



**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) 2016**

**Chamber Ref: FTS/HPC/CV/23/1577**

**Re: Property at 3 Abbey Mill, Riverside, FK8 1QS (“the Property”)**

**Parties:**

**Mr Chee Shien Tan, Muhammad Hamaz Yusuf, 8 Menteith Road, Stirling, FK9 5DH; 8 Menteith Road, Stirling, FK9 5DH (“the Applicant”)**

**Airthrey Mill Property Company Ltd, 65 Restalrig Avenue, Edinburgh, EH7 6PN (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £850 should be made.**

**Background**

- 1, The background to the case is set out in the Case Management Discussion Note.

**Hearing**

2. The Hearing took place by teleconference on 7<sup>th</sup> December 2023. The Applicants were represented by Mr Tan, and the Respondents were represented by Mr Thomas Inglis, a director of the Defenders.
3. The Chairperson went over the terms of the CMD Note and the disputed issues, and established that each party knew what the purpose of the Hearing was and how it would progress.

## Applicants' Case

4. Mr Tan was asked to present his case. He began by giving evidence himself. He referred to his document, A1. He said that the situation had started with mould on the ceiling. The landlord had told the Applicants that it was their responsibility to clean off the mould and when they did that they saw water marks. Mr Tan said that they contacted the university accommodation office, both Applicants being students, to check what they should do. They came out as a favour. They told the Applicants that the bathroom did not accord to BSI regulations as it was not tanked. They said that the leak was coming from the ceiling or the fan, and that the fan should be covered. The Tribunal asked Mr Tan if he had any witnesses or documentation to back up this position, or what qualifications the people had to make comment. He said that he did not know and he did not have any documentation.
5. Mr Tan said that between 16<sup>th</sup> August 2022 and 23<sup>rd</sup> August 2022 Andrew Inglis, director of the Defenders, came round twice. He took a pen out and marked the ceiling so that he could come back to see if the water mark was spreading. Mr Tan said that he thought that the landlords had been negligent. It was their responsibility to ensure the safety of the tenants and they had done nothing between 16<sup>th</sup> and 23<sup>rd</sup> of August. They had not asked any professional to come out and look at the situation.
6. Mr Tan said that the ceiling in the bathroom had fallen on Mr Yusuf, the other tenant, on 23<sup>rd</sup> August 2022. He referred to his production A1 which he said was extracts from WhatsApp, downloaded from WhatsApp's chatlogs.
7. Mr Tan referred to his production A3, which again was a WhatsApp chatlog showing when Mr Yusuf had advised the Respondents that the ceiling had collapsed.
8. Mr Tan referred to his photographs B1, B2, B3 and B4. He said that these were photographs he had taken on 5<sup>th</sup> September 2022. They showed that the ceiling was leaking, there were exposed wires and there were nails sticking out of the wooden structure which was there to support the ceiling. He said that picture B2 showed a hole in the bathroom ceiling which actually extended to half of the ceiling. He said that pictures B2 and B4 although they looked identical were different angles of the same thing.
9. Mr Tan said that the landlord was aware of the condition of the bathroom. He said that it could be used, but the hole was still there and as they were showering the leak was still coming from above and debris was falling. The light was just hanging there by the wire and he said you could see that in photographs B3 and B4.
10. Mr Tan referred to his production C1 which was another WhatsApp log. He pointed out that he had requested insurance intervention and Mr Andrew Inglis, who was the other person in the chat, said that he would inform the insurance company. This chat took place between 23<sup>rd</sup> August and 24<sup>th</sup> August. He also referred to his productions C2 and C3 which he said was him checking on the coverage of the insurance. He said that he has sought legal advice from Pollock & Ross Solicitors in December 2022 and they had told him that if the tenants

had requested insurance intervention then the insurance company had to step in. He said that Mr Andrew Inglis had refused this.

