



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 57 of the Housing Scotland  
Act 2006**

**Chamber Ref: FTS/HPC/PR/23/0115**

**Re: Property at 49 Ballindean Place, Dundee, DD4 8PE (“the Property”)**

**Parties:**

**Mrs Anne Jordan, Mr Charles Jordan, 80 Balunie Drive, Dundee, DD4 8PY (“the Applicant”)**

**Miss Amanda Smeaton, 49 Ballindean Place, Dundee, DD4 8PE (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

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

**Background**

1. This was a hearing to consider evidence to determine the application by the Applicants who are the landlords in a lease of the Property to the Respondent who is the tenant for an order under Rule 49 of the Tribunal’s rules.
2. The Applicant submitted their application seeking an order directing the tenant to allow the applicant and workmen instructed on their behalf access to the Property to complete required works to ensure the repairing standard is met. The Applicant alleges that the Respondent has persistently refused to allow an inspection and has caused or allowed to be caused significant damage to the Property including to doors, walls, the bathroom, kitchen and fire alarms. They believe essential repairs are required to the Property and the Respondent has prevented them being attended to.

3. The Applicant lodged along with their application the following:-
  - a. Copy title sheet for the Property
  - b. Tenancy agreement between the parties dated 17<sup>th</sup> December 2020
  - c. Notice to Leave dated 12<sup>th</sup> July 2022
  - d. Gas Installation/ Safety Record dated 6<sup>th</sup> July 2022
  - e. Photographs of the bathroom
  - f. Photographs of boiler cupboard
  - g. Photographs of carpet
  - h. Photographs of ceiling
  - i. Photographs of interior and exterior doors
  - j. Photographs of fire alarms
  - k. Photographs of the garden
  - l. Photographs of the hallway cupboard
  - m. Photographs of Kitchen
  - n. Photographs of walls
  - o. Screenshots of various text messages between the parties.
4. The Tribunal received written representations from the Respondent on 19<sup>th</sup> April 2023 denying that she had deliberately allowed the property to fall into a state of disrepair and to confirm that she has reported all repairs promptly. The Respondent provided a detailed response to the Applicant's written representations and denies obstructing access for inspection or repairs.
5. The first CMD was held on 9<sup>th</sup> May 2023 by teleconference and both parties were represented by legal representatives. The note of that CMD is referred to for its terms.
6. At the end of the discussion it was agreed that the parties would see if an inspection of the Property could take place and if matters could then be resolved on a voluntary basis.
7. The Tribunal indicated that it would like addressed on the following matters
  - a. "Is this an appropriate application to ask for assistance for the landlord to exercise a right of access when there is a right of entry application available and a whole procedure dedicated to that in terms of s28A of the Housing Scotland Act 2006 and rule 55 of the Tribunals rules?
  - b. If this is an appropriate application has "notice of the intended action" as required by S27 of the 2006 Act been given to the tenant and if so how and when.
  - c. What wording in any order is the Applicant seeking?
8. The Respondent indicated she was willing to allow an inspection of the Property by the landlord.
9. Ms Kelly submitted a written response to this direction on 24<sup>th</sup> May 2023 which is referred to for its terms.

10. The CMD on 31<sup>st</sup> May also took place by teleconference and both parties were represented by their legal representatives, namely Ms Fiona Kelly solicitor from Lindsays for the Applicant and Ms Rebecca Falconer solicitor from Dundee Law Centre for the Respondent. Neither party was present.
11. Ms Kelly explained the inspection had indeed taken place only the day before but that her clients still wished to proceed with this application as they felt it had only proceeded because of the current Tribunal proceedings and that given the history of obstruction that they allege the Respondent has provided to access for inspections or repair they are still seeking an order under Rule 49 to stop the Respondent obstructing further access to the Applicants or their tradesmen who wish to repair aspect of damage to the Property. She confirmed in particular there are still issues with the fire alarm, window unit, seal round the bath, gas fire and the wall in the living room needs checked after a former leak. She confirmed that the Applicant believe that these issues relate to ensuring the Property meets the repairing standard. Ms Kelly confirmed that this is causing stress to her clients who feel the fabric of the building is deteriorating due to the continued obstruction of the Respondent.
12. Ms Falconer advised that her client's position remains the same that she is willing to work towards the repairs being carried out and that she feels she has not denied access.
13. With regard to the questions the Tribunal had raised at the first CMD, Ms Kelly confirmed both orally in and in her written response that her clients were aware of their right to use Rule 55 seeking right of entry but that they wish to use Rule 49 to have the assistance of an order from the Tribunal to prevent the continued obstruction of the Respondent to them and their tradesmen as they believe work requires to be carried out to meet the repairing standard and they do not believe the Respondent will allow access on an ongoing basis.
14. With respect to the question of whether notice had been given of the "intended action" Ms Kelly submitted that there was ample notice of various requests for access for inspection or for the attendance of workmen which she said was evidenced in the text messages lodged in evidence. In addition, the copy notice to leave dated 12<sup>th</sup> July 2022 also gave notice that this application may be made. Ms Kelly indicated that no objection has been made to the notice requirement by the Respondent. The Tribunal asked Ms Falconer if she had any objections or comments to make about the notice or notices referred to and she advised that she had no objection to the notice provided in terms of Rule 49.
15. Ms Falconer confirmed that she was present at the inspection held on 30<sup>th</sup> May along with the Respondent and advised that both Applicants were present. She also mentioned that the Respondent has replaced all the fire alarms which are now working although she advised that one had been knocked off accidentally and therefore was not in place at the inspection carried out. Ms Kelly agreed that her clients advised one was missing but they were not aware of any explanation for this.
16. A hearing was then fixed to take place in person on 7<sup>th</sup> August 2023 at Dundee and the Tribunal noted the following matters were in dispute.

