



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing Tenancies (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/22/0846**

**Re: Property at 57 Cowane Street, Stirling, FK8 1JP (“the Property”)**

**Parties:**

**Mr Ewan Stewart, 7 Bellwood Road, Aboyne, Aberdeenshire, AB34 5HQ (“the Applicant”)**

**Stuart Reid Properties, Mrs Jacqueline Ann Reid, 3/2 16 Ingleby Drive, Dennison, Glasgow, G31 2PT (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make no order.**

**Background**

- 1 By application to the Tribunal the Applicant sought an order in the sum of £2387.50 against the Respondent as a result of the Respondent’s alleged failure to comply with the Repairing Standard and maintain the property in a habitable condition. The claim consisted of £812.50, being 50% of rent paid during the term of the tenancy and £1575 for harassment by the Respondent. The £1575 was broken down into a duplicate payment of rent, £250 for the stress of having to move from the property and moving costs.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 28 September 2022 to take place by teleconference.

- 3 The Case Management Discussion took place on 28 September 2022. The Applicant was in attendance. The Respondents were not present. Having noted that they had been served with the application paperwork the Tribunal determined to proceed in their absence. The Tribunal subsequently heard submissions from the Applicant, determined there were no issues to be resolved and made an order for payment in the sum of £1637.50.
- 4 The Respondents submitted a request for recall of the order on the basis that they had not been aware of the application nor the Case Management Discussion. The Tribunal therefore determined to fix a further Case Management Discussion to consider the request.

### **The Case Management Discussion**

- 5 The Case Management Discussion took place on 22 May 2023. The Applicant, Mr Stewart, was present. Mr Stuart Reid and Ms Jacqueline Ann Brown were also in attendance. Ms Brown confirmed she would speak on behalf of the Respondents. She further confirmed that she was now known as Mrs Jacqueline Ann Reid.
- 6 The Legal Member noted that the Respondents had submitted an application for recall of the order granted for payment in favour of the Applicant, which had been made in the absence of the Respondents at a previous Case Management Discussion. The purpose of the Case Management Discussion was to hear from the parties on the application for recall prior to the Tribunal taking a decision on the matter.
- 7 Mrs Reid explained that they had been completely unaware that the Applicant had submitted the application. They had been on holiday when the correspondence was received and became aware of it on their return. They had immediately contacted the Tribunal and were informed that they needed to contact the case worker. They had emailed the case worker on 28<sup>th</sup> October 2022 asking for clarification. On 4<sup>th</sup> November 2022 they received a response with the case papers and correspondence. On 8<sup>th</sup> November 2022 they received a copy of the written decision. Mrs Reid advised that they had not made the formal application for recall until they became aware of the decision.
- 8 Mrs Reid confirmed that she and Mr Reid had been landlords since 2005. Mr Reid had six properties and she had three. This was the only tenant that had applied to the Tribunal. For Mr Reid the properties were his main source of income, and were he to allow them to fall into disrepair this would devalue the assets and make it difficult for him to source the income from them. Mrs Reid confirmed that they had evidence to submit regarding the condition of the property. The allegations made by Mr Stewart were disputed. It had been a difficult period during the pandemic in terms of instructing contractors. They were notified of repairs and these had been addressed.

- 9 Mr Stewart addressed the Tribunal. He stated that the Respondents should have been aware of the proceedings. Their main communication was by email. The evidence Mr Stewart had provided was absolute. He felt the Respondents had not disputed anything. They were not disputing the condition of the property. Mr Reid had told Mr Stewart that repairs were nothing to do with him. Mr Reid would use a key to access the property whenever he wished. There had been nothing new submitted by the Respondents that wasn't available to the Tribunal when it reached the decision.
- 10 Mrs Reid confirmed that the application paperwork had been served by Sheriff Officers, hence why they had not received it in time.
- 11 Having heard from the parties the Tribunal concluded that it would be in the interests of justice to recall the order made and thereafter to fix a hearing on the following issues to be resolved:-
- Whether the Applicant was entitled to an abatement of rent for the period from 1<sup>st</sup> August 2021 to 31<sup>st</sup> December 2021 due to the condition of the property during that time;
  - Whether the Applicant was entitled to compensation for inconvenience; and
  - Whether the Applicant was forced to leave the property prematurely and was therefore entitled to a duplicate rental payment incurred in the sum of £325.
- 12 The Tribunal therefore recalled the order made on 4 November 2022 and duly fixed a hearing. A Direction was issued under separate cover confirming arrangement for submitting documents and notice of witnesses. Both parties submitted further written representations in advance of the hearing.

