



**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/25/2639

Property: 44 Auchinraith Avenue, Hamilton ML3 OJQ (“Property”)

Parties:

**Joseph Sander, 74 White Lion Road, Amersham, Buckinghamshire HP7 9JS
 (“Applicant”)**

**Claire Bachurzewski, 44 Auchinraith Avenue, Hamilton ML3 OJQ
 (“Respondent”)**

Tribunal Members:

Joan Devine (Legal Member)

Mary Lyden (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
 (“Tribunal”) determined that an order for payment of £7,900 should be made.**

Background

1. The Applicant sought an order for payment of £4,000 in respect of arrears. The Applicant had lodged Form F. The documents produced were: a Tenancy Agreement which commenced on 15 July 2023 (“Tenancy Agreement”) and a statement of rent arrears.
2. On 10 November 2025 the Respondent lodged written representations. A Case Management Discussion (“CMD”) took place before the Tribunal on 21 November 2025. Reference is made to the note of the CMD. The outcome of the CMD was that the Tribunal fixed an evidential hearing to take place on 3 July 2026 and issued a direction. On 15 January 2026 the Respondent lodged a response to the direction. On 28 January 2026 the Applicant lodged a response to the direction. On 17 February 2026 the Applicant lodged a further inventory of productions.

3. A Hearing was scheduled to take place on 3 July 2026 at Glasgow Tribunals Centre. On 29 June 2026 the Respondent asked for the Hearing date to be postponed. This was granted and a fresh date was fixed for 1 October 2026.
4. On 29 June 2026 the Applicant's Representative lodged an updated statement of rent arrears, a gas safety certificate and an invoice for the installation of a new boiler at the Property dated 10 April 2022.
5. The Tribunal issued a Direction dated 3 July 2026 in the following terms :

The Respondent is required to lodge with the Tribunal :

1. *Evidence of the outstanding rent having been placed in a separate bank account pending resolution of the question of entitlement to withhold rent.*
2. *A written submission stating whether she continues to reside at 44 Auchinraith Avenue, Hamilton ML3 OJQ.*

The said documentation should be lodged with the Tribunal no later than close of business on 20 July 2026.

No Response to the Direction was lodged by the Respondent. The Tribunal followed up seeking a response to the Direction. No response was received.

6. On 14 September 2026 the Applicant lodged an updated statement of rent arrears which indicated arrears of £14,400.

Hearing

7. On 1 October 2026 a Hearing took place at Glasgow Tribunals Centre. Only the Applicant was in attendance. The Tribunal was satisfied that the date of the Hearing had been intimated to the Respondent.
8. The Hearing was in respect of the application for a payment order and also in respect of the conjoined application in which the Applicant sought an order for possession of the Property which proceeded under reference FTS/HPC/EV/25/2638. Reference is made to the Decision in the conjoined application for a possession order.
9. The Tribunal noted that the tenancy commenced on 15 July 2023 and that the rent was £650 per month. The Tribunal noted that the updated statement of arrears lodged indicated a balance due of £14,400. The Applicant confirmed that was correct. The Tribunal allowed the sum claimed to be amended to £14,400.
10. The Tribunal asked how it was that the tenancy came about. The Applicant explained that his Father has owned a shop in the local area for some 30 years

and that he knew the Respondent's family. He said that the previous tenant of the Property had vacated and renovations were being carried out when he was approached by the Respondent who was keen to take up a tenancy of the Property as soon as possible. He said that the Property is very close to where the Respondent's mother lives. He said that the tenancy began before all renovations were complete. In light of that he said that the first two months of the tenancy were rent free. He said that the main work still to be carried out was painting. The Applicant explained that he lives in England and manages the Property with assistance from his Father who lives nearer the Property. He said that he generally communicates with tenants via whatsapp. He said that he owns ten properties. He said that he was not aware of the Respondent's child having asthma until the CMD.

