



**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/23/1710**

**Re: Property at Flat 3/1, 447 Hawthorne Street, Glasgow, G22 6EW (“the Property”)**

**Parties:**

**Mr Paul Smith, Meadow Bank House, Torrance, Glasgow, G64 4EQ (“the Applicant”)**

**Miss Nicola McLelland, 25 Fruin Street, Flat 0/1, Glasgow, G22 5DP (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. By application dated 25 May 2023 the Applicant’s representative, Lynn Blackwood of Looking to Rent, Glasgow, applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the Respondent’s tenancy of the property. The Applicant’s representative submitted a copy of the tenancy agreement together with a rent statement and an email from the Respondent in support of the application.
2. By Notice of Acceptance dated 19 June 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Service by Advertisement as the Applicant's representative was unable to trace the Respondent.
4. By email dated 6 August 2023 the Respondent contacted the Tribunal administration.
5. A Case Management Discussion was held by teleconference on 8 August 2023. The Applicant did not attend but was represented by Miss Blackwood. The Respondent attended in person. It was agreed that the Respondent had following service of a Notice to Leave vacated the property on 16 April 2023 and had paid rent of £1125.00 leaving a balance of unpaid rent of £1272. 95. It was the Respondent's position that this rent was unpaid. The Respondent claimed that repairs to the property had not been done timeously and that the property had suffered from water ingress and dry rot that had affected her health and that she was entitled to an abatement of rent. The Tribunal determined to continue the application to a hearing and directed the Respondent to provide written representations setting out in some detail her reasons for not having to pay some or all of the outstanding rent within a period of four weeks.
6. By email dated 10 October 2023 the Applicant's representative submitted further written representations.
7. On 12 October 2023 Sheriff Officers delivered a set of case papers to the Respondent at her home address.
8. By email dated 1 November 2023 the Applicant's representative submitted further written representations to the Tribunal.
9. By emails dated 1 November 2023 the Respondent submitted written representations to the Tribunal.

### **The Hearing**

10. A hearing was held by teleconference on 8 November 2023. The Applicant did not attend but was represented by Miss Lynn Blackwood of Looking to Rent. The Respondent attended in person.
11. By way of preliminary matters, the Tribunal queried with the Respondent as to why she had not complied with the direction to submit written representations within four weeks of the CMD. The Respondent said she had forgotten and had only remembered when submitting the productions on 1 November. The Tribunal expressed its displeasure at the Respondent's failure as it made it more difficult for both the Tribunal and the Applicant to understand the exact nature of the Respondent's defence. The Tribunal also noted that the

Respondent had provided the name and address and contact details of the surveyor she had instructed but had not provided a list of witnesses or given any indication in her email of 1 November that she intended to call Mr Fotheringham as a witness. The Respondent said that she thought the Tribunal would arrange this. After it being explained that this was not the case the Tribunal sought to ascertain if the Respondent wished an adjournment in order that she could contact Mr Fotheringham to see if he would agree to be a witness. The Respondent said she did not and that she wished to proceed with the hearing.

12. For the Applicant Miss Blackwood referred the Tribunal to the timeline submitted with the written representations on 10 October 2023. She said an inspection of the property took place on 29 June 2022 and the note stated:- “it was reported to the Landlord that there is a water mark on the ceiling near the chimney area, not wet looking and only cosmetic from previous an old leak. It was also noted that there was moss growing in the gutter causing small flies which enter the bedroom window. The tenant has stipulated that a neighbour has been on the roof and the guttering is cracked and water has penetrated the bathroom ceiling although no water in visible.”
13. Miss Blackwood then went on to say that some repairs to the toilet had been carried out but that there had been some issues and that on 14 November 2022 after discussions with the Applicant it had been agreed that the Applicant’s representatives would take care of the repairs as it was deemed easier for LTR to make direct access with the tenant and arrange contractors. She said that on 14 November a meeting between the Respondent and her director, Warren Crawford, had taken place and referred the Tribunal to an email sent by Mr Crawford dated 6 December 2022 that detailed what had been discussed at the meeting.
14. Miss Blackwood said that although the Respondent had in an email dated 31 December said that she suspected there was dry rot in the property and had a damp specialist coming to the property she had not provided any photographs but had then contacted Glasgow City Council. Miss Blackwood went on to say that Glasgow City Council had then contacted the Applicant who had arranged for RM Consulting to carry out a survey of the property and she referred the Tribunal to their report. She said although there was some dry rot at the property the report confirmed there was nothing of danger. Miss Blackwood said that as regards the water marks in the kitchen she thought this was cosmetic and from an old leak.
15. In response to questioning from the ordinary member of the Tribunal Miss Blackwood confirmed that at her inspection on 29 June 2022 she had concluded that the property was not wind and watertight but as one of the Respondent’s neighbours had been on the roof no water had been coming in. and no water was visible at the time of her visit. Ms Blackwood however confirmed she did not carry a moisture meter to test the patch on the ceiling.