### **The Hearing**

- 13 The hearing took place on 4 August 2023. The Applicant was present as were both Respondents. There were no witnesses present for either party.
- 14 As a preliminary point the Applicant intimated that he had submitted audio evidence which had not been considered by the Tribunal, nor intimated to the Respondent. The Tribunal confirmed that it would hear evidence from the parties at the hearing and would consider whether to accept the video evidence thereafter. Parties would be given the opportunity to make written representations in the event that the Tribunal determined to accept the audio evidence for consideration.
- 15 As a further preliminary point Mrs Reid asked for clarification on what the Applicant was seeking as it was not clear from recent written representations. The Applicant confirmed that he was seeking the sum of £1637.50 as per the previous decision of the Tribunal dated 4 November 2022. This was calculated as £812.50 for abatement of rent, £500 for inconvenience and

£325 for a duplicate rental payment he had to pay as a result of having to leave the property prematurely.

- 16 The Tribunal then heard evidence from both the Applicant and the Respondents. Mrs Reid confirmed that she would be primarily addressing the Tribunal on the Respondents' behalf. For the avoidance of doubt the following is a summary of the evidence given at the hearing and does not constitute a verbatim account of what was said.
- 17 Mr Stewart confirmed that he had moved into the property on 8 August 2021. There was no adequate lock on the front door, it didn't shut properly and was left slightly ajar. The property was on the main street with a moderate level of crime therefore this caused him some concern. There was a gate that could be securely shut. There was a water leak in the adjacent bedroom, as well as water damage in the kitchen and a lot of mould. The general condition of the property was far from being up to scratch. Mr Stewart and his flatmate had met with Mr Reid in October 2021. They then sought assistance from the fire brigade due to the proximity of the water leak to the electrics. Mr Stewart referred to a diagram of the location of the leak submitted by the Respondents which was accurate. It showed the shower cubicle and the built in wardrobe where the electricity box was contained.
- 18 Mr Stewart had also contacted the local authority who had visited the property. One of the issues they noticed was the wet wall in the bathroom. Tiles were peeling away from the wall which demonstrated how much space was between the wet wall and the bathroom wall. There was also a crack in the corner of the room. It was concerning having a leak right next to the electricity box. It was for that reason Mr Stewart had contacted the fire brigade. Mr Stewart advised that one smoke alarm in the property did not work. It was located in the hall. Mr Stewart understood that hard wired interlinked alarms were a legal requirement. Mr Stewart confirmed that he had reported the issue with the front door to Mr Reid and he had fixed a new lock to the door during his October visit. With regard to the water leak Mr Stewart advised that his flatmate had been in contact with Mr Reid regarding this as it impacted his bedroom. Mr Stewart had seen his flatmate's communications with Mr Reid. Mr Reid visited the property on the 6<sup>th</sup> and 7<sup>th</sup> October and it was demonstrated to him that the wall was spongy. Workmen had made a hole in the wall and there had been no real urgency to fix it. Mr Stewart felt that Mr Reid had swept these issues under the carpet. Mr Stewart felt these issues were urgent and therefore contacted the fire brigade to carry out an inspection.
- 19 Mr Stewart confirmed that the water leak had been reported to the Respondents in July 2021, prior to him moving into the flat. The leak in the kitchen was mentioned in April 2021, again prior to Mr Stewart moving in. Mr Stewart then took the Tribunal through photographs he had taken of the property. He pointed to dampness on his bedroom walls. The general air quality was quite bad with a smell of mould in both bedrooms. His bedroom did have some black mould. The bed he was sleeping on was severely

bending in the middle. It had to be propped up. It was impossible to keep the flat clean. Mr Stewart pointed to a photograph showing mould on his camera bag which was located in his bedroom. This was with dehumidifier usage. Mr Stewart pointed out the external door in the kitchen where light could be seen coming through. It was very drafty. A lot of plastering in the property had been badly done and parts of ceiling were missing.