11. The Tribunal noted that at the CMD the Respondent had indicated rent had been withheld as there were outstanding repairs at the Property. The Tribunal noted that the Respondent had lodged a written submission providing details of the required repairs and photographs.
12. The Tribunal proceeded to consider each item of repair in turn.
13. **Lack of gas safety checks** – The Applicant told the Tribunal that he had a contractor who carried out gas safety checks every year for the Property and had installed a new boiler at the Property in April 2022. An invoice for the installation had been lodged.
14. **No Energy Performance Certificate (“EPC”)** – The Applicant told the Tribunal that he did not have an EPC for the Property. He said he instructed a tradesman to prepare one but was unable to gain access.
15. **Shower only runs cold** – The Applicant told the Tribunal that he could not recall when an issue with the shower was reported to him by the Respondent. He said that a new shower was purchased and a tradesman was arranged to fit it. He said that the Respondent then suggested that her Father could fit the shower as he was a plumber. The Applicant said he told the Respondent to have her Father fit the shower and the Applicant would pay for the labour cost and the cost of any materials. The Tribunal noted the exchange of messages between the Applicant and the Respondent dated 16 April 2024 lodged on behalf of the Applicant. The Applicant said that he did not receive an invoice from the Respondent's Father.
16. **Unsafe Heating system** – The Applicant said that a new boiler was fitted in April 2022. The Tribunal noted the exchange of messages between the Applicant and the Respondent dated 13 and 14 February 2024 lodged on behalf

of the Applicant which referred to a lack of heating and hot water and the boiler displaying an error code. The Applicant said that the contractor who fitted the boiler attended to fix it on 14 February 2024, the day after the issue with the boiler was raised. The Applicant told the Tribunal that the boiler is situated in a cupboard upstairs in the Property. He said that the Respondent found it inconvenient to go upstairs to turn the boiler on and off. He said that the Respondent did raise this with him but he regarded the issue not as a need for a repair but a complaint about the location of the boiler.

17. **Plaster on walls cracked** – The Tribunal noted the photographs lodged by the Respondent which showed cracked plaster on walls. The Applicant said that the walls were not like that when the Respondent took entry to the Property. He said that the need for repairs to plasterwork had not been notified to him. He said he first heard of the issue at the CMD.
18. **Carpet infested with beetles** – The Applicant told the Tribunal that new carpets were fitted in the Property around 18 months before the Respondent's tenancy began. He said that not long after the tenancy began the Respondent notified him about beetle infestation of the carpets. He said that he had a pest control contractor attend who advised that the best option was to fumigate the whole property. He said that work was instructed and undertaken. He said that the Respondent wanted to replace the carpets and that she did so at her own expense. He said for that reason the first two months of the tenancy were rent free rather than just the first month.
19. **Draughty windows** – The Applicant told the Tribunal that he had tradesmen attend to assess what repairs were required to the windows. He said he thought the issue could be addressed with insulation tape. He said that plastic "wedges" which connected with the window handle in order to properly close the window needed replaced. The Tribunal noted that the photographs lodged by the Respondent showed that the wedges on a number of windows were missing or broken. The Applicant said he told the tradesman to fix the windows and he heard nothing further about the windows. The Applicant said he thought the issue about the windows was raised near the start of the tenancy and he could not recall how long it was before he instructed the repairs. The Tribunal asked the Applicant if he checked that the works were carried out. He said that he usually would check with a tenant if work had been completed or his Father would check. He said that as he heard nothing further about the windows he assumed the repairs had been done.
20. **Dampness** – The Applicant told the Tribunal that the Respondent did not raise with him any concerns about dampness in the Property. He said the Property was not damp at the start of the tenancy.