11. Mr Tan referred to his productions D1 to D6, which he said showed the landlord's refusal to mediate. He sent an email to them on 11<sup>th</sup> November 2022 asking for them to deal with their claims and gave them two weeks to respond. They did not respond. He said that in January 2023 he consulted a solicitor and he also went to the local MSP. They tried to contact the landlords and received no response.
12. Mr Tan said that the Applicants left the property on 3<sup>rd</sup> May 2023.
13. The Tribunal asked Mr Tan what had happened to the deposit that they had paid to the landlords. Mr Tan said that it was still with the Tenancy Deposit Scheme. He had requested it to be put on hold. The Tribunal asked him why he had asked for it to be put on hold, and he was reluctant to answer. He eventually said that it was because when they were trying to move out they needed a landlord's reference and the landlord refused to provide it. He said that they provided false referencing.
14. The Tribunal asked when Mr Tan had first noticed the marks on the ceiling. He said it was around 15<sup>th</sup> August when they were cleaning the mould. The Tribunal asked when the mould had first been removed, and he said it had been there for around two to three weeks, probably from mid July. The Tribunal asked if he was using the fan when showering and he said that he was, it was connected to the light and came on when the light was switched on. The Tribunal asked if the landlord had said that the tenants were responsible for the mould, and he replied that the landlord had said that. He said the landlords had told them that it is up to them to maintain cleanliness so that they did think to some extent the mould was up to them. There was none when they first moved in and it did first appear in July.
15. Mr Tan then called Mr Yusuf as a witness. Mr Yusuf was the other tenant. Mr Tan referred Mr Yusuf to WhatsApp conversation A3. Mr Yusuf said that the WhatsApp conversation had been between him and Andrew Inglis. He said that on 23<sup>rd</sup> August 2022 around 1pm -2pm he was in the flat as there was supposed to be someone coming to look at the bathroom. He went to use the bathroom and half the ceiling fell in. Some of the chalk board from the ceiling scattered into pieces and fell on him. The ceiling fell onto the floor. He was not injured. He reported it immediately, certainly within 15 minutes of it having happened. He said that they had reported the leak before the ceiling came in but no-one had done anything.
16. Mr Tan referred Mr Yusuf to conversation B4 regarding insurance coverage. He said that on 16<sup>th</sup> September 2022 he messaged Andrew Inglis asking if the insurance covered the rental period till the time the bathroom is ready. The Tribunal asked Mr Yusuf if it was his position that he had not been able to use the shower for two months. He said that if he turned on the tap to take a shower he ended up with two showers, as one came from the ceiling and one came from the shower. He said that he moved out to another property for a month, and that Mr Tan showered at the university.

17. Mr Yusuf said that he was out of the property between 24<sup>th</sup> August 2022 and 29<sup>th</sup> September 2022. This was because the roof was still dripping water and he did not want to shower like that. He said that after 29<sup>th</sup> September the water stopped dripping but the ceiling was still not repaired.
18. Mr Yusuf said he could recall having a heated conversation with Andrew Inglis. Mr Inglis said that it was their mistake as they hadn't kept the property in good condition.
19. Mr Thomas Inglis was given the opportunity to cross examine Mr Yusuf. He asked if Mr Yusuf could remember the date of the heated argument he had had with Andrew Inglis so that he could put it to his brother in evidence. Mr Yusuf said that he couldn't remember the date, but it was the date when Andrew Inglis gave him the Gas Compliance certificate. Mr Yusuf said that when he told Andrew Inglis about the dripping water Mr Inglis said that they had never taken care of the house and it was their fault. He did say that the mould was there and the ceiling was intact before it fell in. He said that he had told Andrew Inglis about the leak a couple of weeks before, probably around 17<sup>th</sup> August. He saw the drip between 10<sup>th</sup> and 17<sup>th</sup> August. He was asked if he could remember when he first saw the black mould and he could not remember.
20. Thomas Inglis was also given the opportunity to cross examine Mr Tan. He asked Mr Tan if he was sure that the pictures he had previously referred to had been taken on 5<sup>th</sup> September 2022. Mr Tan said that he was sure. They were taken when the ceiling first collapsed. He was asked if Andrew Inglis had come round and tidied up and removed the nails. He said that from 24<sup>th</sup> August till 5<sup>th</sup> September the ceiling was still leaking and the nails that could be seen in the photographs were the ones holding the ceiling in place.
21. Mr Inglis asked Mr Tan about his allegations regarding providing a reference. Mr Tan said that he was of the understanding that Mr Inglis had been contacted by an Estate Agent who was looking for a tenancy reference for the Applicants and had not given one. Mr Inglis asked him if he could provide any evidence of the conversation. Mr Tan said that the Estate Agency do have a recording of it but they said that they were unable to disclose it without a Warrant. Mr Tan confirmed that this concluded his case.