- 20 Mr Stewart confirmed that the fire brigade had attended the property. He referred to an email they had sent following their inspection. They had verbally advised him to move as soon as possible. Mr Stewart advised that he and his flatmate had to minimise use of shower due to the condition of the wet wall and general condition of it.
- 21 Mr Stewart referred to more photographs which showed evidence of water leaks, damaged skirting boards and a leaking shower cubicle.
- 22 Mr Stewart confirmed that he had contacted both the fire brigade and the local authority after Mr Reid's visit in October 2021 as he felt Mr Reid did not appreciate the urgency of the matter. It seemed to be a pattern of no action by Mr Reid. The fire brigade urged Mr Stewart to contact the local authority. They had already been contacted by the fire brigade and sent round an officer who inspected the property. The officer advised Mr Stewart to send an email to the Respondents listing the issues. Mr Stewart sent said email on 25<sup>th</sup> October 2021. Mr Stewart's flatmate then moved out on 16<sup>th</sup> November 2021. Mr Reid had then fixed some of the issues, however not all, which resulted in Mr Stewart making an application to the Tribunal for a repairing standard enforcement order. Mr Stewart was then given a Notice to Leave by the Respondents, on the basis that they required to refurbish the property. Mr Stewart did not think this was legitimate as the works could be done whilst he remained in the property. Mr Stewart advised that workmen had keys to access the property. Visits would be arranged and workmen would not show up. Mr Stewart advised that he never missed one of the visits. On one occasion Mr Reid attempted to access the property but was unable to do so due to a latch on the door that Mr Stewart had installed. He was intimidating and aggressive. On another occasion Mr Stewart had come back to a contractor in the property who had accessed it with a key.
- 23 Mr Stewart advised that he wasn't given notice of what repairs were being completed. He understood that works were completed to his flatmate's bedroom, the bathroom and some redecoration in the kitchen. The leak in the bedroom was fixed in late November after his flatmate had moved out and a week or so before Mr Stewart moved out. The shower was in a satisfactory state and the floorboard was flush and fixed. Mr Stewart confirmed that he had a padlock on his bedroom where he kept all of his possessions. He also had a dehumidifier that had been provided by the Respondents in the room.
- 24 Mr Stewart confirmed that the Notice to Leave required him to leave on 26<sup>th</sup> November 2021. He had obtained a tenancy agreement for a new property

which commenced on 2nd December 2021. The Notice to Leave was then withdrawn by the Respondents after the works were completed. It was too late to withdraw from his new tenancy and he moved into that property on 2<sup>nd</sup> December 2021. However he had to give one months notice to the Respondents. He had communicated with the Respondents to ask if he ended the tenancy midway through the month would he only pay half of the monthly rent. He received no response. As a result Mr Stewart had to pay rent for the two properties. He was therefore seeking repayment of the rent paid for the last month of his tenancy. Mr Stewart believed that the Notice to Leave served by the Respondents was unlawful. Mr Reid had indicated that he had served the Notice to Leave, not because he required to refurbish the property, but because of Mr Stewart's behaviour. Mr Reid was also seeking new tenants whilst Mr Stewart was still living there. He had no plans to renovate the property after Mr Stewart left. He had withdrawn the Notice to Leave on 26<sup>th</sup> November but by that point it was too late. Mr Stewart had already obtained a new tenancy.

- 25 Mrs Reid addressed the Tribunal. She confirmed that Mr Reid had been a landlord since 2005. He had let to multiple tenants, most of whom were students and therefore a transient population. This was the first time the Respondents had faced an application like this. The properties were their main source of income for retirement therefore they had an interest in maintaining them. Mrs Reid further noted that neither she nor Mr Reid resided in the properties therefore they relied on tenants to inform them of any issues so that they could carry out repairs as quickly as possible. It was important to highlight that these issues had arisen during the Covid-19 pandemic, when there were challenges with access to properties and movement of people.
- 26 Mrs Reid confirmed that Mr Stewart had moved into the property on 8<sup>th</sup> August 2021. She referred to a Whatsapp message he had sent which confirmed that everything was fine apart from the lock. Mrs Reid confirmed that the property was a typical main door tenanted flat, with a set of storm doors which were highly secure. The property was accessed from the street, and had an internal door with locks. However Mr Stewart felt that the internal door required something more substantial. Mr Reid had immediately responded to his concern and agreed to fit a mortice lock, which he hoped to get in October. He advised Mr Stewart of this and Mr Stewart confirmed that he was content to wait. The lock was ordered as stated and fitted on 6<sup>th</sup> October 2021. Whilst visiting on 6<sup>th</sup> October the primary purpose was for Mr Reid to meet with a contractor to address the leak in the bathroom. Mrs Reid confirmed that in July 2021 the tenant in the room where the leak occurred notified them of the problem. However it was a struggle to get contractors. There was limited work during a period of lockdown. Contractors had a preference for taking on more significant jobs. The Respondents contacted their property manager on 14<sup>th</sup> July 2021 and he attempted to procure the

