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 of the Private Housing (Tenancies)(Scotland)Act 2016

Chamber Ref: FTS/HPC/CV/24/5560

Re: Property at 7 Old Schoolhouse Lane, Johnstone, PA6 7JB ("the Property")

Parties:

Mr Thomas Stewart, Wellees Farm, Kilallan Road, Johnstone, PA6 7HQ ("the Applicant")

Ms Sheila Hickinbottom, 59 Treesbank Road, Kilmarnock, KA1 4SE ("the Respondent")

Tribunal Members:

Alison Kelly (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of rent arrears should be made, but subject to abatement.

Background

1. On 4th December 2024 the Applicant lodged an application under Rule 111 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") seeking payment of a sum of rent arrears.

2. Lodged with the Application were:

   a. Copy Private Residential Tenancy commencing 23rd January 2023 and showing a rent of £995 per month
   b. Rent Statement showing arrears of £10450 as of 21st October 2024

3. The Application was served on the Respondent by Sheriff Officer on 23rd December 2025.

4. On 13th January 2026 the Respondent sent a detailed Written Submission to the Tribunal setting out her position.

5. The Respondent sent a separate email to the Tribunal confirming that she would be represented at the Case Management Discussion by her son in law.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place on 6th February 2026 by teleconference. The Applicant was represented by Mr Donnelly of Holmes McKillop, Solicitors. No one joined the call on behalf of the Respondent. The CMD did not commence until 2.10 to give time to anyone who may have been having connection issues to join.

7. The Chairperson confirmed the purposes of a CMD in terms of Rule 17 of the Rules. She also explained that in terms of Rule 29 that if a party or party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with, may proceed with the application upon the representations of any party present and all the material before it. The Chairperson was satisfied that proper notice had been given as the Respondent had confirmed she would be represented.

8. Mr Donnelly asked for a payment order in the amount of £10,450 as per the Application. The Chairperson noted that the Respondent had highlighted a number of what appeared to be double charges for rent over a lengthy period. She noted that there was also a series of credits, which may have been effectively credit notes for wrongly charged entries, but without a clear statement she did not feel able to grant an order for the sum sought. The repayment to the applicant of the deposit did not feature on the statement either.

9. Separately the Chairperson highlighted that there were entries that made it look as though the tenancy deposit had not been lodged in a nominated scheme until 18th December 2023. Mr Donnelly said that he had a certificate to prove that it had been lodged with the scheme on 31st January 2023, within the statutory time period, and that the entries were merely there to show transfer from one letting agent to another of the responsibility for the deposit. The Chairperson was clear that the issue of when the deposit was lodged in a scheme was irrelevant here as any such claim for relief is time barred, however it was another unclear entry on the rent statement.

10. The Respondent was not present or represented and therefore could not present the arguments that she had put forward in her Written Submission. The Tribunal therefore cannot consider these. The CMD was therefore continued to a date to be advised.

Continued Case Management Discussion

11. The Continued Case Management Discussion ("CCMD") took place on 6th May 2026 by teleconference. The Applicant was represented by Mr Donnelly of Holmes McKillop, Solicitors. The Respondent joined the call, and she was represented by Mr Ben Forsyth.

12. The Chairperson confirmed the purposes of a CMD in terms of Rule 17 of the Rules.

13. Mr Donnelly said that he was seeking a payment order in the amount of £10450 as per the application. He said that he had had difficulty on obtaining full instructions from the Applicant regarding the rent statement and therefore had not been able to provide an updated statement. Mr Forsyth said that the Respondent thought the outstanding sum was £9500, as per the email received from the Applicant's letting agent to the Respondent dated 5th January 2025 and contained within the Respondent's productions. He did query the amount of deposit returned, given as £950, when the actual amount of the deposit paid was £995, as shown on the Applicant's rent statement. The amount due by way of rent arrears was noted as a disputed issue.

14. The Chairperson took Mr Forsyth through the Respondent's submission. She pointed out that any claim in relation to incorrect lodging of the deposit in an approved scheme was time barred, as such an application would have to have been made within three months of the ending of the tenancy agreement.

