicant established gross rent arrears in the sum of £19,932.55.
29. Following termination of the tenancy, the tenancy deposit was released to the Applicant through SafeDeposits Scotland.
30. Of the tenancy deposit, £2,748 was applied towards rent arrears and a further sum of £1,152 was applied in respect of heating oil.
31. Around September 2021, flooding from an upstairs bathroom caused damage to the living room ceiling below. The Applicant subsequently arranged for repairs to be carried out.

Reasons for the Decision

32. The Tribunal found Mr Ralston's evidence to be credible, reliable and consistent with the documentary material lodged.
33. The Tribunal carefully considered the entirety of the Respondent's written case and all productions lodged in support thereof. For the reasons set out below, the Tribunal was not satisfied that the Respondent had established the factual basis of the counterclaim.
34. The Tribunal was satisfied from the rent statements and supporting documentation lodged that rent arrears amounting to £19,932.55 had accrued.
35. The Tribunal further accepted that £2,748 from the tenancy deposit had already been applied towards rent arrears through the SafeDeposits Scotland process, leaving an outstanding balance due by the Respondent of £17,184.55.
36. The Tribunal accepted that flooding and ceiling damage had occurred during the tenancy. However, the Tribunal could not establish liability on the part of the Applicant. The Tribunal accepted the Applicant's evidence that the jacuzzi bath had been disconnected prior to the Respondent's tenancy commencing. The Respondent, in his document dated 10 November 2022, stated that *"since July 2021, there is an ongoing leak from the jacuzzi sections of the bath which results in water leaking into the floor/ceiling of the living room below. The tenant was never made aware of this resulting in significant damage to the living room ceiling and the Tenant's property, the landlord fixed the ceiling but never fixed the root cause..."*. The Tribunal did not accept that the Respondent had established that the Applicant was responsible for the leak or any resulting losses.
37. The Tribunal notes that, whilst the Respondent's document dated 10 November 2022 refers generally to damage to personal property, it contains no reference to the high-value items later relied upon in support of the counterclaim. The Tribunal

noted that the Respondent subsequently referred in written representations dated 15 April 2024 to damage to a sofa, television, rug and pictures arising from the flooding incident in September 2021. However, the Tribunal finds it difficult to accept that losses of the scale later claimed were not more fully raised with the Applicant or his agents at the time. The more detailed claims relating to these items emerged significantly later than the flooding incident itself and after disputes regarding rent arrears had arisen between the parties.

38. The painting formed the largest element of the Respondent's counterclaim, namely a sum of £8,000. In support of this claim, the Respondent lodged an email dated 12 April 2024 from "D. Vallantyne". The Tribunal noted that this email purported to establish that a painting had been purchased in 2017 for £6,000 and had an estimated replacement value in excess of £8,000 as at October 2021. The provenance of the painting and the qualifications of the author of the email were not established. Moreover, the Tribunal was unable to determine from the photographs lodged the extent of any damage said to have been sustained by the painting, whether it was capable of repair, or the basis upon which the replacement valuation had been calculated.
39. In respect of the remaining elements of the counterclaim, the Respondent produced receipts showing a sofa purchase of £5,000 and a television purchase of £1,799. At the hearing on 17 January 2025, the Respondent stated that he had disposed of both items. The Tribunal was therefore unable to assess their condition or the extent of any damage said to have been sustained.
40. In summary, the Tribunal was not satisfied that the information provided by the Respondent was sufficient to establish ownership, value, condition, damage or recoverable loss in respect of the items claimed. The Tribunal found the documentary material lodged in support of the counterclaim to be insufficient to establish the losses claimed on the balance of probabilities.
41. The Tribunal was satisfied from the Applicant's oral evidence, the documentary evidence lodged and the Respondent's own productions that the Respondent had failed to establish that the leak from the jacuzzi bath resulted from any act or omission on the part of the Applicant. The Tribunal was further not satisfied that the evidence established a causal connection between any act or omission on the part of the Applicant and the losses claimed.
42. In relation to the sum of £1,152 applied from the tenancy deposit in respect of heating oil, the Tribunal noted that the Respondent did not challenge the proposed distribution of the tenancy deposit through the dispute resolution procedure available under the approved tenancy deposit scheme when notified of the proposed allocation on 21 December 2023. In any event, having considered the written submissions and productions lodged by both parties, the Tribunal preferred the evidence of Mr Ralston and the Applicant's documentary evidence in relation to this matter. The Tribunal was satisfied that £1,152 was properly deducted from the tenancy deposit in respect of replenishment of the heating oil tank.

43. The Respondent also alleged that a number of other repairs had not been completed during the tenancy. The Tribunal noted that these matters were disputed by the Applicant and were not supported by sufficient evidence to establish any entitlement to damages, set-off or rent abatement.

DECISION

The Tribunal therefore grants the application and makes an Order for Payment in favour of the Applicant in the sum of £17,184.55 together with interest at the rate of 4% per annum from the date of the decision until payment. Interest is ordered in terms of Section 41A (1) and (2)(b) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 SSI 2017 No. 328 to reflect loss of interest if the sum had been invested in a savings account. The date of the decision is deemed to be the date this decision is signed as detailed below. This date will be a short period before it is notified in writing by the Tribunal to both the Respondent and the Applicant, as the Respondent was not present at the hearing and until his receipt of this notification, he is unaware of the outcome.

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.

V Bremner

Legal Member/Chair

Date: 14 August 2026