services of a contractor who was unable to take on the job due to being extremely busy. Other contractors gave the same response. Accordingly Mr Reid attended the property on 25<sup>th</sup> July 2021 and carried out a temporary repair. Mrs Reid made reference to a photograph which showed the size of the hole that had been created to inspect the problem and a temporary fix that had been applied. On 7<sup>th</sup> August 2021 Mr Reid visited the property and noted that it was not being aired and fired to prevent mould. He put money in the meter to ensure the dehumidifier was on. Mrs Reid made reference to a message from Mr Stewart's flatmate which stated that the flat looked great now. Mr Reid had confirmed that he would be back in October to do a few more repairs. During the period between August and October the Respondents made calls to local contractors to try and arrange a more permanent solution to the problem. Mr Reid had then attended the property on 6<sup>th</sup> October 2021 with a contractor. The contractor had removed the temporary fix and made the hole in the wall bigger in order to determine what works were required. He concluded that the cause of the leak was the seal on the left hand side of the shower cubicle which had gone causing the shower to move slightly away from the wall and resulting in water going between the cubicle and the wall. Mrs Reid referred to the diagram produced which showed that there was no risk of water going into the cupboard where the electric box was placed.

- 27 Mrs Reid confirmed that the visit on the 6<sup>th</sup> October 2021 was the first time Mr Reid had met Mr Stewart. Mr Reid noted that the dehumidifier was not being run and damp clothes were drying inside. The dehumidifier was in Mr Stewart's room, not in the communal area as had been instructed. Another area of concern Mr Reid noted was the smoke alarm in the hall. When tested it didn't work and Mr Reid noted that the batteries had been removed. He had asked Mr Stewart and his flatmate to replace the batteries. Mr Reid had informed the tenants that the alarm system would be upgraded however again it had been difficult to source contractors to do this work. That was completed in November 2021.
- 28 Mr Reid confirmed that the contractor had investigated the leak on the 6<sup>th</sup> October 2021 and he became aware of where the leak was coming from. None of the other issues raised by Mr Stewart which were listed in his email of 25<sup>th</sup> October had been intimated to the Respondents previously. Mr Stewart appeared to be offended by the fact that the Respondents were trying to gain access in order to investigate the leak. They were trying to abide by Covid regulations. Mr Stewart was asked to remain in his room when contractors were present if he could not leave the property. That was in accordance with the regulations. There had to be minimal contact. Mrs Reid advised that the Respondents were not aware of the Fire Brigade's visit or the outcome of that

discussion until they saw reference to it in the application paperwork. They were also unaware of Mr Stewart's contact with the local authority.