21. **Garden unsafe** – The Tribunal noted the photographs of the garden lodged by the Respondent which showed that the garden was overgrown and untidy and there was a pile of bricks situated close to a fence. The Applicant told the Tribunal that the garden was “not great” when the tenancy began but the Respondent was keen to take entry quickly. He said he asked the Respondent to cut the hedge and mow the grass. He said that the bricks were required to fix the fence at the bottom of the garden. He said that the Respondent refused access for the fence to be repaired. He said that the rubbish in the garden shown in the photographs lodged by the Respondent was not there at the start of the tenancy.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement which commenced on 15 July 2023.
2. In terms of the Tenancy Agreement the rent was £650 per month.
3. In terms of the Tenancy Agreement rent fell due on the 15th of each month.
4. The Applicant did not charge the Respondent rent for the first two months of the tenancy.
5. The Respondent failed to pay the rent in full for the period September 2024 to September 2026. The unpaid amount was £13,750.
6. The Applicant did not provide to the Respondent an Energy Performance Certificate for the Property.
7. The Respondent and the Applicant exchanged messages regarding the need to fit a new shower in April 2024. The messages indicated that the Respondent's Father would fit the new shower unit supplied.
8. The boiler in the Property was replaced in April 2022.
9. The Respondent reported to the Applicant the need to carry out repairs to the boiler on 14 February 2024 which was addressed within a reasonable time.
10. The Respondent did not report to the Applicant the need to carry out repairs to plaster on the walls of the Property.
11. A pest control contractor fumigated the Property in order to deal with a beetle infestation of the carpets in the Property.

12. The Respondent reported to the Applicant the need to carry out repairs to windows in the Property.
13. The Applicant instructed that repairs be carried out to windows in the Property but could not confirm whether or not the works were actually carried out.
14. The Respondent did not report to the Applicant the need to carry out repairs in respect of dampness in the Property.
15. The Respondent's use and enjoyment of the Property has been negatively impacted as a result of the failure by the Applicant to instruct necessary repairs at the Property since the need for such repairs was notified to the Applicant at the beginning of the tenancy.

Findings in Fact and Law

The Tribunal made the following findings in fact and law:

1. The Applicant failed to comply with his obligations under the 2006 Act to ensure that the Property meets the repairing standard at all times during the tenancy.
2. The Respondent is entitled to an abatement of rent in respect of the failure by the Applicant to ensure that the Property meets the repairing standard at all times in the sum of £5,850.
3. A balance of £7,900 remains due.

Reasons for the Decision

22. The statement of rent arrears lodged on 14 September 2026 indicated arrears due of £14,400. Rent due in October 2026 was included. At the date of the Hearing, the rent due in October 2026 had not yet fallen due. £650 should therefore be deducted from the sum claimed leaving a balance of £13,750.
23. In terms of the Tenancy Agreement the Applicant undertook to ensure the Property met the Repairing Standard in accordance with the Housing (Scotland) Act 2006 ("2006 Act"). The Respondent undertook to take reasonable care of the Property. There was nothing in the Tenancy Agreement which prohibited the retention of rent by the Respondent. The Tenancy Agreement states that the Applicant is required to provide to the Respondent an EPC for the Property. The need to provide an EPC is also required by regulation 5 of the Energy Performance of Building (Scotland) Regulations 2008.
24. The legislation which governs a landlord's obligation to repair is the 2006 Act. Section 12 of the 2006 Act provides that the repairing standard applies to any

house let for human habitation. The definition of “house” in section 194 of the 2006 Act includes any garden which is capable of being enjoyed along with the living accommodation. Section 13 sets out the detail of the repairing standard, including the obligation to keep the house wind and watertight and fit for human habitation, to ensure that the installations for the supply of water, gas and electricity are in a reasonable state of repair and in proper working order and that fixtures, fittings and appliances that the landlord provides under the tenancy must be in a reasonable state of repair and in proper working order. Section 14 provides that a landlord’s duty is to ensure that the house meets the repairing standard at the start of the tenancy and at all times during the tenancy. It provides that the duty to maintain the house at all times during the tenancy applies only where the tenant notifies the landlord or the landlord otherwise becomes aware that work requires to be carried out for the purposes of complying with the repairing standard. Section 14 goes on to state that the landlord should carry out the required works within a reasonable time of the landlord being notified of the need to carry out repairs.

