



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017**

**Chamber Ref: FTS/HPC/CV/22/1670**

**Re: Property at 81 Somerville Drive (3/2), Glasgow, G42 9BJ (“the Property”)**

**Parties:**

**Mrs Lesley Pryce, 81 Somerville Drive (3/2), Glasgow, G42 9BJ (“the Applicant”)**

**Mr Ameen Sharif, 98 Dixon Avenue, Glasgow, G42 8EL (“the Respondent”)**

**Tribunal Members:**

**Steven Quither (Legal Member) and Andrew McFarlane (Surveyor Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) UNANIMOUSLY determined that the application be refused and no award made.**

## **1. BACKGROUND**

This is an application for payment of compensation arising out of an “Assured Lease Agreement” between the parties in respect of the Property, commencing 5 November 2014 and stated to run initially for 6 months and then continuing for 2 monthly periods by tacit relocation thereafter. Said Agreement is stated to be a Short Assured Tenancy in terms of s32 of the Housing (Scotland) Act 1988. In terms of same, the rent was to be £495 per calendar month, payable in advance on the 1<sup>st</sup> of each calendar month and, in addition, there was a deposit payable of £495.

2. By application dated 27 May 2022, the Applicant originally sought payment from the Respondent in the sum of £7000, being £1000 for 2014 to 2016 and £6000 for 2016 to 2022 by way of compensation for inconvenience stated to have been caused to her for said periods arising out of the property failing to meet the Repairing Standard. In addition, she claimed £2284.80 by way of £38.08 per month overpayment of rent paid to the Respondent for 60 months, on the basis that the Respondent was unjustifiably enriched thereby. Accordingly, the application as originally made was for a total sum of £9284.80, all as set out in the Applicant's original written representations lodged with the Application, along with a copy of said Assured Lease Agreement and a report from Professor Tim Sharpe dated 19 February 2022. After sundry clarification of various matters, the application was accepted by this Tribunal by Notice of Acceptance dated 26 July 2022.
3. A Case Management Discussion ("CMD") duly took place on 14 October 2022, by which time the Applicant had vacated the Property on or about 7 October 2022, which date was noted to be the end date of the tenancy. Matters clarified at same were that there would require to be evidence led as to the extent of any disrepair founded upon by the Applicant and possible timebar regarding part of the Applicant's claim which, it was noted, dated from 2014. For his part, the Respondent denied any sum was due to the Applicant and, indeed, stated that he was due rent arrears of £3562 as at the conclusion of the tenancy. In view of the evidence which would be required, a hearing was to be fixed, parties to attend personally. Initially, a hearing was fixed for 10 March 2023 but this was postponed at the request of the Applicant given the non-availability of her witness. A later date of 14 June 2023 was postponed due to the non-availability of Professor Sharpe. Finally, a hearing was fixed for 14 August 2023.
4. At said CMD, the Tribunal made clear to parties its expectation on them as to lodging any relevant evidence upon which they might seek to rely at the hearing. Following upon same, prior to and at the hearing on both 14 August and 17 November, the parties lodged further documentation.

For the Applicant, including the documentation lodged with the application, this comprised in total:--

- a) Assured Lease Agreement;
- b) Written Representations (subsequently amended);
- c) Professor Sharpe's Report, with photographs 1 to 41 and 6 thermographic images/additional photographs referred to therein;
- d) Spreadsheet of Housing Benefit Payments and each party's respective breakdowns of rent due and paid;
- e) Respondent's breakdown of rent due and paid ("Tenant Rent Cards");
- f) List of Housing Benefit Payments;
- g) Extracts of Applicant's bank statements;
- h) Further Extracts of Applicant's bank statements;
- i) MyDeposits Scotland Adjudication decision, dated 11 May 2023;
- j) Review Request re i);
- k) Supporting Grounds re j);
- l) MyDeposits Scotland Rejection of j) & k); and
- m) List of Authorities, with relevant copies.

For the Respondent, these comprised:--

- a) Tenant Rent Cards from 2014/15 to 2021/22;
- b) Photographs of Property after Applicant left same, some before and some after "a clean";
- c) Graham + Sibbald Property Questionnaire, dated 28 October 2022;
- d) Graham + Sibbald Mortgage Valuation Report, dated 2 November 2022;
- e) Graham + Sibbald Home Report, dated 2 November 2022;
- f) Energy Performance Certificate.

Amendment was made to the Applicant's original written representations, the effect of which was to clarify by reference to her various bank statements lodged her challenge to the accuracy of the Respondent's Tenant Rent Cards and also to delete her claim for reimbursement for the Respondent's unjust enrichment, thereby leaving her claim to be solely in respect of compensation for £7000, as previously referred to.

An amended version of said written representations was subsequently and helpfully lodged for the Applicant.

## **5. THE HEARING**

This duly took place on 14 August and was continued to 17 November, with both parties in attendance on both dates. The Applicant was accompanied by her Solicitor, Mr McIntosh from Castlemilk Law Centre and the Respondent was accompanied by his friend/supporter, Mr Rasul. On the first day, evidence was heard from Professor Sharpe, the Applicant and her daughter Hannah Crawford and on the second day, the Tribunal heard a statement read out by the Respondent, confirming his position regarding the matters raised by the Applicant on the first day. He then answered questions from Mr McIntosh, before the Tribunal heard from both parties in conclusion.

### **HEARING on 14 AUGUST**

## **6. PROFESSOR TIM SHARPE**

Referred to his Report for his qualifications etc. and throughout his evidence, adding at the outset that he had been Professor and Head of Department of Architecture at University of Strathclyde for 3½ years, before which he had been at Glasgow School of Art since 1990, with a particular expertise in matters concerning dampness and disrepair.