- 29 Mrs Reid confirmed that it had been difficult to get contractors to commit to exact dates and times. Mr Stewart's flatmate was happy with contractors gaining access because he was aware that there needed to be some flexibility. The Respondents had asked Mr Reid to be similarly flexible in order that they could complete the repairs. There was one occasion when contractors tried to enter property. They knocked on the front and back door and made three telephone calls to see if anyone was in property. When there was no response access was taken in order to carry out the repairs. It could be difficult when tenants tell the landlord there is a problem which the landlord requires to address. The Respondents were wholly reliant on contractors and were trying to balance everything. They just wanted Mr Stewart to be reasonable and allow them to fix the problems.
- 30 With regard to the water leak, Mrs Reid advised that the contractor who had carried out the initial investigation on 6<sup>th</sup> October had to return to his mothers home to visit her. The Respondents had to try and find another contractor. They contacted Mr Stewart on 13<sup>th</sup> November 2021 to advise that their work would be carried out after the other tenant had left. This was evidenced in a Whatsapp message. The Respondents had attempted at all times to keep Mr Stewart informed of the situation. The other tenant who occupied the room with the leak had left the property. From that date on until the departure of Mr Stewart that room was not let. The Respondents did ask Mr Stewart to ensure the dehumidifier was kept in the other tenant's bedroom between 17<sup>th</sup> November 2021 when the other tenant had left and 25<sup>th</sup> November 2021 when the contractor returned to complete the repair. The Respondents were hugely concerned about the damp increasing. They had also provided Mr Stewart with £20 to facilitate any additional costs associated with having to run the dehumidifier. Running the dehumidifier would allow the wall to dry out. On 25<sup>th</sup> November 2021 the contractor returned to the property and completed the repair and on 26<sup>th</sup> November 2021 he undertook plasterwork repair to rooms. Again Mr Stewart was requested to ensure that the dehumidifier was put on in the other tenant's bedroom room to allow the new plaster to dry. At this point an email was sent on 26<sup>th</sup> November 2021 to Mr Stewart informing him that the bathroom had now been completed. The Respondents agreed to reduce the rent by £20 as gesture of goodwill to put towards cost of the dehumidifier and allow that to dry out.
- 31 With regard to the Notice to Leave Mrs Reid confirmed that on 25<sup>th</sup> October 2021 they had received the email from Mr Stewart listing a significant number of issues with the property. This was the first time the Respondents had been



made aware of all of these issues in writing. On receipt of the list they responded immediately to inform him that they would do everything to get the issues repaired. They also served the Notice to Leave. This arose from concerns about the state of the property. Due to Covid their visits to the property had been minimal. Given the list of issues was so significant they felt they would require to recover possession of the property in order to refurbish it. They believed they would need full access. It was of concern that Mr Stewart had not contacted the Respondents to notify them of the issues, instead contacting the local authority. The Respondents had never been made aware that he had contacted the local authority and never gave them the opportunity to address the issues. Mrs Reid advised that the Respondents had a good relationship with the private housing team at the local authority in question. All of the issues listed in his email of 25<sup>th</sup> October 2021 apart from those relating to Mr Stewart's bedroom were resolved by 26<sup>th</sup> November 2021. The Respondents could not gain access to Mr Stewart's bedroom because Mr Stewart as stated had padlocked the door to his bedroom to ensure no one could gain access to it. In doing so he had padlocked the dehumidifier in the room and no one could gain access to that. The Respondents had also not been made aware of the black mould in the property. It had a full damp proof course installed so they had done what they could to ensure issues like mould could be dealt with.

- 32 Because the other bedroom had been fully repaired and the communal areas repaired the Respondents retracted the Notice to Leave as they realised during the works that they did not require full access as they had originally thought and the property did not require a full refurbishment. All the repairs were complete apart from those relating to Mr Stewart's room. They asked Mr Stewart if he would be happy for the other room to be let, to help him from a bills perspective, and he agreed to that. Mr Stewart had said that the property was still uninhabitable when he left, but he was happy to undertake viewings with new tenants which didn't make sense.
- 33 Mrs Reid confirmed that Mr Stewart had made an application to the Tribunal stating that the property didn't meet Repairing Standard. An inspection had been carried out and the Tribunal had found on 18<sup>th</sup> March 2022 that the property did meet the standard. Mrs Reid confirmed that the property had been let in January 2022 to two young female students who left due to an issue not caused by any disrepair. After they left the property was then let on 2 February 2022 to tenants who are still now there. Mrs Reid referred to the reference that had been provided by the existing tenants. Mrs Reid confirmed that Mr Stewart had given notice on 1<sup>st</sup> December 2021 and the Respondents were then notified on 7<sup>th</sup> December 2021 that the heating and the gas in the property wasn't working. They contacted their gas engineer who confirmed

that the reason the boiler wasn't working was because it had no credit on the meter. The boiler had stopped as a result. The Respondents had contacted Mr Stewart who advised that he had not fully relocated, he still had belongings in the property. Upon Mr Stewart leaving the electric and gas were both topped up so that the property could be fully heated and ventilated. Mr Stewart had then said that he wished to turn off the water supply to the property. This was a huge concern, particularly in December when the temperatures were low and there was the risk of freezing pipes. It was then agreed that Mr Stewart would formally vacate the property on 22<sup>nd</sup> December 2021, prior to the end of the notice period. A formal check out and inventory procedure was undertaken and the Respondents provided a reference for Mr Stewart for his new property.