- a. The parties are in dispute over whether or not the Respondent has denied or obstructed access to the Applicants or their tradesmen to inspect or carry out work that relates to the repairing standard.
  - b. An inspection has taken place but no agreement has been reached on future works.
17. The Tribunal advised the parties that if they wished to lodge any further productions they should do so by lodging a paginated inventory as there was already a number of productions lodged. The Tribunal also noted that it was of course open to both parties to continue to try and agree a time and date for any further works prior to the hearing date.
18. Prior to the hearing Ms Kelly provided further a written submission which submitted that:-
- a. The recent inspection only went ahead because of these proceedings
  - b. That the Applicants did not believe the inspection would have taken place otherwise
  - c. That if the order is not granted the fabric of the tenancy will deteriorate further
  - d. Ms Kelly then referred to the Respondent failing to permit entry to workman instructed by the applicant on 2 separate occasions in June 2022 to repair the radiator and conduct the gas safety inspection and advised a further company has been instructed to conduct the inspection for 2023.
  - e. The submissions then go on to provide a list of repairs which they see as necessary, namely to the window, the replacement of the smoke alarm at the top of the stairs, the front door and the sealant on the bathroom.
  - f. Along with these submissions a statement from Gordon Bowman heating Engineer of William Ree and Partners was lodged.

### **The Hearing**

19. The hearing commenced at 10am at Dundee Carers Centre in Dundee where both Applicants and the Respondent attended in person along with their solicitors, Ms Kelly for the Applicant and Ms Falconer for the Respondent.
20. Ms Kelly provided a hard paginated copy of some of her previous productions for the Tribunal and the other party.
21. The Tribunal invited Ms Kelly to set out what the Applicants were seeking and to lead evidence from her clients.
22. Ms Kelly advised that her clients were seeking an order under Rule 49 to allow her clients and their tradesmen to access the Property and to carry out various repairs. She advised she would be referring to her various productions and submissions and she lodged a further restricted and paginated copy of productions for the Tribunal and for the Respondent and Ms Falconer.
23. Mrs Jordan spoke first and under questions from Ms Kelly she confirmed that she is the named landlord under the lease, for the Property which was let to the Respondent originally in 2019. She confirmed that she had used a previous style of tenancy agreement and so it is not in the style of a Private Residential Tenancy.

Mrs Jordan advised that the tenant did not generally report repairs to herself or her husband the second Applicant. She advised it was only when there was a need that the Respondent phoned them and even then only when it became a real emergency. That the tenant had phoned regarding a significant leak from a radiator and when she and her husband attended at the Property they found a stream of water coming down from the bedroom through the ceiling through a leak in the pipe. She advised that prior to this, and it was later confirmed this was in January, they had received a call from the tenant to advise that the window had been blown open and was damaged in the main bedroom. Mrs Jordan advised that when her husband and a joiner attended to look at it they spotted some water leaking from the radiator through the ceiling to the living room but this had not been reported to them. Mrs Jordan confirmed that on 1<sup>st</sup> June last year they received an emergency text asking for help and it was at that point that they attended and saw the water pouring out and turned the water off and arranged for an emergency plumber to make the radiator safe. The emergency plumber attended and was able to cap the pipe but needed to return to fix the radiator.