He confirmed the Report (Applicant's Production 1/1) had been prepared by him based on an inspection on 18 February 2022, the Property being top left in a standard stone and brick tenement building, as referred to in the second paragraph of said Report.

It had gas central heating, with radiators on internal walls. By reference to current standards, the "U values" (the rate of measurement at which the Property would lose heat) was poor, but could be improved by better insulation, albeit there was no specific requirement to carry out such work. The walls of the close were poorly insulated too and were in all likelihood not cavity insulated, all of which contributed to general heat loss in the Property.

There was no access to loft space to check its insulation.

Photos 3-6 annexed to said Report showed the boiler and radiator in the back bedroom and Photo 7 the radiator in the front bedroom.

When he tested the system, the radiators took about 30 to 45 minutes to heat up but the front bedroom radiator did not heat at all and there was no other heating in the Property.

Photos 11-27 show the generally poor condition of the single glazed windows at the rear of the Property, which would also contribute to heat loss. The windows would have taken perhaps 8 years or so to deteriorate to this condition, although it was difficult to place an exact duration on any period of deterioration and he did not see any visible sign of recent water penetration.

Photo 10 shows one of the living room windows, which could not be opened, restricting ventilation and preventing them being used to escape in any emergency. Photos 28 and 29 show evidence of water staining on the back bedroom ceiling, although there was no obvious defect in the roof. If there was a defect any problem could be exacerbated. Thermographic images showed a cold centre of this stain, which could possibly be due to lack of insulation or dampness. The room had a cold and draughty feel to it.

Photos 30 to 35 showed the bathroom, in particular the poor sealing between the bath and adjacent plasterboard wall, which could lead to water leakage from the bath. In addition, the finger push (to activate the flushing mechanism) on the cistern was missing.

The remaining photos showed various aspects of the kitchen area, which was off the living room and which had been created by opening up a former bed recess. Here, the extractor fan, serving both the kitchen and living room, was in very poor condition, which could lead to condensation and accumulation of cooking smells. In addition, the kitchen lights were not working, the cooker was missing a control knob and appeared to be not in a particularly good condition, although he did not test it.

In summary, the Property had a poor heating system, possible water penetration from the roof and poorly maintained single glazed windows. He suggested the replacement of the windows, investigation of the possible roof leak and upgrading the heating system, including the relative pipework, otherwise existing problems

could deteriorate further. Insulating the loft space and moving radiators to external walls would help also.

He considered the Property would not be pleasant to live in.

He was then asked questions by Mr Rasul, on behalf of the Respondent.

By way of response to them, he advised/confirmed/accepted:--

The Property was a typical tenement of its type, generally maintaining its original construction.

He was not aware if the living room window simply needed a key to open it, the button forming part of the opening mechanism seemed to depress when pressed but the window did not open.

The windows throughout were in generally poor condition, especially the exteriors of the rear windows, resulting in poor insulation and there was evidence of damp and mould on some of the windows, but he could open some of them, including the bathroom window.

He did not know if the cistern cap had been removed or how long it had been missing.

The plaster wall adjacent to the bath would not be waterproof and there was a possibility of leakage from the bath due to the difficulty of making a proper seal between it and the wall.

He did not know that the Property had now been sold by the Respondent or if the radiator in the front bedroom had worked after the Applicant left.

The damp patch could be historical, judging by its appearance and the boiler would have issues due to its age.

The extractor fan was dirty when he saw it and he accepted that dirt and grime would accumulate on it and the cooker if they were not cleaned regularly.

He did not dispute the different appearance of these as shown in the Respondent's photos once the Property had been cleaned after the Applicant moved out in October 2022, nor that the kitchen light worked well once replacement bulbs were fitted.

His Photos 4 and 9 showed, respectively, the pressure gauge and reset function of the boiler, which could be used to address any number of things.

He had not bled any of the radiators and could accept the central heating motherboard had been renewed but not mentioned in his report.

He confirmed Photos 12 to 21 were of the back bedroom windows, 22 to 27 the bathroom windows and 28 and 29 the back bedroom ceiling, showing the stains seeming to appear old but which, with thermal imaging, showed the cold spot previously referred to. He did not know that the surveyor who did a Home Report for the Property had had access to the loft and had confirmed that the ceiling staining was a sign of past, as opposed to ongoing, dampness.

He had not seen the Home Report and/or the Valuation Report, so was not aware that the windows had been classed as "Category 2", ie requiring future attention, as opposed to "Category 3", requiring urgent attention.

He stood by the findings, opinions and conclusions in his Report.

## **7. THE APPLICANT**

Confirmed her present address to be Flat 8/1, 3 Prospecthill Crescent, Glasgow and that she was previously a tenant of the Property, per her Production 1/2, the Assured Lease Agreement between the parties, in terms of which she lived at the Property between 5 November 2014 and, in her recollection, 8 October 2022.

In relation to the condition of the Property, her recollection was:--

The heating system comprised a gas combi boiler in the back bedroom per Photos 3-4, providing heating and hot water. This was quite old and while it was initially fine, there was no thermostat or timer control, which meant it required to be switched on and off manually. Sometime in 2017, the pilot light would not come on and the boiler would require to be reset. However, for the three years from 2014 to 2017, the heating in the flat was generally satisfactory, albeit the flat would take a little time to heat up.

The internal doors were old and did not close properly, leading to draughtiness and in general the radiators began to seem to lose heat too, leading to the front bedroom eventually becoming difficult to heat, perhaps from about 2016.