15. Mr Forsyth said that the Respondent was seeking an abatement of rent. The property had not met the repairing standard, and the Tribunal had issued a Repairing Standard Enforcement Order. The Respondent had moved out of the property on 28th April 2024 and had moved in with her brother, as she could not continue to reside there. She had not brought the tenancy to an end as she had been advised that by doing so the Repairing Standards application would also be brought to an end. The tenancy came to an end in October 2024. He said that a rent relief order had been sought while the repairing standards application was being dealt with.

16. Mr Forsyth said that the Respondent had offered to settle the matter previously by offering £4000 in full and final settlement. She was still prepared to offer that and would be able to pay it in a lump sum. The Chairperson said that this was a matter for the Applicant to consider, and she could not order it.

17. It was decided that a Hearing would be required and all parties agreed that Videoconference would be the best method.

18. The disputed issues to be resolved at the hearing are:

- What sum of rent is actually due
- Should the rent be abated due to the condition of the property, and if so by how much

19. Neither party was able to commit to what witnesses they may wish to call at this point.

20. The Chairperson explained that it was up to each side to prove their case, and if they wished to call witnesses it was their responsibility to arrange for those witnesses to be present, and to meet any expenses that the witnesses might have.

21. The case was adjourned to a Hearing, to take place by videoconference, the date to be advised.

Subsequent to CMD

22. On 7th August 2026 the Respondent sent an email to the Tribunal lodging a letter from her GP and a letter from a hospice social worker. She said that she had no witnesses and could not find documents in relation to any rent abatement.

23. On 13th October 2026 the Applicant's solicitor lodged an updated rent statement, and copies of the documentation in relation to the Repairing Standards Enforcement Order, Certificate of Completion and Refusal of Permission to Appeal.

Hearing

24. The Hearing took place on 20th October 2026 by videoconference. The Applicant was represented by Mr Donnelly of Holmes McKillop, Solicitors. The Respondent was not present. She was represented by Mr Ben Forsyth.

25. Mr Forsyth explained that the Respondent was not able to join as she was having to deal with another matter. He confirmed that he did wish to proceed today.

26. Mr Donnelly confirmed that the Applicant would be giving evidence and would join when appropriate.

27. The Chairperson asked Mr Donnelly to confirm the sum sought, as she could not see that the £995 deposit had been deducted on the rent statement. Mr Donnelly confirmed that the deposit was to be deducted and that the sum sought was £9455. Mr Forsyth confirmed that he agreed with that figure. Mr Donnelly confirmed that the Applicant was unwilling to accept the Respondent's offer of £4000 in full and final settlement.

28. There was a preliminary issue to deal with. Mr Donnelly said that he did not think that the Tribunal could order an abatement of rent as the matter had already been dealt with. He said that the Respondent had asked for a rent reduction order in relation to her repairing standards application and that this had been refused by the Tribunal. She had appealed and the appeal had also been refused.

29. Mr Donnelly said that the Tribunal had considered the same set of facts before the Tribunal today and decided that there should be no order. It was not appropriate for the Tribunal today to make any order in relation to abatement. He made reference to the Tribunal's Written Decision in the Repairing Standards Enforcement Order ("RSEO") in case FTS/HPC/RP/23/2895, dated 25th April 2024. He said that four points were to be addressed. He made reference to the Decision dated 19th September 2024 in which the Tribunal discharged the RSEO. He said that the Tribunal were satisfied that the four points had been dealt with. He made reference to the Repairing Standards Refusal of Permission to Appeal, dated 7th October 2024. He said that the Tribunal did not make a Rent Reduction Order because the Applicant had complied. His point was that the matter had already been dealt with.

30. The Tribunal did not agree with Mr Donnelly. In the Decision refusing permission to appeal, the Tribunal said in paragraph 3:

    On 17 September 2024 the tribunal certified that the Landlord had complied with the terms of the Repairing Standard Enforcement Order (RSEO) made on 5 April 2024. S.27(2) of the Housing (Scotland) Act 2006 provides that the tribunal can only make a rent relief order when a landlord fails to comply with an RSEO. In this case the Landlord complied with the requirements of the RSEO. The tribunal could not make a rent relief order.

31. The Tribunal did not say that it had considered the facts and refused to make an order; it said that it could only make a rent relief order when a landlord fails to comply with an RSEO.

32. A rent relief order in terms of section 27 of the 2006 Act is punitive. It is made as a punishment for non compliance. It is not a rent abatement, which is a claim against the landlord and is an equitable claim.