24. Ms Kelly at this point referred the Tribunal to the statement from the plumber Mr Gordon Bowman who had been instructed at that time. The statement confirms that Mr Bowman had “attended the Property on 1<sup>st</sup> June 2022 to check a leaking radiator and complete a gas safety inspection.” He advised that he attended and “smelt damp and could see the carpet was damaged, a bedroom radiator was hanging off the wall with one bracket barely attached and the other brackets missing and that there was water coming from the pipe attached to the radiator.” He also advised that he was unable to refit the radiator as it needed a specific type of bracket, the tenant did not know where they would be and he therefore capped the pipe to the radiator and removed the radiator from the wall to stop the leak and prevent further damage. Mr Bowman goes on to report “Once the radiator was removed and the pipes capped, I attempted to carry out the Gas Safety inspection. However, I was unable to gain access to the boiler as the cupboard was full of various items.”
25. Mr Bowman’s statement goes on to confirm that a new radiator was ordered, and he was told to attend on 17<sup>th</sup> June 2022 to fit the radiator and complete the Gas Safety Inspection. He notes that he and his colleague did not get an answer on arrival and after contacting the office and waiting for half an hour he was advised to go to the next appointment. He advised the same thing happened on 1<sup>st</sup> July when he attended but could not get access to the Property and finally they got access on 6<sup>th</sup> July 2022 when the tenant allowed them in and he fitted the new radiator and completed the gas safety inspection with his colleague Mr ~Curtis McIntosh.” Mr Bowman ends his statement by confirming he was frustrated by the lack of access on 2 occasions and felt it had wasted his time, he intended to not go back but did in fact attend the fourth appointment and fitted the radiator.
26. Mrs Jordan corroborated Mr Bowman’s statement that he had finally managed to fix the radiator and service the gas boiler and confirmed that they had been charged for 2 abortive call out charges.
27. When asked if an inspection had been carried out she advised that it had been carried out on 30<sup>th</sup> May 2023 after these proceedings had started and the first CMD

had taken place. She advised that there are a number of repairs that require to be done.

- a. Firstly the window that originally been complained of by the tenant. The joiner, she advised had told herself and her husband, that there was no way this could have been damaged by wind, more likely it had been banged shut. She confirmed that the window had only been nailed shut and this requires to be repaired either the whole window needs replaced or the lock does.
- b. Mrs Jordan confirmed the fire alarms were all in place on 30<sup>th</sup> May (unlike before) apart from the fire alarm at the top of the stair which had been dismantled. She advised that fire alarms being removed has been an ongoing problem and is a fire risk if they are not operating properly.
- c. She advised there is damage to various doors. For instance the front door is missing a letter box and the runner at the bottom of the door is missing. She averred this means it is not wind and water tight.
- d. Re the bathroom she advised the bath seal is still black and cracked and can see from the roof, water has come through. She referred to the photographs of the kitchen where it shows water damage. When asked if she had been carrying out regular inspections she advised it has been mostly when the Respondent has called. Mrs Jordan confirmed that it had always been a problem trying to get access and that it always had to be rearranged and this has had an effect on gas safety checks and repairs.
- e. With regard to the gas safety inspection and check Mrs Jordan confirmed that this was done last year in July, and this year's was finally carried out on Friday 4<sup>th</sup> August. She advised that it was originally meant to be done on 2<sup>nd</sup> August but it had to be rearranged. Ms Kelly asked Mrs Jordan if the order was not granted did she believe they would be able to access the property to carry out repairs. She advised that she thought they would have problems and there would be delays and she was worried the fabric of the Property would deteriorate.

28. Under some questions from Mr Khan, Ms Kelly confirmed the order she was seeking on behalf of her clients was for "access to the Property to carry out repairs required, any inspections and repairs necessary, particularly to the door, window, fire alarm and to prevent anything from the Property deteriorating."

29. Mr Jordon then gave evidence and confirmed he is the joint owner of the Property along with his wife and he dealt with most of the maintenance issues. He advised that he has found accessing the Property a complete nightmare. He indicated that the last tenant they had in the property had been there for 16 years and there was only one issue namely a leak caused by sealant round the bath, so he had specifically told the tenant to keep the bath sealed.

30. He advised that he had received only 2 phone calls from the Respondent. The first one was within 2 weeks of the tenancy starting when the pipe froze and he arranged someone to come out straight away.

31. He advised that there was difficulty in arranging gas safety inspections. He would arrange inspections, but the respondent never once phoned to say she would not be in and then there would be excuses days later.