The boiler did not always reset when that was tried. In Photo 9, "R" means "reset".

The red light showing indicates the pilot light has gone out.

Sometimes it appeared to fail and the system seemed to lock, requiring it to be left for 20 minutes or so to eventually reset. Sometimes it would seem to switch off and

when the reset button was pushed it would seem to come on again, only to then go off again after about 20 minutes or so. This could happen several times a day until the Applicant gave up trying, which issue continued till about 2022.

She reported these issues by phone to 1<sup>st</sup> Lets. They would send out a general maintenance, as opposed to a heating, engineer. She recalls one such person being called "Houston", who did not fix the problem but simply checked the pressure and said a heating engineer would be required. The result of the pilot light going out was that there was no heating or hot water at all for several days on end. An engineer did come out in 2017 and when he tested it, it continued to go on and off. He similarly did not fit any new parts or suchlike to the system. After these issues had persisted over about 2017 and 2018, another engineer ("Imtiaz") diagnosed that a new motherboard was needed. She understands this was reported back to 1<sup>st</sup> Lets and a quote of £250 to £300 was given. This was then referred back to the Respondent and a new motherboard was fitted in about summer of 2019. Initially, the boiler seemed to work better but, after about 6 months, the heating again began working somewhat erratically, only coming on some of the time and with the reset button again only working some of the time. By then, it was winter and the Applicant bought an oil filled radiator and slept on a sofa bed in the living room, occasionally with her son, then aged 7 or 8, since it was warmer. She did not see any point in reporting the difficulty again. A representative of 1<sup>st</sup> Lets conducted a flat inspection in about March 2020 and she reported all the faults to them.

The radiator in the front bedroom stopped working sometime in 2017 and had never been back on since, causing the Applicant and her son and daughter to require to share the back bedroom at various times. This too was reported to 1<sup>st</sup> Lets, but her recollection is that they did not respond initially. Photo 8 shows said radiator, which she was concerned was not securely fixed to the wall and was in danger of falling off. However, 1<sup>st</sup> Lets would generally be out about 4 or 5 times a year and at one stage an individual she knew as "Maz" did attend to look at this radiator but beyond taking a photograph of it, he did nothing else to fix it. The Respondent at no time came to look at it or repair it, all of which resulted in the front bedroom becoming too cold to use and she and her son requiring to sleep on a sofa bed in the living room.



Both she and her son have asthma and his was exacerbated by temperature changes, he was unable to use the living room to any appreciable extent.

The front bedroom window was uPVC framed and double glazed and initially it was fine, until about 2017 or so, when she became unable to open it since the handle seemed to be jammed in some way and wouldn't turn. Again, she reported this to 1<sup>st</sup> Lets and possibly an individual known to her as "Houston" came out. A new handle was then fitted after a couple of weeks or so.

The living room windows, which are 3 windows in a bay format, also were fine to begin with but firstly the right one would not open, then in 2018 sometime the middle one would not open, followed by the left one doing the same in 2019. An individual known to her as "Frank" came to collect rent sometime in 2018 when the left window was still opening and he contacted 1<sup>st</sup> Lets about the window, since it was a warm day and the room was becoming warm as a result, but no one attended. There were no keys provided to open the windows but they seemed to have seized up in any event and during the summer the living room became stiflingly hot and it was difficult to sleep there.

The Applicant's daughter Hannah lived with her at the Property till 2018, after which she stayed between the Applicant and Hannah's father. Hannah used the back bedroom, but this was damp, as illustrated by Photos 12 to 21. The Applicant was aware at the outset that the windows were old, since they were single glazed, which led to them not being particularly efficient at keeping out the cold and Hannah was cold all the time and would go to her father's house for showers. Condensation would build up on various windows during the winter months and while the radiator in the back bedroom would come on, it didn't carry much heat, which the Applicant put down to the heating system simply being old and inefficient.

Over 2018 to 2019 "Frank" came to the Property just about every month, then between summer to winter 2019 someone known to her as "Don King" came to the Property too.

Photos 28 and 29 show the dampness in the back bedroom, which the Applicant first recalls seeing in October or November or so of 2019, 2 years or so after she had decorated it in 2017. If there was heavy rainfall this seemed to be more noticeable, although there weren't any drips or smell. However, it spoiled the décor, as is evident from the photos. "Maz" took photos of this in 2020.

Photo 30 shows the cistern, which used to have a covering for the flushing mechanism on the top. However, through time and use it just broke. "Frank" advised the ballcock had become detached, which the Applicant needed then to fix herself.

The bath was not sealed properly, leading to water leakage. Sometime in 2015, the Applicant's son was having a bath and the occupier of the flat below the Property complained of water leakage from the Property.

Photo 31 shows the shower attachment to the bath taps. This was very difficult to regulate, leading to the shower being too hot or too cold. The Applicant would frequently boil pots of water to have a bath and, as explained previously, her daughter would go to her father's for a shower, perhaps 3 times a week.

Photos 36 to 41 show the kitchen, in particular Photo 37 shows the kitchen light.

This was prone to bulbs blowing out and needing to be replaced frequently.

Photos 38 to 40 show the kitchen extractor fan, which never worked. As a result, the Applicant had to be careful about what she cooked and avoid cooking any strong smelling foods

Photo 41 shows the cooker, with a control knob missing, one of 2 which fell off. 1<sup>st</sup> Lets said they would replace the first knob which fell off but did not do so, leaving the Applicant unable to use that part of the cooker controlled by same. She could only use 2 hobs of the cooker at either level 2 or 7, with nothing in between, the same with the oven. Any strong cooking smells tended to linger in the property and she was advised not to cook strong foods if possible to minimise this.