33. The Tribunal, when discharging the RSEO did not consider the facts and apply them to whether or not an abatement should be made. They had no jurisdiction to make such a decision. Accordingly, this Tribunal can consider the same facts and decide whether an abatement should be ordered.

Evidence

34. The Applicant gave evidence. He said that the Respondent had raised concerns shortly after she moved in in January 2023. He received a letter from the local authority. There were issues with damp, mould, the decking and balustrade, the front door lock was stiff and some of the windows were misted.

35. The Applicant said that he was not sure of dates, but he got the window units replaced, renewed the lock on the front door and renewed the fence and decking. He considered that he had been fairly proactive. He said that some of these works were carried out before the first Tribunal inspection, which took

place in March 2024. He could recall going to a meeting in the Tribunal office after the inspection and the facts were laid out. He said that the Tribunal ordered him to get a report from a qualified damp specialist, repair the fence and balustrade, get an up to date gas safety certificate and repair defective seals around the windows. He said that all of the work was done.

36. The Applicant said that the damp specialist said that the house was being kept too warm. Due to the age of the house and the fact that there was no insulation in the roof, the hot air was rising and condensing on the cold ceiling. He was advised to clean the damp marks caused.

37. The Chairperson noted that the report by the damp specialist had not been lodged with the current Tribunal.

38. The Applicant said that the damp specialist told him that the windows were all fully closed, and that most of the newly fitted trickle vents were also closed. It was the specialist's opinion that the level of heat and lack of ventilation were the causes of the damp and mould.

39. The Applicant said that he got someone to repair the window seals. The decking and balustrade were installed in or around 2003 and had deteriorated with age. He had them replaced. He got an up to date gas safety certificate.

40. The Applicant said that he attended the reinspection. The Tribunal members looked at all the points and made a decision that the four points raised had been dealt with to their satisfaction. He said that the question of a rent relief order was raised and they decided against it. They were satisfied that the work had been done.

41. The Applicant said that the property is a mid terraced house. It has two bedrooms upstairs. Downstairs there is another bedroom along with a living/dining area and extension.

42. The Applicant was asked if there were any other issues with the property. He said no and then explained that the whole front and side walls of the house had been re-rendered. He said it needed to be done and will have helped that side of the property.

43. The Applicant said that the Respondent stopped paying rent. She paid nothing until the day she moved out, when she paid a bizarre sum of around £812.60. She moved out on 18th October 2024, but the notice period took her beyond that.

44. The Applicant said that as far as he was aware the Respondent may have moved out when some of the work was being done. He did not think she was there when the roughcast/rendering was done, and when the lead flashing was being repaired the workman told him that there was no one going about. He did not know if her possessions were still in the property during this time.

45. The Applicant said that he was aware that the Respondent's mother lived with her. She occupied the ground floor bedroom and was receiving care. He had also heard the Respondent mention her granddaughter. He said that he was not aware of any parts of the property which could not be used due to the issues, and all appliances were in working order as far as he knew.

46. On questioning by the Tribunal members, the Applicant said that the re-rendering had taken place after the first inspection in relation to the RSEO and before the second inspection. He said that it had not been the damp specialist who had suggested re-rendering or fixing the flashings. He had met with his builder friend as part of routine maintenance and he had suggested it. He did not think that there had been water penetration from defective render. He said that the builder told him that there had previously been cavity wall insulation and this was the worst thing you could do. He said that there had not been water penetration in the upstairs bedrooms. The flashing requiring repair had been above the downstairs rooms. He said that the builder had also said that the mortar rendering at the top of the roof also needed redone, so he did that too.

47. Mr Khan asked why the Applicant had not dealt with these matters when he got the initial letter from the local authority (mentioned in the RSEO Decision). He said that it had mentioned windows and window units. He did not recall it mentioning dampness or mould.

48. Mr Khan asked why he waited until after the March 2024 inspection before getting the builder out. The Applicant said that winter was not the best time to get work done. He said that they may have disagreed in what was needing done. He felt that he was generally proactive. He said that the damp specialist didn't think that there was a lot wrong with the house.