The ordinary member asked why there had been no further inspection or contact with the Respondent and no work done to the window or the roof until November 2022 and Miss Blackwood said there had been no further reports from the Respondent until November. Miss Blackwood said that other repairs to the toilet had been undertaken during that time and the bedroom window had been repaired on 12 January 2023. In response to a further query from the Tribunal Miss Blackwood acknowledged that the Respondent might be entitled to an abatement of rent potentially for the delay in repairing the window but did not think any abatement was justified in respect of the dry rot or water ingress. Miss Blackwood accepted it had taken six months to repair the window. She said that her firm had used a drone to look over the roof on 9 January 2023 and at that time there was no visible water and it was not wet at that time. Miss Blackwood commented that the Respondent had not provided the letting agents with a set of keys although this was a term of the lease. She said it would have been easier to gain access for repairs if they had keys but that the Respondent had not prevented access. Miss Blackwood said that although the window and roof had not been repaired for six months, she did not think there had been any risk to the Respondent's health. She said that although there had been fungal growth historically at the property prior to the Applicant installing a new bathroom there was no recent signs of such and that as the Respondent was a smoker that was more likely to affect her health. Miss Blackwood said that the medical report provided by the Respondent's GP spoke of the property having a history of mushrooms and dry rot for over 12 years. She said she had tried to contact the Respondent's GP as this was not accurate but had not heard back.

16. The Respondent confirmed that the bathroom at the property had been replaced about six or seven years ago and that one of the photographs submitted by her showed the presence of mushrooms in the bathroom at that time. She said she had first noticed the damp patch in the kitchen a few weeks before Miss Blackwood's inspection in June 2022. She went on to say that although the bedroom window had been repaired in January 2023 it had not been fully repaired and was still not completely watertight but was an improvement.
17. The Respondent said that there had been communication between herself and the letting agents in the period between June and November 2022 but that she only had access to her emails from August 2022. She said the Applicant's representatives had said the wet patch in the kitchen was only cosmetic but that she had seen that it had been expanding. She said she had been particularly alarmed as the chimney over the flat next door had collapsed. She said because of that she had contacted an independent surveyor who had told her there was dry rot at the property. She said that because of the delay in the Applicant's representatives dealing with the issues she had contacted Landlord Registration at Glasgow City Council on 1 February 2023.

18. The Respondent said that because the bedroom window had not been repaired by October 2022 and with her emphysema, she had found it necessary to move her bed into the living room and had remained there until the window was repaired in January 2023. She also said that since moving into a property that has been properly maintained her health has improved. The Respondent said that she had endured months of emails telling her that the repairs to the property were communal and could not be carried out until all owners agreed and she had found it soul destroying and it had affected her mental health. She went on to say that it had been difficult to obtain a GP appointment and she had not managed to obtain a medical report to confirm her submissions. The Respondent confirmed that she was a smoker and smoked about 10 cigarettes a day.
19. The Respondent went on to say that she had justifiable reasons to be concerned about the condition of the property and given what had happened to the adjoining property she had good reason to be afraid but that she was just fobbed off by the Applicant's representatives.
20. The Respondent explained the Tribunal that when she had been a tenant the rent had been £375.00 per month but the property was now rented out at £650.00 per month. In response Miss Blackwood explained that the Respondent's rent had not increased throughout the 12 years she had been a tenant and the current amount reflected the market rent.
21. In response to a query from the Tribunal the Respondent confirmed she had cancelled her standing order for the rent in October 2022 and had told the Applicant's representatives why she was not paying rent. She went on to say that she thought her landlord's reaction had been all money oriented and no progress had been made with repairs. She said that Mr Crawford had attended at the property because the rent was not being paid. The Respondent said that she had not started paying rent in January 2023 because the Applicant had still not addressed the issues with the dry rot and the damp patch.
22. The Respondent said that she had not contested the Notice to Leave served on her and had vacated the property on 16 April 2023. She said that she felt the Applicant's representatives had broken her as a person and she had had enough. She said they had wanted her out of the property and had made her life hell and were only interested in her paying the rent.
23. For the Applicant Miss Blackwood said that for the first couple of months after not paying rent the Respondent had not said why the rent was not being paid but had then said that it was being withheld. She went on to say that she accepted that the Respondent might be entitled to a small abatement of rent