The Applicant was then asked questions by Mr Rasul, on behalf of the Respondent By way of response to them, she advised/confirmed/accepted:--

She reported matters to 1<sup>st</sup> Lets by telephone and their initial response was usually that they would require to obtain the Respondent's instructions. She was in contact with them frequently and they never asked her to confirm anything in writing.

At no time did the Respondent ever attend to deal with any defects, at no time did anyone suggest to her to simply bleed the back radiator, neither did 1<sup>st</sup> Lets do so. She tried her best to be a good tenant and did not accept she only started reporting problems when the Respondent began suggesting he would like to bring the tenancy to an end in 2019.

Mr McIntosh then resumed his questioning of the Applicant to take her through the rent position.

So far as the rent was concerned, she never received any Rent Statement or indication there was any issue with arrears until lockdown when she was told by "Maz" there were arrears, but not how much.

When she received Housing Benefit herself, she paid rent either by debit card to 1<sup>st</sup> Lets or at their office, sometimes in cash. If she received receipts she no longer had these.

She appreciates the Property could have been left in better condition than she left it but she was suffering from depression due to the whole situation.

Productions 2/1 and 2/2 are excerpts from her bank statements from 4 August 2016 to 23 December 2019.

Production 1/4 is what the Respondent has lodged as Tenant Rent Cards, but she never received any such documents.

Production 1/5 is a statement of her own Housing Benefit statements from 11 April 2015 to 15 October 2022.

Production 1/3 is a spreadsheet prepared by the Applicant's agents to collate the information contained in these 3 separate productions. Mr McIntosh took the Applicant through this spreadsheet, referring to specific dates as appropriate and basically the evidence broke down into 4 periods:--

a) November 2014 to December 2018

During this period the Applicant, with two exceptions, paid her rent by debit card either by visiting 1<sup>st</sup> Lets or by telephoning them and giving card details. The figures recorded on the rent card were incorrect in a number of instances when compared with the bank statements. Cash was paid on two occasions, on 7 July 2017 and 3 April 2018 and it could be seen from the bank statements that a sum approximating to the amount of the rent had been withdrawn from the bank account and a corresponding payment recorded on the Rent Card.

b) January to December 2019

During this period the Applicant paid rent in cash, except in February, March and April. She advised that this was as a result of 1<sup>st</sup> Lets moving their office from the vicinity of the Property to a location less convenient for her. It was further her

position that representatives of 1<sup>st</sup> Lets called at the Property to collect cash from her in payment of rent. The previously outlined procedure of withdrawal of cash from her bank was noted from the statements. The cash payments were recorded on the Rent Card except for the months of July and October. The bank statements revealed cash being withdrawn in these months.

c) January to March 2020

In December 2019 the Applicant explained that her Housing Benefit was reduced from £456.92 per 4 weeks to £134.72 and then further reduced to £90.32 in January 2020 before increasing to £331.97 in February and then £412.52 in March. The Applicant was uncertain as to why this had happened but thought it was because Glasgow City Council (“GCC”) considered that due to a change in circumstances she had been previously overpaid. She explained she had not received any correspondence from GCC. Due to this change in circumstances, she was unable to pay rent. The Applicant departed from the spreadsheet prepared by Mr McIntosh which showed no rent payments for January, February and March. She indicated she had received money from “a friend” and had paid one month’s rent in January which had not been recorded on the Rent Card. Accordingly, only the rent for February and March had not been paid.

d) April 2020 to October 2022

From April 2020 an arrangement was put in place that Housing Benefit was paid directly to 1<sup>st</sup> Lets, initially at £411.92 every 4 weeks. The figures recorded on the Rent Card did not tally with the statement from GCC. Principally there were 13 payments of Housing Benefit each year but 1<sup>st</sup> Lets only recorded 12 being received. In 2020 a large sum is recorded as being received in April and nothing in May, June and July whereas for this period there were 5 payments of £411.92 made by GCC which in total exceeded the sum recorded on the Rent Card. From May 2021, with the exception of October 2022, when the Applicant left the Property, Housing Benefit was restored to the previous figure of £456.92 but the Rent Card continued to record the previous lower figure (£411.92) until the end of the tenancy.

In addition, the Applicant paid a deposit at the outset but heard that as at April 2021 it had not been lodged with one of the deposit schemes and she had not had it returned to her.

Mr Rasul then questioned the Applicant further. In response to his questions she advised/confirmed/accepted:--

She had kept a cat in the Property but only for a short time and, in any event, the previous tenant had kept cats also. She appreciated the terms of the lease re keeping pets etc. and also for reporting matters of concern in writing to the Respondent or 1<sup>st</sup> Lets. However, she considered she had good verbal communications with 1<sup>st</sup> Lets.

She explained that the bathroom door lock had jammed while her son was in the bathroom and she required to break the glass in the bathroom door to let him out, resulting in the damage to the door as shown in the Respondent's photos of same. She got to the stage where she felt making any further complaints or reports was a waste of time, which would explain why 1<sup>st</sup> Lets might have no record of some of them after about July 2019.

She did not know what effect bleeding the radiator might have had on its effectiveness or efficiency.

## **8. HANNAH CRAWFORD**

Confirmed her age to be 22, her present address as 8A Prospecthill Crescent, Glasgow G42 and that she is the daughter of the Applicant.

She stayed with the Applicant at the Property from about 2014 when she was still at high school until she started working full time at 16.

Her room was the back bedroom beside the bathroom and the boiler was in that room.