49. The Applicant said that he accepted there were mould marks, but he did not accept that there was damp. He was asked how the damp readings and wet carpet could square with there not being damp. He said that when the reinspection was done everything was fine. He could not explain why it dried up, but it did. He accepted that extensive work had been carried out between the two inspections but said that it was just basic property maintenance.

50. Mr Forsyth did not have any questions arising from what the Applicant had said in evidence.

51. Mr Forsyth did not have any witnesses. He asked the Tribunal to consider the letters lodged with the Respondent's email of 31st July 2026.

52. The first letter was dated 11th March 2024 and was by Dr Byrne of Strathgryffe Medical Practice. The letter was signed. In the letter the doctor referred to having visited the house several times and being aware of damp and mould which she felt could have impacted on health.

53. The second letter was dated 7th March 2024 and was by Isobel McWilliams, Palliative Care Social Worker at St Vincent's Hospice, Howwood. The letter was not signed. In the letter the social worker said that she had visited the house and that there was a distinctive damp smell and the issues of damp did not help with the Respondent's mother's health condition.

54. Mr Forsyth asked that the letters be taken as read. He also said that he would like the Tribunal to take into account the photographs attached to the Inspection Report dated 21st March 2024, and lodged by the Applicant, when making its decision.

Submissions

55. Mr Donnelly submitted that there were issues with the property and these fell into two categories: those which were dealt with before the March 2024 inspection and those which were dealt with afterwards.

56. Mr Donnelly said that the windows were replaced, the door lock replaced, the trickle vents installed and the shower repaired before the inspection. The damp specialist's report, the window seals, the decking and balustrade and the gas safety certificate were dealt with afterwards, and the Tribunal had been satisfied that the RSEO had been complied with and discharged it.

57. Mr Donnelly said that the Applicant gave evidence that the decision to re-render was not linked and was routine maintenance, and this demonstrates that the Applicant takes his responsibilities seriously. He said that the property remained habitable and the Respondent continued to live there until at least August 2024.

58. Mr Donnelly said that there was evidence of the cause of the dampness from the damp specialist, and he said that it was due to the heating being turned up and no ventilation. There was no evidence from the tenant to counter that.

59. Mr Donnelly said that there was little, if any, evidential weight in the letters from the GP and social worker. They were not there to be cross examined.

60. Mr Donnelly said that the Tribunal involved in the RSEO did not attribute a cause to the damp and there was no contradictory evidence from the tenant. He submitted that there should not be any abatement of rent.

61. Mr Forsyth said that he thought that the facts supported an abatement of £5000. He said that it was clear that there had been damp and he asked the Tribunal to fully consider the terms of the decision in the RSEO and the photographs when making a decision.

Findings In Fact

i. The Applicant is a joint owner of the property and has the permission of the other owners to make this application;
ii. The property is mid-terraced two storey with two bedrooms on the upper floor and one bedroom, living room, kitchen and shower room on the ground floor;
iii. Patio doors lead to an area of garden and decking at the rear;
iv. The parties entered into a Private Residential Tenancy Agreement commencing 23rd January 2023;
v. The tenancy ended on or around 21st October 2024;
vi. The rent was £950 per month;
vii. The Respondent paid a deposit of £995;
viii. The Respondent lived in the property with her mother and her granddaughter;
ix. At the end of the tenancy the parties agree that the Respondent owed £9455 in rent;
x. Clause 18 of the Private Residential Tenancy Agreement imposed an obligation on the Applicant to provide a property that met the Repairing Standard;
xi. The Respondent brought repair issues to the attention of the Applicant shortly after moving in to the property;
xii. The local authority wrote to the Applicant on the Respondent's behalf on 20th April 2023 regarding repairs issues;
xiii. The Respondent submitted a repairing standards application to the Tribunal on 21st August 2023;
xiv. Tribunal members inspected the property on 21st March 2024;
xv. The surveyor member took a number of photographs which were appended to the Decision of 21st March 2024;
xvi. The Tribunal found that after the application was made and prior to the inspection the Applicant had fitted trickle vents to the windows, fitted a new lock to the front door and repaired the shower;
xvii. During the inspection the Tribunal found evidence of damp and mould;
xviii. Below surface readings indicated embedded damp in each bedroom and the living room;
xix. Mould was present in other areas of the house;
xx. The carpet adjacent to the patio door in the living room was wet;
xxi. Higher than average damp readings were taken from the windowsills;
xxii. There were defective seals on the double glazed units;
xxiii. The decking and balustrade needed replacing;
xxiv. Flashings and roof tiles required repair;
xxv. The Tribunal issued a Repairing Standards Enforcement Order ("RSEO") dated 5th April 2024 as it did not consider that the applicant had met the Repairing Standard;
xxvi. After the RSEO was issued the Applicant organised re-rendering of the front and side walls, repair of the flashings and repair to the mortar at the ridge of the roof;
xxvii. The Tribunal carried out a further inspection on 14th August 2024 and were satisfied that the terms of the RSEO had been met;
xxviii. The Tribunal issued a Certificate of Completion on 17th September 2024.