### Respondent's Case

22. Mr Thomas Inglis had the opportunity to present his case. He gave evidence. He said that he did not dispute there was a leak in the ceiling and that the ceiling did come down. He said it had taken longer than they would have liked for it to be fixed, but they had to wait for the owner of the upstairs flat to accept that there was an issue, and for that bathroom to be refitted.
23. Mr Inglis said that he did not accept that the bathroom was unusable. He had had no notification from the tenants that they couldn't use the shower. He did not accept that the pictures which Mr Tan had submitted had been taken by him on 5<sup>th</sup> September 2022.
24. Mr Inglis said that he did not think that the issue of mediation was relevant. He took legal advice. He was told that they didn't need to do anything but they did

send the letter with the gesture of goodwill which was lodged as a production. The Tribunal pointed out that the letter was undated and he said that he would ask his brother to confirm the date when he gave evidence.

25. Andrew Inglis then gave evidence. He said that on the day he was notified that the ceiling had collapsed he went to the property as soon as he possibly could. He did a walk through. Two thirds of the bathroom ceiling had collapsed. He said he cut it back to make it safe, pinned the wires up, removed all the expansion foam and removed some of the braces, and made the light safe. He was asked for his qualifications and said that he was a qualified advanced heating engineer.
26. Mr Inglis said that the light had to be repositioned. He removed the debris on the ceiling, washed the bathroom and the walls etc and the only thing that was not right was the hole in the ceiling. He said that all the fittings were working and he checked that with Mr Tan. This was all done on 23<sup>th</sup> August 2022.
27. Mr Inglis was asked when the gesture of goodwill letter was sent and he said it was emailed to Mr Tan on 23<sup>rd</sup> December 2022.
28. Mr Inglis was asked when he was first notified of the black mould. He said that it was in 5<sup>th</sup> August 2022 when he was carrying out a flat inspection.
29. Mr Inglis was referred to photograph CM1, CM2 and CM3 of the Respondent's productions. He said that he took the photographs on 13<sup>th</sup> August 2022 at 12.23pm.
30. Mr Inglis was also referred to photographs BS1 and BS2. He said that he had taken these before the Applicants moved in. These were attached to the advert to rent the flat in the first place.
31. Mr Inglis was asked what the cause of the leak was. He said that the upstairs neighbour found a faulty pipe and this was what had caused the leak.
32. Mr Inglis said that he didn't recall having a heated discussion with Mr Yusuf at all. He said that he did get a barrage of message from him when the ceiling came down.
33. The Tribunal asked Mr Inglis what checks he had carried out when he was first made aware of the ingress of water. He said that he had a moisture meter which he plugged into the ceiling. It was at a level where the problem was condensation rather than water ingress. He had asked Mr Tan how they used the bathroom when showering. He said that they had turned the overrun of the fan off as they didn't like the sound of it. He explained that the fan should run for ten minutes after the light is switched off, but that function had been disabled. He told the tenants not to do that as it was for a purpose. He thought Mr Tan took that on board. The extractor fan was the only source of ventilation in the bathroom.
34. The Tribunal asked Mr Inglis if the leak could have been responsible for the mould. He said that that was a bit of a loaded question. He said possibly, but the mould probably happened over a longer period. He did check upstairs when he was first advised of the issue but there was no sign of a leak at all. After the

ceiling fell he checked upstairs again and pulled off their bath panel. He didn't do that the first time because it wasn't his property and the owner didn't give authority for that. The owner did give authority for it after the ceiling had come down.