The radiator didn't really work and there was no hot water on occasions. The red light on the boiler would frequently illuminate and the heating would go off. The room was generally cold, especially during winter and the window in the bedroom was only single glazed and did not keep the cold out. The paint was coming off the window frames.

During the cold weather, she could see her breath in the room and the window would steam up with condensation, which would then drip onto the window ledge and need to be mopped up.

At one point, she can't remember just when, the living room windows stopped opening and no fresh air could get in, which led to the Property becoming really stuffy, especially in summer and caused her to have migraines. She would often feel sweaty and in need of fresh air

In addition, the Property would retain cooking smells, due to the lack of fresh air. The shower would go from scalding to freezing and she started staying between the Applicant and her father.

She knew nothing about the Housing Benefit situation or anything to do with payment of rent.

Mr Rasul did not ask any questions of this witness.

## **9. CLOSURE OF APPLICANT'S CASE**

Mr McIntosh advised he was content to close his case for the Applicant.

The hearing was then adjourned to a date and time to be confirmed for any evidence the Respondent wished to lead. He was given general advice as to same. A suitable date was subsequently identified as 17 November 2023 for parties to consider their positions further.

## **10. CONTINUED HEARING on 17 NOVEMBER**

Mr McIntosh, for completeness, lodged without objection, the Productions referred to in preceding paragraph 4i) to l) and the Tribunal then heard from the Respondent.

## **11. THE RESPONDENT**

Mr Rasul indicated the Respondent simply wished to read out a prepared Statement, which the Tribunal was content to permit him to do, under no objection from the Applicant and subject to Mr McIntosh then being able to ask him further questions. Copies were made available to the Applicant and the Tribunal.

In summary, the Respondent stated:--

- a) He wished the case dismissed since it had no substance;
- b) The case has caused him stress and financial hardship against a background of him suffering from health and family concerns;

- c) He did not consider Professor Sharpe to be either expert or impartial and queried various of his findings;
- d) The Tribunal should prefer the Home Report to Professor Sharpe's findings;
- e) He had instructed 1<sup>st</sup> Lets to simply attend to any repair or maintenance matters throughout the tenancy and they have confirmed to him that apart from the replacement of the motherboard for the boiler, they have no record of any other complaints from the Applicant. They have also confirmed that they have no record of the various cash rent payments the Applicant claims to have made, do not attend at rented properties for rent collection and, with the exception of a "Frank" from some years ago, did not recognise the various names provided by the Applicant as their representatives;
- f) He wondered why the Applicant did not leave the Property sooner if it was in such a poor condition for so long and was of the view that she simply was obstructive and neglectful of it once the Respondent told her in 2019 that he wished to sell the Property and she would need to vacate it.

Mr McIntosh then questioned the Respondent, in response to which the Respondent advised/confirmed/accepted:--

He did not go to the Property during the Applicant's time at it so could not comment on its condition, but the matters she complained about had not been present in 2014, as best he could recall.

With reference to Production 1, the Property was not in a new building, it was over 100 years old and its condition reflected that age. It did not necessarily reflect 2023 building standards.

He did not accept the heating was poor, simply that the front bedroom radiator stated to be not working needed to be turned up to give heat. The central heating was installed in about 2008 or 2009 and that had to be taken into account when assessing it, nonetheless it provided heating and hot water, it only need to be operated properly.

He had confirmed with 1<sup>st</sup> Lets that the only complaint they had had from the Applicant was about the boiler, for which a new motherboard had been installed.

He did not accept the Applicant couldn't use the front bedroom but obviously he was not there. In any event, 1<sup>st</sup> Lets had no record of any issue being raised about it.

The water penetration in the back bedroom referred to by Professor Sharpe was historic and he did not know how long it had been there. In any event, again there was no record of any complaint about it and it could be addressed by redecoration. However, the room was wind and watertight, albeit he could accept the windows were single glazed and had perhaps deteriorated and had possibly not been painted during the Applicant's tenancy. He had never thought about upgrading to double glazing and that had never been raised by 1<sup>st</sup> Lets.

No issue had been reported about the living room windows and they could be opened with easily obtainable window keys. 1<sup>st</sup> Lets had told him no issue had ever been raised regarding the radiators or windows.

He accepted no representative from 1<sup>st</sup> Lets was at the Tribunal, but the proprietor of the firm had died and no-one could attend.

There was similarly no report about the missing button on the cistern and he wondered who had removed it. The toilet had been left dirty when the Applicant vacated the Property.

The bath was sealed with a bath panel and he did not accept there were any issues with water penetration such as were referred to by Professor Sharpe. It had been sealed prior to the Applicant moving in and no issue had been reported to him by 1<sup>st</sup> Lets. Photos 31 and 32 (of the bath) showed the space behind the taps end of the bath and that the sealing was dirty. He accepted the sealing strip could be lifted out.

The kitchen extractor fan was caked in grease, which stopped it working but it worked fine once cleaned. The cooker was in a similar condition.

He considered the Applicant was responsible for routine cleaning, not him.

He didn't know when any problems began with the heating but between 2014 and 2017, he was in touch with 1<sup>st</sup> Lets about the gas certificate for the Property and recalled telling them to replace the motherboard if that was what was needed. Apart from that, he was unaware of any other complaints either direct to him or to 1<sup>st</sup> Lets, nor was he aware of any photos of the Property taken by 1<sup>st</sup> Lets in 2020 or at any other time. If any were taken, he didn't have them.

So far as the improvements recommended by Professor Sharpe were concerned, the loft was outside the Property and was accessed by a common landing, there was no loft as such in the Property itself. He had not done any work regarding the



heating system, the windows, the cistern or the shower splashback since he had not been told any was needed.