25. As regards gas safety checks, the Respondent’s written submission was that she was not provided with a gas safety certificate and that no gas safety inspection was carried out during the tenancy. Gas safety checks require to be carried out annually. A copy gas safety certificate was lodged on behalf of the Applicant. The Tribunal noted that it did not relate to the Property but to a house at 55 Auchinraith Avenue, Hamilton. Further, it was dated 29 March 2022. The Applicant’s evidence was that he had a contractor who carried out gas safety checks every year for the Property. It would have been a straightforward matter for the Applicant to provide a copy of the current gas safety certificate for the Property but this was not done. It would have assisted the Tribunal if the Respondent had been in attendance at the Hearing to provide evidence regarding the carrying out of gas safety checks. Without hearing from the Respondent the Tribunal took the view that it could not make a finding regarding the gas safety certification.
26. As regards the lack of an EPC, the Applicant accepted that he did not provide an EPC to the Respondent. This contravened the terms of the Tenancy Agreement and regulation 5 of the Energy Performance of Buildings (Scotland) Regulations 2008.
27. As regards the shower, screenshots of messages between the Applicant and the Respondent between 6 and 16 April 2024 indicated that a new shower unit had been acquired and the Respondent’s Father was to purchase the materials required to fit the shower and then fit it in the Property. The Applicant’s evidence was that he could not recall when the need to repair the shower was first intimated to him. The Respondent’s written submission was that the shower

had not worked since the start of the tenancy. The Respondent did not lodge any evidence of the need for the repair being intimated to the Applicant other than the exchange in April 2024. On the basis of the information provided to the Tribunal, the Tribunal considered that the Applicant addressed the need to repair the shower within a reasonable time.

28. As regards the heating system, the Respondent's written submission was that the control system on the boiler was not accessible. The Applicant had lodged a copy invoice which indicated that a new boiler was fitted in April 2022. He had also lodged copy messages between the Parties which indicated that the Respondent notified a problem with the boiler on 13 February 2024 and the Applicant responded the next day with a time slot for a contractor to attend the Property to fix the boiler. On the basis of the information provided to the Tribunal, the Tribunal considered that the Applicant addressed the need to repair the boiler within a reasonable time.
29. As regards the cracked plaster on the walls, the Respondent had lodged photographs of significant damage to walls. The Applicant's evidence was that the walls were not in that state of repair at the start of the tenancy and that the need to repair walls had not been notified to him. The Respondent did not lodge any evidence of the need for a repair to walls being notified to the Applicant. The Tribunal determined that the need for a repair to walls had not been intimated to the Applicant by the Respondent.
30. As regards the carpets being infested with beetles, the evidence given by the Applicant and the written submission lodged by the Respondent both indicated that shortly after the tenancy began an issue arose with beetle infestation on the carpets and a pest control contractor attended the Property. The Respondent's submission stated that the contractor recommended replacement of the carpets. The Applicant's evidence was that the contractor fumigated the entire Property and thereafter the Respondent replaced the carpets at her own expense. The Applicant's evidence was that the Respondent meeting that cost was one of the reasons for the first two months of the tenancy being rent free.
31. As regards the windows, the evidence given by the Applicant and the written submission lodged by the Respondent both indicated that repairs were required to windows. The Applicant's evidence was that he thought the issue about the windows was raised near the start of the tenancy and he could not recall how long it was before he instructed the repairs. He was unable to confirm that the works which he instructed in order to repair the windows were actually carried out. The nature of the works was the replacement of plastic "wedges" which connected with the window handle in order to properly close the window. The

written submission lodged by the Respondent stated that the windows were not wind and watertight, that the windows were not draught proof and that this resulted in the Property being persistently cold. The submission also stated that no repairs were carried out to the windows.