32. With regard to the radiator leak, he advised that the first they knew about it was when he was at the Property to look at the window which the joiner advised could not have been damaged by being blown open. Mr Jordan advised that they noticed the bottom pipe of the radiator was bent and water was spraying out. Due to delays partly in obtaining access, it took 150 days to get someone to come. The original plumber would not come because the place smelled of dog and that ended their professional relationship with him. Then another plumber said he was phoning and not getting in, and then he got covid. Then there was the massive leak from the radiator which the Respondent called and reported straight away. Mr Jordan attended and switched off the water and then got a plumber who capped it but couldn't fix it as the brackets were missing. The whole radiator had to be renewed. Mr Jordan believed the plumber tried to get access 4 times before he got in. Mr Jordan mentioned that when tradesmen including this plumber couldn't get access, they sometimes reported that they saw shadows in the house but no-one answered the door, but he did acknowledge that the Respondent has a dog and it may have been that.
33. Mr Jordan also confirmed that this is their only rental property, and that he had not followed up on some repairs because he had thought they could do the work when the tenant left after they had started an eviction application.
34. Ms Kelly confirmed that the applicants are trying to seek an eviction of the Respondent but explained that the Applicants themselves tried to serve a notice to leave first of leave which was not in the prescribed form and then a statutory notice was served and an application raised but this was rejected. She advised that a further notice to leave has been served recently but this notice is on an additional ground namely ground 12A as well as Ground 11.
35. Ms Kelly advised that the Applicants had, with her help, drafted a letter to the Respondent regarding the work needing done. The Tribunal asked Ms Kelly to lodge the letter, which she did at the end of the hearing. She advised the letter has not been sent as the Applicants wanted to see what the outcome of this hearing was.
36. The Tribunal then invited Ms Falconer to ask questions of the Respondent and make submissions on her behalf.
37. Ms Falconer advised that the Respondent's position was that she denies she has refused access and allowed the Property to fall into disrepair.
38. The Respondent, Ms Smeaton, confirmed under questions that she was the tenant in the Property. She advised that the gas safety check happens once a year and the last one had been completed on Friday (4<sup>th</sup> August). She confirmed that another date had been arranged but she had an ill child, so phoned and asked the engineer to come back another day and he came back the following day.
39. In respect of the previous check Ms Smeaton explained that she remembered it was the plumber who arranged it and she thought there was one cancellation where it fell on a school day and she was running late.

40. With regard to the damaged radiator, Ms Smeaton advised that the walls are thin and she noticed the radiator had become loose and that the carpet was soaked. She reported it, and a plumber came out and capped it. She denied touching or damaging the pipes.
41. Ms Smeaton explained that the window was in her daughters' bedroom. They often kept the window partially open. There had been a storm and the window blew open damaging it. She advised the children had to sleep with her that night and that she left a key for the tradesman to come and sort the window. She advised that it has been nailed shut since and now there is now some mould growing round the window because it cannot be opened to allow ventilation.
42. Ms Smeaton confirmed that the damage to internal doors was caused by her dog and accepted it is her responsibility to repair these before she vacates the property. She also acknowledged that the front door has been damaged by her dog which took the letter box off when the postman delivered mail, and that she will fix it when she is leaving. She later added that she uses a draught excluder and considers the door wind and watertight.
43. With regard to the smoke and fire alarms, Ms Smeaton advised that when there was water coming through the ceiling they were all going off and so she had removed them but advised they are now all back in place. Her brother is an electrician and had reinstalled the one missing at the time of the last inspection.
44. Ms Smeaton denied she is responsible for damage in the kitchen saying it is really old and that this is more wear and tear. She noted the mark on the kitchen ceiling was from the leak from the radiator. With regard to the carpets, she alleged they were very old and just worn. She accepted however that by putting up stairgates this had caused holes in the walls which she advised she would fix when she left the property.
45. With regard to the bathroom Ms Smeaton accepted that there were repairs needed there and submitted that she wanted them fixed. She denied she had deliberately obstructed access saying that she had sent text messages sometimes when she could not make it, and a couple of times the plumber had not attended as arranged.
46. The Respondent denied that the issue with the front door was a repairing standard problem and confirmed she was happy for the landlord to arrange for repairs to be carried out.
47. Under questions from Ms Kelly, the Respondent acknowledged that she had not been in the Property on the two times mentioned by Mr Bowman and that the abortive visits in June/July 2022 were her fault and accepted responsibility for that.
48. The draft letter referred to by Ms Kelly as drafted by the Applicants, submitted to the Tribunal and copied to the respondent at the conclusion of the hearing, is worded as follows:-