He recalled installing the kitchen but not necessarily the extractor fan, but it worked fine once it had been cleaned.

There had been no complaints about the cooker, which also worked fine once it was cleaned.

1<sup>st</sup> Lets had dealt with all issues regarding the rent, for which he paid them a commission of about 12%, so he was unaware of any issues regarding rent arrears, he was simply advised when the rent had been paid.

Production 1/4 comprised rent statements prepared by 1<sup>st</sup> Lets and while he was aware of a "Frank" who had dealt with repairs at least 4 years ago, he did not collect rent and neither he nor 1<sup>st</sup> Lets were aware of any of the other persons named by the Applicant as having attended at the Property. He would expect receipts to be given for any rent paid in cash.

## **12. SUBMISSION FOR THE APPLICANT**

Mr McIntosh confirmed there had been another case between the parties in 2022, where the Respondent had applied for eviction of the Applicant to enable the Respondent to sell the Property but this had been superseded by the Applicant being rehoused and vacating the Property on 8 October 2022.

He advised the Applicant's position was based on 4 matters, namely:--

- a) Disrepair;
- b) Rent;
- c) Compensation; and
- d) The Applicant's deposit

focussing primarily on c).

His submissions were:--

- a) Disrepair.

He referred to s13(1) of the Housing (Scotland) Act 2006 ("the 2006 Act"), setting out the "Repairing Standard" and asked the Tribunal to find, with particular reference to the evidence about the back bedroom, the windows, the cooker and especially the heating system, that the Property had failed to meet the requisite standard it was required to, in that it was not wind and watertight.

b) Rent

He referred to the Applicant's evidence about rent paid as all summarised in Production 1/3, specifically accepting that the Applicant had not paid rent in both February and March 2020 since she was frustrated by the condition of the flat by then as well as having issues regarding her Housing Benefit. The Applicant's position was that this was the only rent unpaid by her, since she frequently paid her rent by cash, either to 1<sup>st</sup> Lets at their office or to one of their representatives who called at the Property for that purpose

c) Compensation

The Applicant's position was that the Property had left something to be desired at the outset, in that there was generally poor insulation, especially in the back bedroom, and the bath was not sealed right but it had then deteriorated during her time in occupation. While a new motherboard had been installed in about 2016 or 2017, it had not greatly improved matters and then the radiator in the front bedroom stopped working too.

Accordingly, the Applicant was seeking £7000 compensation in total for inconvenience during her time in occupancy of the Property, being £1000 for 2014 to 2016 and £6000 for 2016 to 2022.

He referred to the authorities lodged by him, in particular:--

**Summers v Salford Corporation [1943] AC (HL) 283** (which specifically considered a faulty window rendering a property unfit for human habitation);

**Renfrew District Council v Gray 1987 SLT (Sh Ct) 70** (specifically at pp72E to H and p73F considering the tenant's remedies for not getting full or effective possession of a property leased); and

**McCabe v Staffa Rock plc FTS/HPC/CV/21/0267**, which he particularly commended to the Tribunal as analogous to this case, specifically referring to the approach taken by the Tribunal in that case as one which should be followed, basing any award on the "passing rent" provided for in the lease of £5940 per annum.

He submitted that any inconvenience had been caused for 7 full calendar years and any award should be calculated accordingly.

d) The Applicant's deposit

Applicant's Productions 2/3 to 2/5 confirmed that MyDeposits Scotland had adjudicated that the deposit be returned to the Respondent and that the Applicant's review request against that decision had been subsequently refused.

### **13. SUBMISSION FOR THE RESPONDENT**

The Respondent spoke on his own behalf and his submission was concise and succinct.

He stated that the Property was in generally good repair and accordingly asked for the application to be dismissed.

He asked the Tribunal to consider the photographs he had lodged of the Property immediately after the Applicant left it and then once it had been cleaned, as well as the Home Report which had not identified any major defects and had not flagged up the historic water leak as any major difficulty, as evidenced further by the fact that the Property had been purchased by the first person to view it once it had been placed on the market

The Applicant had missed numerous rent payments which should have been paid to 1<sup>st</sup> Lets and which she still owed, she had not paid rent by cash as claimed by her.

Her claim for compensation was false, she had not cleaned the Property or taken basic care of it, neither had she made any complaints regarding the windows or anything else and there was no reason for her to not pay rent due. The windows were simply missing a key and the extractor fan needed cleaned, both of which she could have dealt with.

Similarly, there was no issue of water penetration in the bathroom and, again, no issue regarding this referred to in the Home Report.

In any event, if it was in such poor condition, he did not understand why she had stayed there for 8 years, especially for the final 3 years when she knew he wanted her to leave.

Furthermore, the age and nature of the Property had to be taken into account.

He had not heard anything back from the new owner once he sold the Property, which evidenced its acceptable condition for its age and type.

Accordingly, no award should be made to the Applicant and, indeed, he was still seeking payment of outstanding rent due. (Mr McIntosh interjected at this point to

indicate there was no counterclaim and that, in any event, some of what was stated to be rent arrears had “prescribed”).

14. The Tribunal then advised the parties that it would take time to consider all that had been said and lodged by them in support of their respective positions and issue its decision in due course.