32. As regards dampness in the Property The Applicant's evidence was that the Property was not damp at the start of the tenancy and that the need to investigate dampness had not been notified to him. The Respondent did not lodge any evidence of the need for dampness to be investigated being notified to the Applicant. The Tribunal determined that the need for a repair in respect of dampness had not been intimated to the Applicant by the Respondent.
33. As regards the garden, the Respondent had lodged photographs showing the garden to be overgrown as well as the presence of rubbish and a pile of bricks. The photographs were not dated. The Applicant's evidence was that the garden was "not great" at the start of the tenancy and that the bricks were required to assist with the repair of a fence in the garden. He said that he was unable to gain access for a contractor to carry out the fence repair. He said the rubbish was not present at the start of the tenancy. The Applicant did not lodge any evidence such as screenshots of messages between the Parties to show that there had been a difficulty with access being provided. The Tribunal noted that the Applicant accepted that the garden was not in a good state at the start of the tenancy and that the bricks were placed in the garden after the tenancy began. It would have assisted the Tribunal if the Respondent had been in attendance at the Hearing to provide evidence regarding when the garden fell into a poor state and when they notified to the Applicant a need to carry out works in the garden. Without hearing from the Respondent the Tribunal took the view that it could not make a finding regarding the garden. .
34. Taking all of this evidence into account, the Tribunal considered that the Applicant complied with his obligations under the 2006 Act as regards the shower, the boiler, the wall plaster, the carpets and dampness in the Property.
35. The Tribunal considered that the Applicant failed to provide the Respondent with an EPC in breach of his obligations under the Energy Performance of Buildings (Scotland) Regulations 2008 and he failed to comply with the repairing obligations under the 2006 Act as regards the windows in the Property . The evidence from the Applicant was that each of these issues was present from the start of the tenancy.
36. Tenants who notify landlords of the need for repairs in order to ensure the repairing standard is met at a property have various rights in the event of a

failure by the landlord to meet the required standards. One remedy is to claim an abatement of rent as the Respondent has done in this case.

37. The leading authority on abatement is the opinion of Lord President Inglis in *Muir v McIntyre* 1887 14 R 470 at page 472 where he said “...it is quite settled in law that an abatement is to be allowed if a tenant loses the beneficial enjoyment of any part of the subject let to him either through the fault of the landlord or through some unforeseen calamity which the tenant was not able to prevent.” This opinion is affirmed in *Renfrew District Council v Gray* 1987 SLT (Sh Ct) 70, where Sheriff Principal Caplan said that abatement is based on the fact that the tenant should not pay for rights he never enjoyed.
38. When abatement is being claimed, consideration needs to be given to the extent and the duration over which the Respondent was denied beneficial enjoyment of part of the Property. In assessing what would be a reasonable abatement the Tribunal requires to take into account the overall inconvenience which the Respondent had to suffer. The Respondent’s written submission stated that the issue with the windows had a negative impact on her son’s asthma. .
39. The evidence available to the Tribunal indicated that the lack of an EPC and the problem with the windows were each outstanding from the start of the tenancy. The first two months were rent free. Any abatement awarded should therefore be effective from three months after the tenancy commenced, 15 October 2023. The Tribunal considered that an abatement equivalent to 5% of the rent was appropriate in respect of the lack of an EPC, an abatement equivalent to 20% of the rent was appropriate in respect of the windows. . This produces a total abatement of 25% from the 15 October 2023 to 15 September 2026 which is a period of 36 months. The rent for that period was £23,400. 25% of that figure is £5,850.
40. The rent due is £13,750. The Tribunal determined that the rent due should be abated by a total of £5,850 which leaves a balance due of £7,900. The Tribunal determined to make an Order for payment of that amount.

Decision

41. The Tribunal grants an order for payment of £7,900.

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.

Joan Devine

Joan Devine
Legal Member

Date: 9 October 2026