



**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/20/2173**

**Re: Property at 12 Castlehill, Cupar, Fife, KY15 4HA (“the Property”)**

**Parties:**

**Mr Faheem Parkar, 12 Castlehill, Cupar, Fife, KY15 4HA (“the Applicant”)**

**Mr Frank Thomas, 16 Edenbank Road, Cupar, Fife, KY15 4HE (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment in the sum of £380.00.**

**Background**

1. By application dated 13 October 2020 the Applicant applied to the Tribunal for an order for payment in the sum of £5780.00 in respect of alleged damages arising from water ingress to the property in which he was a tenant under a Private Residential Tenancy Agreement.
2. The Applicant provided the Tribunal with copy email correspondence, photographs and the tenancy agreement in support of his claim.
3. By notice of Acceptance dated 12 November 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.

4. A Case Management Discussion was held by teleconference on 18 December 2020 and following submissions on behalf of both parties the Tribunal adjourned the application to a full hearing.
5. By email dated 1 February 2021 the Respondent's representatives Rollos, Solicitors, Cupar submitted written representations to the Tribunal.
6. By email dated 3 February 2021 the Applicant submitted written representations to the Tribunal.

### **The Hearing**

7. A hearing was held by teleconference on 11 February 2021. The Applicant attended personally. The Respondent did not attend but was represented by Ms Alison Hegarty of Rollos, Solicitors, Cupar.
8. By way of a preliminary matter the Tribunal suggested to the parties that if they wished to have a short adjournment to discuss the possibility of reaching an extra-judicial settlement the Tribunal would accede to such a request. The parties agreed to have a discussion and the Tribunal adjourned.
9. Following the adjournment, the parties advised they had been unable to reach agreement and wished to proceed with the hearing.

### **The Applicant's Evidence**

10. The Applicant advised the Tribunal he was no longer seeking to insist on his claim for future removal expenses.
11. The Applicant submitted that following noticing a bad smell in the property it turned out there was a leak from the neighbouring property causing water ingress into a cupboard in the hallway. The Applicant said that he had been advised by the Respondent's agents on 27 November 2020 that the repairs would commence on 3 December 2020. The Applicant explained that date was not convenient and offered 4 or 5 December instead. The repairs actually commenced on 7 December and took about two weeks.
12. The Applicant said that he had moved out of the property due to the smell from 23 September to 11 November 2020 and referred the Tribunal to page 28 of his Inventory of Productions, an email of 4 October 2020.
13. The Applicant advised the Tribunal that the Respondent had offered a rent reduction of 50% for a period of one month. He submitted that the rent should be altered until the repair was completed and further submitted that the repair was not done in a timely manner. The Applicant queried if the property met the tolerable or repairing standard given that a de-humidifier was removing 2 litres of water per day. The Applicant referred the Tribunal to the terms of the Tenancy Agreement with regards to the requirement for the property to meet the repairing standard and that the property must remain reasonably fit for

people to live in. The Applicant also referred the Tribunal to the Repairing Timetable referred to in the tenancy agreement to the effect that the Respondent was responsible for carrying out repairs as soon as reasonably practicable. After being notified of the need to do so. Instead, it had taken three months to complete. The Applicant referred the Tribunal to the email from Anthony Sweeney of Fife Council dated 1 October 2020 suggesting there should be a rent reduction until the repairs were completed (Page 211).

14. The Applicant submitted he incurred extra costs by staying with his ex-wife and paying her £700.00 as well as suffering from stress and inconvenience.
15. Ms Hegarty asked the Applicant to confirm that he had reported the water ingress on 30 August and that he had been advised of the proposed date of the repairs on 27 November 2020. The Applicant confirmed this was the case and that he had some sympathy with the Respondent because of there being external factors but that should not affect who should pay.
16. Ms Hegarty asked if the Applicant agreed that once matters had been passed to the building's Factors, Abbeyforth that the Respondent had done everything he could and matters were outwith his control. The Applicant did not accept that was correct.
17. The Tribunal queried where the smell was most noticeable and the Applicant said it was really bad in the hallway and some in the lounge. He said it was disgusting and made him nauseous. He said that when he returned to the property on 11 November the smell was much less noticeable and was tolerable. The Applicant confirmed the problem had been caused by a leak from the shower in his neighbour's property. He suggested that it might have been possible for the Respondent to effect a temporary repair by installing WetWall if the neighbour's flat still had a leak but did not know if this would have been possible. He said he could not remember if he had raised that with the Respondent's agents. He thought he had but was not sure. He had asked them to fix the issue. The Applicant went on to say that if the Respondent had agreed a reduction in the rent then he would have stayed on in the property and put up with it but without the rent reduction he was not prepared to stay. The Applicant confirmed he had funds to pay the rent he had been withholding.

### **Ruksana Parkar**

18. Mrs Parkar confirmed that the Applicant had stayed at her home for 11/2 months and had paid her £700.00. She said she would not allow her children to stay with the Applicant at the property because the smell was awful. She said it smelled rotten and that if you had asthma you would not live there. She said that she and the Applicant had two children and on the occasion she went to help remove his possessions the smell was bad and the hallway had all the stuff he had moved out of the cupboard. She said it had mould on it.