- 34 Mrs Reid confirmed that the number of hours that were taken to undertake the repairs was approximately six hours over three days, prior to the repairs being completed in November 2021. The shower was usable during that period.
- 35 The Tribunal then heard against from Mr Stewart. He confirmed that the email sent on 25<sup>th</sup> October 2021 was the first time he had formalised in writing the repairs that were required. However he said he had been in verbal discussions with the Respondents, as well as the extensive messages between the Respondents and his flatmate. The only issue he had intimated was the lock on the door. On 7<sup>th</sup> October 2021 Mr Reid had messaged his flatmate in the morning, although it was meant to be in the evening. Mr Reid had accessed the property and apologised for walking in. It was a perfectly pleasant visit but Mr Stewart felt he had brushed off a lot of the issues. The main issues were highlighted to the fire brigade. The issues with the water leak had been discussed with his flatmate and his flatmate had provided a transcript of the conversation. Mr Stewart became aware of the intention to complete a temporary repair at a later date. Mr Stewart advised that he had never turned down a visit from contractors, and would stay in for visits that never happened. He confirmed that he had placed a padlock on the door to his bedroom due to a lack of security. He confirmed that he had not advised the Respondents that he was contacting the fire brigade or the local authority. He further advised that he had not forwarded on the outcome of the inspections by those parties. On 1<sup>st</sup> December 2021 he advised that he had moved the majority of his belongings out of the property however there were some things left. He couldn't recall the temperature at the time but he had left the heating on all night in November 2021 at the maximum temperature. It was less than 20 degrees which showed how inefficient the draughty the property was. He had returned to the property and the heating was off. He had contacted the Respondents out of concern for burst pipes. Mr Stewart advised that he had then fixed the problem himself.

- 36 Mr Stewart spoke about the condition of the property when he left in November 2021. He stated that there was still water ingress at the door and nothing had been done about that. The plasterwork was still not fully finished. The mould had not been dealt with and the bed had not been repaired. It had been completed to some extent but there were a number of outstanding issues upon him leaving. Mr Stewart confirmed that he had received a message from Mr Reid that confirmed the installation of the smoke alarms in late December. However he had not witnessed this. He advised that he had been given a Notice to Leave, but not his fellow tenant. Mr Stewart explained that the Respondents should not have let a property that did not comply with the Repairing Standard. The Covid regulations weren't a relevant point. It was the duty of the landlord to ensure that the property met the repairing standard. The Respondents shouldn't have let the room to him. The key evidence was in the discussion between himself and Mr Reid regarding the gas engineer. It showed flexibility in terms of staying in the property and accepting visits, however two visits didn't happen. There was a claim that Mr Stewart never left the property and was only in his room. On one occasion a contractor attended and said he didn't believe anyone stayed in the property. This was a reasonable assumption as things had been cleared out following his flatmate's departure. The next morning Mr Reid had returned to the property and Mr Stewart made reference to the audio recording. Mr Reid had become frustrated by the lock Mr Stewart had installed on the door.
- 37 Mrs Reid advised that the other tenant had provided them with a Notice to Leave on 16<sup>th</sup> October 2021. This was ten days prior to serving the Notice to Leave on Mr Stewart. Mrs Reid again stated that the Respondents had no knowledge of the contact with the fire brigade and the local authority until the application paperwork was served. With regard to the issues Mr Stewart had raised Mrs Reid requested that the Tribunal look at the facts. The Respondents had provided photographic evidence showing the presence of smoke and heat detectors in the property. The tenants had been made aware of the fact that an interlinked alarm system was going to be fitted. The leak from the bathroom, which had been the main focus, was caused by a lack of sealant and it had been repaired at a cost of less than £500. It was not a major repair. A temporary fix was applied in July 2021 and Mr Stewart's flatmate was more than happy for it to be looked at again in October. The contractor had attended in October 2021 however due to various unfortunate circumstances the repair wasn't completed until November 2021. Mr Stewart had alleged that the leak caused a danger to life, however the fire brigade had noted that there was no water in the cupboard where the electric box was placed. The hole in the wall had been made bigger on the 6<sup>th</sup> October 2021 during the contractor's inspection.