*"List of Repairs Required at 49 Ballindean Place I am writing to you following the inspection carried out on Tuesday 30th May 2023 at 49 Ballindean Place, Dundee.*

*We, the landlords, have noted the following repairs which are to be carried out;*

*1. Smoke alarms. The smoke alarm at the top of the stairs has been removed please ensure this is reinstated as a matter of urgency. (A further inspection will be carried out to ensure this has been done). Please note this is required by law and for your safety.*

*2. Front external door. (Damaged caused by you or visitors to your household). To be repaired or replaced by you the tenant.*

*3. Internal doors. Where there has been damaged caused by pet dog and tenant. These doors must be repaired or replaced by you the tenant.*

*4. Holes in wall at the bottom and top of the stairs. To be repaired by you the tenant*

*5. Front Panel of bath (missing) . To be replaced by you the tenant.*

*6. Sealant around bath. Tenant must ensure this remains intact at all times and must be reported to landlord if any leaks occur from bath or toilet. (In the past leakage from missing sealant around bath has led to water leakage, the same as unreported toilet leakage, both have resulted in further damage to ceiling and kitchen units). Radiator replaced by landlord following removal of previous one by tenant. This resulted in further damage to both wall, floor and ceiling below, due to water leakage.*

*Further inspection around the house is now required to ensure no other damage has been caused through water in electric light fittings and joists etc.*

*Front bedroom window; This needs replaced by landlord however tenant must provide access to ensure this work can be carried out. We will source another contractor to contact you to arrange dates and times to have this work done.*

*Please provide access arrangements with Landlord to allow this work to be carried out. Should for any reason you cannot make an arranged time, you need to inform the contractor as soon"*

## **Findings in Fact**

49. The Applicants are owners of the Property.

50. The Respondent is the tenant in the Property by virtue of a lease which commenced in 2019.

51. The lease is a private rented tenancy despite not having been drafted with the prescribed terms.

52. The Applicants have experienced issues trying to arrange timeous access to the property for inspections and for tradesmen to gain access from time to time.

53. The gas safety check was carried out last year on 1<sup>st</sup> July and has been carried out this year on 4<sup>th</sup> August.

54. A tradesmen failed to gain entry to the Property to replace a radiator on 2 occasions in June/July 2022 before being able to do so on 6<sup>th</sup> July 2022.

55. The Respondent has granted access timeously for emergency repairs.

56. The gas safety check for 2023 was rearranged once to take place 2 days later than scheduled.

57. An inspection of the Property by the Applicants has taken place on 30<sup>th</sup> May 2023.

58. The inspection has identified various repairs the Applicants wish to carry out.

59. The Applicants have not asked to attend the Property to carry out a further inspection or repairs.

60. The bedroom window has been nailed shut since January 2022 and no attempt has been made to arrange a repair.
61. The Respondent has delayed or rearranged access to the property by tradesmen in the past.
62. The Respondent is not currently obstructing any access to the Property.

### **Reasons for Decision**

63. This is an application for an order to stop a person obstructing another person carrying out their duties in relation to the Repairing Standard and keeping a property compliant with it.

64. S57 says

“ **Obstructions etc.**

(1) This section applies if, after receiving notice of the intended action, any person prevents or obstructs any other person from doing anything which that other person is by or under this Part required, authorised or entitled to do.

(2) Where this section applies, the relevant authority may order the person who prevented or obstructed another person to permit that other person to do all things which the other person reasonably requires to do for the purposes of—

(a) complying with any requirement imposed by or under this Part, or

(b) doing anything which that other person is by or under this Part authorised or entitled to do.

(2A) In subsection (2), the relevant authority is—

(a) where the requirement or thing which the person is authorised or entitled to do relates to the repairing standard, the First-tier Tribunal,

(b) in any other case, the sheriff.

(3) Any person who fails to comply with such an order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) This section does not apply in relation to rights conferred by Part 9 (except the right conferred by section 181(4)(a)).”