### **FINDINGS IN FACT**

15. The Applicant occupied the Property under a Short Assured Tenancy from 5 November 2014 until 7 or 8 October 2022 at a rent of £495 per calendar month, which rent was, in the main, paid by Housing Benefit, initially to the Applicant for onward payment to the Respondent through his agents, 1<sup>st</sup> Lets and thereafter directly to said agents. For the period between 4 April 2020 to 15 October 2022 when said benefit was being paid direct to 1<sup>st</sup> Lets, the records of GCC produced by the Applicant as to said payments and the Tenant Rent Cards produced by 1<sup>st</sup> Lets for the Respondent do not tally. Nonetheless, as at conclusion of the tenancy in October 2022, there were rent arrears outstanding of between £1628.61 (Applicant’s Production 1/3) and £6624.98 (Respondent’s (un-numbered) Production, Applicant’s Production 1/4).
16. After about 2017, the Applicant felt there were difficulties with the Property, which more or less persisted until she left. In particular, these related to the boiler and radiators comprising the central heating system, the living room windows, the rear windows, the toilet cistern and bath/shower fittings and surround/splashback etc. and, in the kitchen, the light fitting, extractor fan and cooker control knobs, all of which were noted by Professor Tim Sharpe when he inspected the Property on 18 February 2022.
17. In terms of the Assured Lease Agreement between the parties (Applicant’s Production 1/2), the Respondent undertook (Condition 2) to “keep in habitable repair the structure and exterior of the (Property), to keep in good repair and working order heating, water heating and sanitation and for the supply of water.”. The Applicant undertook (Condition 12) to “promptly report to the

(Respondent)(s))/agent any disrepair/defect for which the (Respondent) is responsible in the structure/exterior or the premises or any installation therein...” and also (footnote to Condition 20) “If the (Applicant) feels that the (Respondent)(s))/agent has broken or not fulfilled the terms or met with the terms within the agreement, then they should complain in writing to the (Respondent)(s))/agent, detailing details of the breach or non-compliance.”. Notwithstanding said conditions, no written complaints were made by the Applicant, either to the Respondent direct or to 1<sup>st</sup> Lets, relating to any of the matters referred to in the preceding paragraph. The Respondent relied upon 1<sup>st</sup> Lets to attend to any complaints made about the Property and report to him as necessary,

- 18.** With the exception of installation of a new motherboard for the central heating system in or about summer 2019, the Respondent was not aware of any other complaints made by the Applicant and no other work was carried out by or on behalf of the Respondent in relation to said issues of concern to the Applicant.
- 19.** The Applicant did not at any time make an application for a Repairing Standard Enforcement Order (“RSEO”) in respect of the Property.
- 20.** Upon the Applicant leaving the Property in October 2022, the various matters now founded upon by her were addressed by routine cleaning and maintenance, prior to the Property being put up for sale shortly thereafter. In that connection, a Home Report, Mortgage Valuation Report and Energy Performance Certificate were prepared on or about 2 November 2022 (Respondent’s Productions), none of which raised any particular issues regarding the matters complained of by the Applicant. In particular, the Home Report advised there was (Category 1) no immediate action required for dampness nor (Category 2) future attention required for the windows, ceilings, water, plumbing and bathroom fittings and heating and hot water. No items were designated as (Category 3) requiring urgent repairs or replacement.

Said Mortgage Valuation Report (Question 6) identified no requirement for any essential repairs or loan retention and found the Property to be “in basic order for age and type”.

Furthermore, the Energy Performance Certificate assessed the Energy Efficiency Rating of the Property at 56, against a potential rating of 65 and a national average of 61.

After the Applicant vacated the Property, it was sold reasonably quickly and without any difficulty, either at the time of sale or on any residual basis thereafter.

21. The Property cannot be said not to have met the Repairing Standard during the Applicant’s occupancy of same. Furthermore, it is uncertain what notification was given to the Respondent of any matters of concern to the Applicant.

### **REASONS FOR DECISION**

22. This is an application based on the provisions of Sections 13 and 14 of the 2006 Act, which provide:--

#### ***“13. The repairing standard***

*(1) A house meets the repairing standard if—*

*(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,*

*(b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,*

*(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,*

*(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,*

*(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed....*

*(h) the house meets the tolerable standard.*

*(2) In determining whether a house meets the standard of repair mentioned in subsection (1)(a), regard is to be had to the extent (if any) to which the house, by*

*reason of disrepair or sanitary defects, falls short of the provisions of any building regulations.*

*(3) In determining whether a house meets the standard of repair mentioned in subsection (1)(b), regard is to be had to—*

*(a) the age, character and prospective life of the house, and*

*(b) the locality in which the house is situated.*

*(4) The reference in subsection (1)(c) to installations in a house includes reference to installations outwith the house which, directly or indirectly, serve the house and which the owner is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise.*

#### **14. Landlord's duty to repair and maintain**

*(1) The landlord in a tenancy must ensure that the house meets the repairing standard—*

*(a) at the start of the tenancy, and*

*(b) at all times during the tenancy.*

*(2) The duty imposed by subsection (1) includes a duty to make good any damage caused by carrying out any work for the purposes of complying with the duty in that subsection.*

*(3) The duty imposed by subsection (1)(b) applies only where—*

*(a) the tenant notifies the landlord, or*

*(b) the landlord otherwise becomes aware,*

*that work requires to be carried out for the purposes of complying with it.*

*(4) The landlord complies with the duty imposed by subsection (1)(b) only if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required.”.*

**23.** The Applicant's case was founded principally upon her own evidence and that of Professor Sharpe, but supplemented by evidence from her daughter Hannah. In essence, her position was that there had been a number of issues arising in respect of the Property from about 3 years after she had moved in. She had raised these with the Respondent's agents, 1<sup>st</sup> Lets but with the exception of a replacement motherboard for the central heating boiler, nothing had been done to remedy them.