35. Mr Inglis said that the tenants were responsible for the upkeep of the property. It had been given to them in a good state and the flat inspection showed it wasn't up to standard. He told them they would have to get back into that condition. He advised them to buy a mould spray. They did that, and then they scraped the bathroom ceiling and found the water stain. He conceded that that would suggest a leak. He drew a line round it to see if it was a previous leak or an ongoing leak.
36. The Tribunal enquired about the position regarding the deposit. Mr Inglis said that the Respondents have made a claim to the Deposit Scheme because the Applicants did not pay the last month's rent. The Applicants have blocked the Tenancy Deposit Scheme from doing anything regarding that at the moment.
37. Mr Tan was given the opportunity to cross examine Thomas Inglis. Mr Tan referred to his letter of claim of 11<sup>th</sup> November 2022 in which he had asked for a response within fourteen days, and then sent a reminder. He asked what procedures the Respondent had taken in relation to that email. Mr Inglis replied that he was aware that the emails had been sent. It was likely that he would have discussed it with his brother, and a response was then sent on 23<sup>rd</sup> December 2022. Mr Tan asked Mr Inglis why there had been no response to the request for mediation. Mr Inglis said that as far as he could see Mr Tan had contacted the MSP and told them a different story. His view was that Mr Tan hadn't got what he wanted so he had gone round banging on doors. Mr Inglis was of the view that the MSP was there to deal with serious problems and couldn't see why they had tried to involve the MSP.
38. Mr Tan was given the opportunity to cross examine Andrew Inglis. He asked Mr Inglis about a BSI requirement that the bathroom needs to be waterproofed and that it should be tanked. Mr Inglis replied that as far as he was aware it was only basements that require tanked. The Tribunal asked Mr Tan if he had lodged any documentation regarding any BSI requirements, and if he had any witnesses to speak to the position. He said that he did not.
39. Mr Tan asked Mr Inglis if his qualification as a heating engineer was the same as a qualification as a joiner. Mr Inglis said it was not, but he covered all aspects of anything to do with those works.
40. Mr Tan asked Mr Inglis if he had come to look at the ceiling between 24<sup>th</sup> August and when it was fixed. Mr Inglis replied that he had tried to but that the tenants had made it difficult for him to gain access to the property. He said that he had done everything he possibly could to sort the ceiling.
41. Mr Tan asked if the insurance company were informed. Mr Inglis replied that the property was factored and there was a common insurance policy. He said that he did inform the insurer. He did not claim on insurance because it would take too long and the excess was more than the cost of the work.

42. Mr Tan asked if there was Landlord Insurance Cover, and if so why was it not used. Mr Inglis said that they hadn't claimed on it because the tenants were not decanted, and the property was not uninhabitable. He pointed out that the insurance was the company's insurance and not the tenants' insurance, and it was up to the company to decide whether or not to make a claim.
43. Mr Tan asked Mr Inglis if he was aware that the condition of the ceiling had deteriorated over the two months. Mr Inglis replied that if it had he was not informed by the tenants. Mr Tan put conversation B4 to him and Mr Inglis pointed out that it didn't say anywhere that they couldn't use, or were not using the bathroom. Mr Tan conceded that he didn't specifically say that it was not usable.
44. Mr Tan asked Mr Inglis if he had contacted a Letting Agent who had asked for a reference. Mr Inglis said that he was sent an email with a link to give a reference. He didn't feel comfortable giving a reference when the tenants were threatening him with legal proceedings. He didn't want to give a reference which would go against him at a later date. He spoke to the Scottish Landlord Association, who said that he could provide the reference. When he tried to access the link it didn't work. He telephoned the Letting Agent and they said that the reference had been pulled.
45. Neither party had anything further to add.
46. The Tribunal adjourned to consider its decision.