Reasons For Decision

62. The Tribunal considered all the evidence before it.

63. The Applicant attended and gave his evidence in a straightforward manner. He answered all questions he was asked. There was no reason for the Tribunal to question either his reliability or credibility.

64. The Applicant's solicitor had also lodged the RSEO Decision dated 5th April 2024, which assisted as it set out the facts found by that Tribunal.

65. The Tribunal, however, did not give any weight to the evidence given by the Applicant about what the damp specialist said to him. There was no reason why the actual report prepared by the damp specialist could not have been produced. The Tribunal was not provided with his name. Mr Donnelly's position was that there was nothing from the Respondent to counter the damp specialist's apparent conclusion that the issue had been caused by the Respondent and therefore it should be accepted. It would have been difficult for the Respondent to counter it given that the report was not lodged and no mention had been made at any part of the proceedings up until the Applicant gave evidence that there was such a view.

66. The Respondent did not attend and therefore no evidence could be taken from her.

67. Mr Forsyth made reference to the letters from the GP and the social worker, which were lodged with the Respondent's documents. The Tribunal could attach very little weight to the letters as they were both fairly vague, fairly brief, one was unsigned, and neither writer was available to be cross examined.

68. It was agreed by the parties that the sum of rent outstanding at the end of the tenancy following deduction of the £995 deposit was £9455. The Respondent had offered £4000 and therefore the Respondent's claim was for an abatement of £5455.

69. It was clear to the Tribunal that there were issues with the condition of the property, and that the Applicant had not fulfilled his contractual obligation in terms of Clause 18 of the Private Residential Tenancy Agreement as laid out in the RSEO decision, and those issues led to the Respondent having a valid claim for abatement.

70. There was no direct evidence from the Respondent to establish the full extent of loss and inconvenience caused to her.

71. The Tribunal had regard to the decision of Sheriff Jamieson in the Upper Tribunal decision in the case of Zhao -v- Dunbar [2022] UT 25, particularly at paragraphs 45 to 52.

72. In paragraph 47 of the decision Sheriff Jamieson states that, following the case of Mack v Glasgow City Council 2006 SLT 556, the breach of contract entitles the tenant to an award of compensation for inconvenience.

73. In paragraph 52 Sheriff Jamieson states that "Awarding compensation for inconvenience in housing cases is not an exact science and each case must turn on its own facts and circumstances." He goes on to take what he describes as a "broad and generous approach" when calculating that award of compensation.

74. In this case the Tribunal, taking a broad approach is satisfied that the Repairing Standard was breached between April 2023, when the local authority wrote to the Applicant on the Respondent's behalf, and August 2024 when the second inspection by the Tribunal took place. No evidence was provided by the Applicant of the dates on which remedial work took place, and this is why a broad approach has been taken. This is a period of 17 months.

75. The monthly rent was £950. There was no evidence that the Respondent was prohibited from using any room or part of the property during that period. There was evidence though, from the RSEO decision and photographs that there were issues which would affect the Respondent and her family's enjoyment of the property, including wet carpets, damp and mouldy rooms, draughty windows and a garden with decking and a balustrade which could not be used. Taking a broad approach, as promoted by Sheriff Jamieson, the Tribunal considered that an abatement of £100 per month would be sufficient compensation.

76. The Tribunal therefore decided that an abatement of £1700 (£100 x 17) would be appropriate. The Tribunal therefore determined to make an Order requiring the Respondent to pay the Applicant the sum of £7,755.

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.

Allison Kelly **20.10.26**

_____ _____

Legal Member/Chair **Date**