The Respondent's position was that 1<sup>st</sup> Lets were tasked by him with dealing with any routine repairs and maintenance, subject to taking his instructions and on the one occasion he had been so consulted, appropriate action had been taken, to fit a new motherboard for the central heating system. Furthermore, it was only after he advised the Applicant in 2019 that he wished her to leave because he wished to sell the Property that any difficulty arose.

The Applicant gave her evidence calmly and the Tribunal had no doubt she was doing her best to recall matters and be truthful about them. However, it had some concerns arising from the evidence led in support of her case, namely:--

- a) Despite her evidence about numerous complaints having been made to 1<sup>st</sup> Lets, not one of them was documented in any way, either by text, email or letter. The Tribunal cannot help but feel that at some stage, if matters were causing her such concern, the Applicant could, would or should have considered written intimation in some shape or form, which would now be available to the Tribunal to bolster her argument. Without same, the Tribunal just does not feel sure about what complaints were made, when they were made and the detail of them. Having said this, however, had the Tribunal felt it could rely on the Applicant's recollection of complaints etc. made, it would have done so notwithstanding any lack of supporting documentation. From consideration of the documentation available to it, the only documentation provided by 1<sup>st</sup> Lets appears to be an email of 17 February 2023, providing the Tenant's Rent Cards to the Respondent;
- b) The concern referred to in the preceding paragraph is all the more acute given what appear to be very clear obligations on the Applicant to make complaints in writing in terms of (at least) the footnote to Condition 20 of the lease between the parties and also that the duty on the Respondent in terms of s14 of the 2006 Act depends on him being notified of work requiring to be done to meet the repairing standard;
- c) Despite there being a remedy available to the Respondent to deal with just the very situation she states she found herself in ie an application for an RSEO, she did not pursue that as a possible remedy. Accordingly, there was no evidence available to this Tribunal from any inspection which might have been carried out as part of such an application, a factor which was present in **McCabe v Staffa Rock plc**, previously referred to;
- d) The issues founded upon by the Applicant seem to have been capable of resolution by routine cleaning and maintenance once she left the property and



do not seem to have been such as to cause any difficulty with the subsequent sale of the Property;

- e) In particular, notwithstanding the specific complaints about the central heating system and windows, there were no specific issues raised in connection with same in the various reports prepared for the Property to be put up for sale. It is noted that notwithstanding Professor Sharpe's concerns, the Energy Efficiency Rating is 56 against a nationwide average of 61 and an optimum rating for the Property of 65. This does not seem to indicate to the Tribunal that there was any significant matter of concern regarding the heating etc. in the Property;
- f) The Tribunal is also concerned as to why, if the Property was so difficult to live in, the Applicant nonetheless chose to remain there for at least 3 years after being made aware of the Respondent's wish to sell it, necessitating her vacating same.
- g) Whilst Professor Sharpe's Report was of some assistance, he had not specifically addressed the condition of the Property relative to the Repairing Standard. Mr McIntosh for the Applicant was left to try and address this in his questioning which was less satisfactory.

**24.** Insofar as the Applicant's submissions are concerned, the Tribunal felt, dealing with each in turn:--

a) Disrepair

As previously referred to, the Tribunal just was not satisfied as to the level of disrepair as spoken to by the Applicant and, to a limited extent only, her daughter. Professor Sharpe's findings could only reflect what he saw on the date of his inspection, in general terms nearing the end of the Applicant's occupation of the Property. In any event, given the contents of the Home Report etc. and the Respondent's evidence about what fairly routine work was needed to deal with the issues, the Tribunal did not feel it could be satisfied that the level of disrepair was such as to render the Property below the repairing standard. Furthermore, it had concerns about what notification had been given to the Respondent;

b) Rent

Evidence was led to highlight the fairly large discrepancy between the figures felt by the parties to accurately reflect any rent still due at the conclusion of the tenancy. The Tribunal places on record its thanks to the Applicant's agent and

staff for preparing Production 1/3, consolidating and collating a great deal of financial information. Given the Tribunal's overall finding, further consideration of any rent arrears outstanding is not necessary, but the Tribunal appreciates the work involved in collating said evidence and, indeed, presenting same;

c) Compensation

The cases referred to by the Applicant have been previously referred to. However, given the overall finding of no breach of the repairing standard, the Tribunal does not consider it necessary to do other than advise that if it had found in favour of the Applicant, it would have found them of general assistance only, in that:--

**Summers v Salford Corporation** was a personal injury claim arising out of an accident due to the faulty window;

**Renfrew District Council v Gray** considered remedies available where a requisite finding of disrepair had been made; and

**McCabe v Staffa Rock plc** had an additional and, in this Tribunal's view important factor missing from this case, ie a previous RSEO made against the landlord, providing independent verification of the condition of the property in that case and work required to remedy same.

The Tribunal in that case appears to have been asked (Paragraph 122) to apply a "general feeling of fairness" and to have placed considerable reliance on its own inspection of the property in question, which was not available for this Tribunal to refer to in this present application.

Again, this Tribunal is not of the view that such a procedure **must** be followed to provide a basis for a claim such as is made here, simply that it would have provided greater clarity and certainty as to the Applicant's complaints.

For clarity also, had the Tribunal been satisfied that the Property had failed to meet the repairing standard, any level of award would have been relatively modest.

d) The Applicant's Deposit

The Tribunal is grateful for the information provided in the interests of completeness but did not consider same relevant.

## DECISION

25. UNANIMOUSLY to refuse the application and make no award.

### 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.

SR QUITHER

12 JANUARY 2024

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Legal Member/Chair

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Date