38 Mrs Reid reiterated that the Respondents relied on their tenants to notify them of any repairs. She hoped they would be reasonable in allowing flexible access to the property. It had been a frustrating and difficult time, both with trying to get contractors and trying to get access to the property via Mr Stewart. Other tenants had no problem with being flexible in allowing access. Mrs Reid acknowledged that there had been two previous water leaks as a result of a problem in the property above. These had been repairs with a total cost of £17,000. With regard to mould Mrs Reid referred to the photographic evidence that had been provided which confirmed there was no mould around hole itself. The mould in the other tenant's bedroom was a result of the hole being made bigger. A request had been made by the Respondents to the tenants to ensure the property was heated and ventilated. As could be seen from Mr Stewart's evidence, the mould in the other tenant's bedroom could be seen when the room was empty. The other tenant had left the property at that time. The Respondents were not aware of the mould. They had not received the photos from Mr Stewart. If they had known they would not have allowed it to continue. On a number of occasions the Respondents had to remind the tenants to properly ventilate and heat the property. The gas boiler had gone out twice. In December 2021 this was the second time and the gas engineer had to walk Mr Stewart through getting it fixed. Mrs Reid felt there was a contradiction in Mr Stewart's conduct. He wanted repairs to be carried out but didn't want anyone to gain access. Mr Reid had become frustrated with Mr Stewart's behaviour, particularly around the access for repairs. He was not using the dehumidifier as instructed and not having gas and electric in the property. The property was the Respondents' livelihood and they did not want it to fall into disrepair. They wanted the tenants to be responsible in notifying them if there was an issue.

39 With regard to the gas boiler Mr Stewart advised that he had called Mr Reid who had talked him through the steps to fix it in December 2021. He had not spoken directly with a gas engineer.

40 The hearing concluded and the Tribunal determined to issue its decision in writing.

### **Findings in Fact**

41 The Applicant and the Respondents entered into a tenancy agreement which commenced on 8<sup>th</sup> August 2021 in respect of the property.

42 The property was occupied by the Applicant and another tenant who was already residing in the property when the Applicant moved in.

- 43 The other tenant notified the Respondents of a water leak from the bathroom in July 2021.
- 44 The Respondents attended the property and carried out a temporary fix in August 2021. The Respondents agreed with the other tenant that a more permanent solution would be investigated in October 2021. The other tenant sent a Whatsapp message to the Respondents on 7 August 2021 stating that the “flat looking great”.
- 45 On 9<sup>th</sup> August 2021 the Applicant sent a Whatsapp message to the Respondents requesting a new lock be fitted to the front door. The Applicant stated in said message that “other than that the flat is looking good”.
- 46 Mr Stuart Reid attended the property on 6<sup>th</sup> October 2021 with a contractor who investigated the source of the leak which was due to a broken seal in the shower cubicle. During the visit Mr Reid tested the smoke detector and noted that the batteries had been removed. Mr Reid instructed the Applicant and his fellow tenant to replace the batteries. The smoke detection system was upgraded in November 2021.
- 47 On or around 7<sup>th</sup> October 2021 the Applicant contacted the fire brigade and the local authority regarding his concerns about the water leak and other issues of disrepair. The Applicant did not notify the Respondents at that time that he had contacted said organisations. The Respondents were unaware until the Applicant’s email of 25 October 2021.
- 48 On 25<sup>th</sup> October 2021 the Applicant emailed the Respondents with a list of issues in respect of disrepair at the property.
- 49 The leak was repaired on 25<sup>th</sup> November 2021. The remainder of the issues on the Applicant’s list, with the exception of those relating to his bedroom, were also addressed.
- 50 The Applicant left the property in December 2021.
- 51 Prior to vacating the property the Applicant made a separate application to the Tribunal stating that the Respondents had not complied with the Repairing Standard. Following an inspection of the property the Tribunal determined on 18<sup>th</sup> March 2022 that the property complied with the Repairing Standard.