19. In response to a question from Ms Hegarty Mrs Parkar said she could not remember exactly when she had been to the property but that it had been on one occasion around the time the Applicant had removed himself from it.
20. In response to a question from the Tribunal Mrs Parkar confirmed she had cooked the Applicant's meals for him when he stayed at her home but that he had bought his supplies.

### **Suzanne Belmonte**

21. Ms Belmonte advised she was a Property Letting Administrator with the Respondent's agents and had held the position for about three years.
22. Ms Belmonte stated that the Applicant had sent an email reporting a leak or damp and mould in a cupboard in the property on 30 August 2020. She had seen the message on her return to work on 31 August and had instructed a timber preservation specialist to attend the same day. She said the Timber specialist attended at the property the following day and thought the water ingress was coming from the property next door. She said she had been put in touch with the owner Mr Robertson who had referred her to the Factor of the building Abbeyforth. Thereafter she explained matters were outwith her remit but that she had continued to chase up the Factor for progress every few days. Ms Belmonte explained that the Factor thought the problem may be coming from the roof and had instructed a roofer to investigate.
23. Ms Belmonte advised that she had replied to all the Applicant's emails as was her normal practice. She thought all reasonable steps had been taken to resolve the issues.
24. In response to a question from the Applicant Ms Belmonte said that on 27 November she had advised the Applicant that the repairs to the property would commence on 3 December. She explained that as far as instructing a roofer was concerned that had been the Factor's decision and any time delay was outwith her control. Ms Belmonte confirmed she had not visited the property during the period concerned but had instructed Mr Joe Douglas to attend. With regards to saying that the Applicant had been pedantic Ms Belmonte said that she had found the wording in an email from him threatening.
25. In response to a query from the Tribunal Ms Belmonte confirmed that the repairs to the neighbour's property had been completed on 17 November 2020. Ms Belmonte said that Mr Douglas had put up a partition between the two properties on 16 November and had also provided a de-humidifier.

### **Mr Joe Douglas**

26. Mr Douglas confirmed he had been employed with the Respondent's agents after being furloughed effectively since August 2020. He said he had attended at the property at the Applicant's request on 22 September 2020. This was to

provide a second opinion on the smell and condition of the property. He said he remained in the property for about 10 minutes. He said the Applicant's possessions that had been in the hall cupboard were in the hallway. There was damp in the hallway cupboard. He said there was quite a strong smell of damp plaster. He said he did not go into every room. He described the smell as that of freshly cut plaster that was quite unpleasant when near to it. He did not think it affected the whole property but thought it was noticeable in 50% of the hallway. He said all the doors in the property were shut and that it might have helped to keep doors and windows open to ventilate the property. Mr Douglas did not think the property was uninhabitable and that it was reasonable to live in it.

27. In response to a question from the Applicant Mr Douglas said that it would be more difficult to live in the property for a longer period if the damp persisted and mould developed. Mr Douglas repeated his advice to ventilate the property as much as possible. If the doors and windows were opened the smell would spread but would not be stronger. He thought there would be no health risk for children visiting but that they should avoid the hallway as there was black mould on the contents.

28. In response to a query from the Tribunal Mr Douglas confirmed that Mr Middlemist had fixed some chipboard in the cupboard to ensure privacy and to prevent access between number 10 and 12. He thought it might have been at the Applicant's request and had been installed around 13 November. Mr Douglas said the only other measure had been with regards to a de-humidifier. The timber specialist had not suggested any other measures.

### **Stephen Middlemist**

29. Mr Middlemist confirmed he was a joiner and had been in business for 34 years. He confirmed he had carried out repairs at the property on the instructions of the Respondent's agents. He agreed the works had been completed around 18 December 2020. The repairs had been necessary following water penetration. He said he had replaced a wall in a cupboard and the flooring outside and had redecorated. He said he believed the water ingress had come from the neighbour's property. The cupboard had been affected and there was a little swelling to the flooring outside the cupboard. He did not think the property was uninhabitable. He confirmed there had been a temporary repair to the cupboard after some plasterboard had been removed.

30. In response to a question from the Applicant Mr Middlemist said that there had been a slight smell of damp from the cupboard area. He said the old flooring in the hallway had been removed and new flooring installed because it was not possible to join laminate flooring. He said it had taken about a week for the repairs and then some further time for the redecoration. He did not think it should be too noisy.

31. The Applicant asked if an audio file in respect of the noise could be played but given that the volume such a file could be altered the Tribunal took the view

that it would have little evidential value. Ms Hegarty objected to the file which she had not previously heard being played and the Tribunal refused to allow the file to be played.

32. Mr Middlemist went on to say that it would be very difficult to have taken any measures that would have removed the smell from the damp area.