### **Findings In Fact**

- i. The Applicants rented the property from the Respondent;
- ii. The tenancy began on 14 January 2022;
- iii. The tenancy ended on 3<sup>rd</sup> May 2023;
- iv. On 14<sup>th</sup> July 2022 Andrew Inglis sent a message to the Applicants regarding arranging an inspection of the flat;
- v. On 5<sup>th</sup> August 2022 the Applicants made Andrew Inglis aware of black mould on the bathroom ceiling;
- vi. On 5<sup>th</sup> August 2022 Andrew Inglis told the Applicants to clean it off with mould cleaner;
- vii. On 13<sup>th</sup> August 2022 Andrew Inglis inspected the ceiling and suggested they scrape the paint off so that he could repaint it;
- viii. On 13 August 2022 the Applicants brought the water staining to Andrew Inglis's attention;
- ix. Andrew Inglis drew round the staining with a pen to see if the stain would spread;
- x. On 16 August 2022 the Applicants informed the Respondent that the water staining had expanded;
- xi. On 16 August 2022 Andrew Inglis visited the owner of the flat above who said there was no leak;
- xii. On 23 August 2022 Mr Yusuf was in the bathroom and a large portion of the bathroom ceiling fell in;

- xiii. Mr Yusuf sent Andrew Inglis a message to advise him and Mr Inglis attended at the property that day;
- xiv. Andrew Inglis visited the owner of the flat above, removed his bath panel and detected a leak;
- xv. Andrew Inglis tidied up the bathroom and ceiling;
- xvi. The ceiling continued to leak;
- xvii. The Applicants did not specifically inform the Respondent that they considered the bathroom unusable;
- xviii. Mr Yusuf moved out of the property between 24th August and 29<sup>th</sup> September;
- xix. The ceiling was repaired on 19 October 2022.

### **Reasons For Decision**

47. The Tribunal considered that the matter at issue was a contractual one.

Clause 17 of the Private Residential Tenancy agreement deals with the repairs and places the onus on the landlord to meet the repairing standard. It states that

“the landlord has a duty to repair and maintain the let property from the start date of the tenancy and throughout the tenancy. This includes a duty to make good any damage caused by doing this work. On becoming aware of a defect, the Landlord must complete the work within a reasonable time.”

The subsection headed REPAIR TIMETABLE states:

“The Tenant undertakes to notify the Landlord as soon as is reasonably practicable of the need for any repair or emergency. The Landlord is responsible for carrying out necessary repairs as soon as is reasonably practicable after having been notified of the need to do so.”

48. The Tribunal had to consider whether or not necessary repairs had been carried out as soon as reasonably practicable. Issues brought up by the Applicants in relation to mediation and references were not relevant to the issue in question.
49. The Tribunal accepted that all the witnesses gave evidence which was reliable and credible.
50. The Tribunal considered that, given the evidence from both sides that at the commencement of the tenancy on 14<sup>th</sup> January 2022 there was no mark on the ceiling, the presence of a fairly large water mark some seven or eight months later was cause for concern. The Tribunal considered that the Respondent should have been more robust in attempting to find out why there was a mark. Had the Respondent insisted on checking behind the upstairs proprietor’s bath panel when the staining was initially noticed it might have led to the leak being detected earlier. The ceiling may not have fallen in if steps had been taken at that point. The evidence of both Thomas and Andrew Inglis led the Tribunal to conclude that they had originally considered that the Applicants were at fault, and that this might have caused them not to investigate as thoroughly as they could have.



51. The Tribunal accepted the evidence of Mr Yusuf that he had moved out of the property between 24<sup>th</sup> August and 29<sup>th</sup> September 2022 as he did not consider the shower to be usable. They also accepted that the Applicants did not specifically tell the Respondent that they considered the bathroom to be unusable. However, given that there was a large hole in the ceiling, and that it continued to leak, the Respondent should have appreciated this. Andrew Inglis gave evidence that the Respondent did have an insurance policy which would have covered decanting the Respondents if necessary.
52. The Tribunal concluded that the Respondent did not deal with the repair as soon as reasonably practicable, and had therefore breached Clause 17 the tenancy agreement.
53. Mr Yusuf gave evidence that the water stopped dripping after 29<sup>th</sup> September 2022 and he returned to live in the property. He was out of the property for around a month. He also gave evidence that during that period Mr Tan showered at the university.
54. The Tribunal decided to award the Applicants one month's rent, totalling £850.

### **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.**



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**Legal Member/Chair**

07 December 2023

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**Date**