## **Reasons for Decision**

- 52 The Tribunal considered it had sufficient information upon which to reach a determination of the application following the hearing. The Tribunal determined not to take into account the audio evidence submitted by the Applicant as, having listened to the recording, the Tribunal considered that it did not add anything to its consideration of the matters before it, following the verbal submissions at the hearing and the written representations provided by both parties. It did not change the Tribunal's assessment of the facts and circumstances of the case.
- 53 The Tribunal accepted that this had been a frustrating and emotive situation for both parties. It did not however accept that the Respondents conduct, particularly that of Mr Reid, went so far as to constitute harassment or intimidation. It was clear from the evidence at the hearing that the relationship between both parties had broken down, but the Tribunal considered that there was fault on both sides in that respect. The Tribunal did not believe that the Applicant had been fully cooperative in allowing access for repairs, and this would have created frustration on the Respondents' part who were trying to take action to comply with their obligations. The Tribunal accepted that arranging contractors to carry out the repairs would have been challenging, and that dates and times for arranging works would have fluctuated. However the Tribunal was satisfied that the Applicant had been given general notice of access for repairs being required, and that the presence of contractors and the Respondents in the household did not equate to harassment.
- 54 On this occasion the Tribunal had the benefit of hearing from both parties regarding the background to the application. The Tribunal was satisfied that the Respondents had taken reasonable steps to comply with their duties under the Repairing Standard. It was clear from the evidence before it that the Respondents had been in contact with the Applicant's fellow tenant regarding the water leak, which primarily impacted on his bedroom. They had also carried out a temporary fix pending sourcing a contractor which had been challenging during the restrictions imposed by the Covid-19 pandemic. They had sought to mitigate the issues through the provision of a dehumidifier and instructions for its use. Both the Applicant and his fellow tenant had stated to the Respondents on 7 August 2021 and 9 August 2021 that the property was in an acceptable condition. Whilst the Applicant had provided messages which purported to show historic issues of disrepair, for the purpose of this application the Tribunal was only concerned with the term of the Applicant's tenancy. His text message on 9<sup>th</sup> August did not indicate any significant concerns regarding the condition of the property, despite his description of what he claimed to be significant disrepair.
- 55 It was thereafter not disputed by the Applicant that he did not formally notify the Respondents of the other issues of disrepair until 25<sup>th</sup> October 2021. He did make mention of verbal discussions but in the absence of any evidence to this effect the Tribunal did not accept that he had properly alerted the Respondents to his complaints. He had shown himself capable of liaising with the Respondents by messaging when required. The Tribunal therefore preferred the evidence of the Respondents in this regard, as evidenced by the

action taken when they became aware of the issues he had highlighted and the specific details provided both in their written representations and verbal submissions at the hearing.

- 56 The Applicant had also contacted both the fire brigade and the local authority without alerting the Respondents of his intention to do so. It appeared unreasonable not to alert the Respondents that he was taking this action and this damaged the credibility of his evidence. Whilst the Respondents have a duty to comply with the Repairing Standard, there is also a duty on tenants to ensure landlords are made aware of repairs. With the exception of the lock on the external door, which was addressed by the Respondents timeously, the Applicant had failed to do so until his email of 25<sup>th</sup> October 2021. He had not raised any of the issues in the earlier months of his tenancy. The Respondents had then taken action, with all repairs having been completed by the end of November 2021. Whilst the Applicant disputed this, the Tribunal preferred the evidence of the Respondents in reaching its conclusion in this regard. This was further supported by the decision of a separate Tribunal in the repairing standard application where it was confirmed that the property met the repairing standard by January 2022. The Tribunal considered this timescale was reasonable given the circumstances in which the Respondents were operating and with the exception of those repairs required in the Applicant's room. The Tribunal accepted that there were challenges in gaining access to the Applicant's room, as evidenced by the padlock on his door. On that basis the Tribunal did not conclude that any rent abatement was due, nor any payment for inconvenience.
- 57 With regard to the Notice to Leave, the Tribunal preferred the Respondents' explanation for serving same, and its subsequent withdrawal, finding it to be a credible explanation. It was reasonable to assume, based on the Applicant's email of 25<sup>th</sup> October 2021, that the property required significant refurbishment. The Respondents were entitled to withdraw the Notice to Leave, albeit it may have been helpful as a gesture of goodwill, to allow the Applicant a reduced notice period. However the Tribunal did not conclude that the Applicant was entitled to recover the duplicate rental payment.
- 58 The Tribunal therefore determined to make no order for the reasons stated above.

## **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.**

# R O'Hare

19 December 2023

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Legal Member/Chair

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Date