for the delay in repairing the window and suggested that a reduction of £25.00 for a period of 7 months amounting to £155.00 would be appropriate.

### **Findings in Fact**

24. The Respondent owed rent of £1272.95 as at 16 April 2023 and this amount was still outstanding at the date of the hearing.
25. The Respondent although a tenant under a Private Residential tenancy since 5 September 2018 had been a tenant at the property for about 12 years.
26. The Respondent became aware of signs of water ingress in the ceiling of the kitchen of the property in about May or June 2022.
27. Miss Lynn Blackwood from the Applicant's letting agents Looking to rent inspected the property on 29 June 2022.
28. At the inspection on 29 June 2022 Miss Blackwood was made aware of the damp stain in the kitchen, a faulty bedroom window and moss growing in the gutter which was also cracked.
29. No repairs or further inspections were carried out and the Respondent stopped paying rent.
30. The Respondent was served with a Notice to Leave under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 on 10 October 2022.
31. A director of the applicant's letting Agents, Warren Crawford, met with the Respondent on 14 November 2022 and following an email from the Respondent replied to her on 6 December 2022.
32. The Applicant's letting agents in their email of 6 December indicated that there were no obvious signs of water ingress from the roof of the property following drone photographs taken on 14 November. They also confirmed that the Respondent's toilet would be replaced and that a window contractor had been instructed.
33. A repair to the Respondent's bedroom window was carried out on 12 January 2023.
34. On or about 10 January 2023 contractors removed moss from the rear roof and gutters at the property believed by the contractors to have been causing water ingress at the property.

35. The Respondent suffers from emphysema and this affects her breathing.
36. The bedroom at the property was not wind and watertight from before 29 June 2022 until 12 January 2023.
37. From about October 2022 until after the bedroom window was repaired in January 2023 the Respondent moved her bed into the living room as the faulty window affected her health.
38. A chimney at the flat adjoining the property fell through the neighbouring property 's roof.
39. The Respondent was worried that the same might occur at her property and instructed a surveyor to inspect the property.
40. The Respondent obtained a verbal report that indicated there was water ingress and dry rot at the property.
41. The Respondent advised the Applicant's letting agents of the verbal report.
42. The Respondent contacted Landlord Registration at Glasgow City Council in February 2023 as the letting agents had not taken her concerns about the property seriously.
43. The Applicant subsequently obtained a report from RM Consulting that concluded there was some dry rot in the property that was minor and that there could be water ingress under certain wind conditions and made recommendations for repairs.
44. The Respondent moved out of the property on 16 April 2023.

### **Reasons for Decision**

45. There was agreement between the parties as to the level of rent arrears. What was disputed was whether the Respondent should meet the full amount of the arrears of £1272.95 or whether that amount should be abated because of the reasons put forward by the Respondent in her defence.
46. It was accepted by Miss Blackwood that at the inspection in June 2022 the property was not wind and watertight as a result of the bedroom window not closing properly. It also appears from the documents submitted to the Tribunal and in particular the email from Julie McManus to the Applicant's letting agents dated 10 January 2023 that the moss on the roof and in the gutter at the rear of the property was causing water ingress to the property. The

Tribunal is therefore satisfied that in the summer of 2022 the problem with a damp patch having been pointed out to the letting agents along with the issues with the bedroom window and gutters the Applicant ought to have taken steps to have repairs carried out as soon as possible thereafter.