### **The Applicant's Final Submissions**

33. The Applicant said that in summary it had taken 31/2 months to resolve the issue and although it may have been due to external factors he had been subjected to the bad smell and considered that a rent abatement was appropriate and that he should also be compensated for his stress and inconvenience.

### **Ms Hegarty's Final Submissions**

34. Ms Hegarty said that from 30 August the Respondent's agents had taken every available step they could but that certain matters were outwith their control. They had to make sure the repair had been completed at number 10 before instructing the repairs at number 12. It was not accepted the property was uninhabitable. The water ingress was confined to the hallway cupboard. The property was suitable for habitation. The Respondent was not liable for the Applicant's temporary accommodation costs. The Respondent had reduced the rent by 50% for one month as a goodwill gesture and was not liable for anything further. The Applicant had the Respondent and her sympathies but the problem was in a small area of the property. The tribunal should take into account the fact that the Applicant had accrued rent arrears of £1386.00.

### **Findings in Fact**

35. There was water ingress into the property as a result of a leak emanating from the neighbouring property at 10 Castlehill Cupar.
36. The water ingress caused damage to the hallway cupboard in the property and the flooring adjacent to it.
37. The water ingress caused mould to form on the contents of the cupboard and within the cupboard.
38. The water ingress caused an unpleasant smell principally in the area around the cupboard but which also permeated to other areas of the property to a lesser extent.
39. Increased ventilation would have reduced the smell.
40. The Applicant reported the problem by email on 30 August 2020.

41. The repairs to the property were completed on 18 December 2020 111 days later.
42. The Respondent's agents took all reasonable steps to remedy the water ingress and carry out repairs as soon as reasonably practicable.
43. The Applicant removed himself from the property from 23 September 2020 until 11 November 2020.
44. During that time the Applicant stayed at his ex-wife's home and paid her £700.00.
45. At no time between 30 August 2020 and 18 December 2020 was the property uninhabitable.
46. There is a Private Residential Tenancy Agreement in place between the parties.
47. The monthly rent for the property is £695.00.

### **Reasons for Decision**

48. In reaching its decision the Tribunal carefully considered the evidence of the Applicant and his witness and also the evidence of the Respondent's witnesses together with the written representations and documents.
49. There is no dispute that the property suffered from water ingress as a result of a leak emanating from a shower in the neighbouring property at number 10 Castlehill Cupar.
50. The Tribunal was satisfied that on being made aware of the problem the Respondent's agents took prompt steps to try to identify the problem by contacting a timber specialist and on being advised that the issue appeared to be coming from the neighbouring property contacted the Factor responsible for the block.
51. The Factor took some time to investigate whether the problem lay with the roof before concluding it did indeed lie with the property next door.
52. The Tribunal has considered whether any blame can be apportioned to the Respondent's agents for any delay that occurred and has concluded that there cannot. Although it would have been open to the Respondent's agents to make direct contact with the adjoining owner it could well have been more difficult for them to make progress with a third party. In the Tribunal's view the Respondent's agents were correct to make use of the Factor's expertise to facilitate repairs.

53. It took 111 days from the problem being notified to the matter being finally resolved. During that time the Applicant chose to live away from the property for a period but indicated he could and would have stayed had the Respondent agreed to abate the rent. It therefore appeared to the Tribunal that despite the Applicant's assertions that the property was uninhabitable it was in fact habitable. This was supported by the evidence of Mr Douglas and Mr Middlemist.
54. The Tribunal accepted the evidence of the Applicant and Mrs Parkar that there was an unpleasant smell in the property and indeed this was confirmed by Mr Douglas. However, smell is very subjective and what one person finds intolerable another may find merely unpleasant. Taking everything into account the Tribunal was not satisfied that there was a substantial risk to the Applicant's health or safety during the period in question. It was a matter for the Applicant to decide whether his children should visit or not or whether he should take such other measures as may be available to ameliorate the situation.
55. However the Tribunal did accept that the Applicant should be entitled to reasonable enjoyment of the whole property and that whilst the water ingress was not due to the fault of the Respondent there was a period of 111 days when the Applicant did not have full enjoyment of the property and the Tribunal has in reaching its decision considered the decision in **Taghi v Reville 2003 Hous L. R. 110 at 113** where the Sheriff Principal suggested that "the appropriate remedy in less serious disrepair cases is to seek a modest abatement of rent, in other words argue that because the landlord is in breach of contract a reasonable proportion of rent should be deducted." The Tribunal has determined that the Applicant is entitled to an abatement of rent amounting to 15% for the period from 30 August to 18 December 2020 and will award the Applicant the sum of £380.00. As there was no fault on the part of the Respondent the Tribunal does not consider it appropriate to make any award for stress and inconvenience. The Applicant's decision to remove from the property for six weeks was his choice and as he said he would have remained if the Respondent had agreed a rent abatement the Tribunal has not made any award under this head of claim. Finally, the Applicant has already removed his claim for future removal expenses.

### **Decision**

56. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £380.00.

### **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.

# G Harding

Graham Harding  
Legal Member/Chair

11 February 2021  
Date