65. The Applicants are alleging they are being obstructed from carrying out repairs and inspections to the Property. They are seeking an open-ended order to allow them and any tradesmen they see necessary to attend and carry out works. The notice that the Applicants have submitted that they served on the Respondent is contained in a Notice to leave dated 12<sup>th</sup> July 2022 and states “You have refused workmen instructed by the landlord to carry out essential inspections and repairs entry to the tenancy subjects. There are a number of essential works required to the tenancy subjects, including repairing the damaged seal around the bath and an inspection for the Gas Safety Certificate. Plumbers and Gas workmen have

attended the tenancy subjects with prior notice being given to you. They were not permitted access. Your Landlord is concerned about the condition of the property deteriorating as a result. This is a breach of the term of the tenancy agreement.”

66. Although Ms Falconer has not made any objection to the type of “notice” given to the Respondent and Ms Kelly has submitted there is no particular type of form of notice that requires to be given the Tribunal notes the legislation suggests that the section applies “after notice is given of the *intended action*”. The Tribunal interprets that to mean the type of activity or action the Applicant wants to carry out and is then prevented from doing. If that is the case the notice to leave gives notice of a failure to allow a gas safety check, despite the fact that from the evidence lodged by the Applicants themselves they accept the gas safety check was in fact carried out on 6<sup>th</sup> July 2022 which predates this notice and has been carried out again this year on 4<sup>th</sup> August. In addition although the Applicant complained in the notice and in this application and hearing, that the seal round the bath needs repaired they do not appear to have attempted to arrange for any repair to be done and indeed in their proposed letter to the Respondent, they state it is the tenant’s responsibility to keep it repaired.
67. From the evidence heard from both parties, the Tribunal accepts that the landlord has experienced some delays in tradesmen being allowed access by the tenant. This has maybe resulted in the landlord losing one or more tradesmen and has caused frustration. However, the tenant accepts that she had failed to advise the plumber of issues she had with being in to allow access in June and July last year. An inspection of the property has been carried out recently and a gas safety check has been completed timeously with the appointment being rearranged to a mutually convenient time that was only 2 days after the original appointment and the Respondent advises she will cooperate with future repairs.
68. The Tribunal notes the landlords are frustrated at what they perceive as the house deteriorating, however, they have not tried to arrange any further tradesmen since July last year.
69. The Tribunal finds from the evidence presented that the tenant has not deliberately obstructed anyone from attending, at most she has been fairly difficult to make arrangements with and has sometimes forgotten or failed to advise tradesmen she would not be there when other life events have occurred. She has however allowed and facilitated appointments when urgent repairs have been required.
70. The landlord advised that they were going to send a letter about repair works but were awaiting the outcome of this hearing. However, the draft letter provided at the conclusion of the Hearing appears to be more a request for repairs to be done by the Respondent rather than a request for access.
71. In relation to the one item they identify as requiring done, the window, they have not yet instructed a contractor and currently the Respondent has not obstructed anyone in their attempts to gain access.

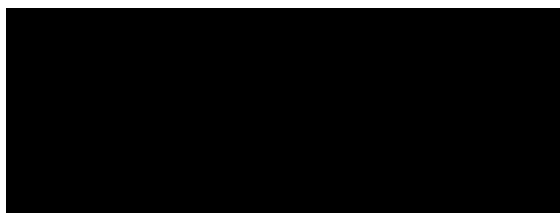
72. It would not be appropriate or necessary in the Tribunal's view for an open-ended order to be granted just to "make sure" the Respondent provides access.
73. The Act provides a remedy to a person "who is being prevented and obstructed" in carrying out duties that relate to the repairing standard. Mr Jordan admitted that he had hoped to carry out repairs when the Respondent had left the Property and so he has not tried to carry out further repairs which he has now identified as being needed.
74. The Applicants admitted that they are actively seeking to evict the Respondent but have not long served a further notice to leave. Any eviction action could take further time and they clearly wish to start repairing the Property and have the right to carry out essential repairs. While the Tribunal notes that further repairs may be required, the Respondent is not complaining that the Property is not wind or watertight. She accepts that the window needs to be fixed and states she is keen for this to take place. Any damage to kitchen cupboards, carpets and walls do not necessarily relate to the repairing standard. The fire alarm and preventing leaks are important and the Applicants should proceed to carry out repair works they consider necessary. However given that there is no evidence that the Respondent is or has actively obstructed any works and there was only evidence of some previous delays, the Tribunal is not satisfied that any order should be granted under this section. If the Applicants do give formal notice of works they wish to do and if the Respondent denies access, or otherwise prevents or obstructs the Applicants or tradesmen instructed by them then it is open to the Applicants to raise another application or to seek a right of entry.

## **Decision**

75. The Application is refused.

## **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 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.**



**Legal Member/Chair**

**10<sup>th</sup> August 2023**  
**Date**