47. The Tribunal found the Respondent to be a credible and reliable witness who having become aware of the problem that had occurred in the neighbouring property where a chimney had collapsed through the roof was not unnaturally concerned that something similar could happen to her having experienced fungal growth in the property some years previously. The Respondent felt she was being “fobbed off” by the Applicant’s letting agents and determined that the only leverage that she had was to stop paying rent although this resulted in her being served with a Notice to Leave.
48. The Respondent suffers from emphysema and felt that her condition was made worse by the bedroom not being wind and watertight and decided to stop using the bedroom between October 2022 and January 2023 until after the window was repaired.
49. Miss Blackwood sought to argue that as the Respondent had not made any further complaints about the window or the water ingress until November 2022 it was not unreasonable that no repairs to the window or the roof were carried out until January 2023. The Tribunal does not agree with that submission. The letting agents and by implication the Applicant were aware of the issues affecting the property from the end of June 2022 and they ought to have instructed repairs long before matters became an issue for the Respondent.
50. The Tribunal is also satisfied that the Applicant’s letting agents failed to take the Respondent’s concerns about the existence of dry rot at the property seriously and the Applicant only instructed his own surveyor after Glasgow City Council became involved. Although the report from RM Consulting indicates the outbreak of dry rot to be minor the Tribunal was concerned that some eight months after the report no work had been carried out at the property.
51. The Tribunal was satisfied that the Respondent was entitled to an abatement of rent to reflect the failings on the part of the Applicant to keep the property wind and watertight and in a reasonable state of repair. The Tribunal did not agree with Miss Blackwood’s proposal that a deduction of £25.00 per month for seven months would be appropriate. According to Sheriff Principal Caplan in *Renfrew District Council v Gray* 1987 SLT (Sh Ct) 70 “Abatement of rent is an equitable right and is essentially based on partial failure of consideration. That is to say, if the tenant does not get what he bargained to pay rent for it is inequitable that he should be contractually bound to pay such rent.” In determining what is appropriate level of abatement the Tribunal has taken account of the length of time it would have expected a reasonable landlord



would have taken to resolve the issues with the property such as the faulty window, blocked gutters and water ingress and is satisfied that these repairs ought to have been completed by the beginning of October 2022 at the latest. The Tribunal was also satisfied that the Respondent was unable to make proper use of the bedroom of the property with effect from October 2022 until mid-January 2023 a period of 3.5 months. The Respondent was therefore effectively unable to use 50% of the property during that time and therefore in terms of this head an abatement of £656.25 is appropriate. The Tribunal also considers that the Respondent is entitled to a further abatement of rent for the periods from July to October 2022 and February to April 2023 during these periods the Applicant failed to address the various repairs reported at the inspection on 29 June and subsequently failed to address the Respondent's legitimate concerns regarding the presence of dry rot. The Tribunal considers that a global additional abatement of £150.00 is appropriate. The Respondent is therefore entitled to a total abatement of rent of £806.25.

52. The Tribunal also considered whether in addition it would be appropriate to include an additional amount by way of abatement of rent to reflect the inconvenience suffered by the Respondent. However such a claim would in reality be a claim for damages rather than an abatement of rent and would have to be brought either as a separate application or counterclaim and the difficulty for the Respondent as pointed out at the commencement of the hearing is that she did not follow the Tribunal's direction and set out in detailed written representations the basis of her defence and even during the hearing has not claimed damages for inconvenience therefore the Tribunal makes no award in this regard.

53. The Tribunal therefore calculates that the Applicant will be entitled to an order for payment amounting to £466.70.

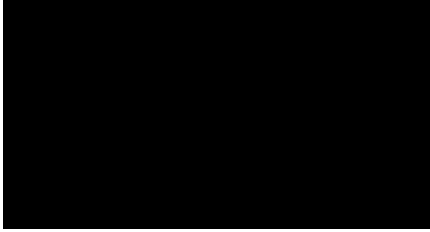
## **Decision**

54. The Tribunal finds the applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £466.70.

## **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**

10 November 2023

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**Date**