



**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**

**Chamber Ref: FTS/HPC/CV/23/2054**

**Re: Property at 23E Union Place, Dundee, Scotland, DD2 1AB (“the Property”)**

**Parties:**

**Miss Andrea Nicole Casono, 120 Marsh Road, Rhyl, Wales LL18 2AH, Miss Gilian Charisse Fronda, 26 Ridley Drive, Rosyth, Fife KY11 2EH and Miss Beatrice Ryan, Im Kleinfeldchen 14e, Eschborn 65760, Germany (“the Applicants”)**

**Mrs Jacqueline Michelle Young and Mr David James Young, care of Sandstone UK Property Management, 10 Whitehall Crescent, Dundee, Scotland, DD1 4AU (“the Respondents”)**

**Tribunal Members:**

**George Clark (Legal Member) and Robert Buchan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted and made an Order for Payment by the Respondents to the Applicants of the sum of £2,307.86.**

**Background**

1. By application dated 21 June 2023 and amended on 23 December 2023, the Applicants sought an Order for Payment by the Respondents by way of compensation and abatement of rent. The total sum sought was £3,762.86, represented by rent withheld (£2,307.86) and the tenancy deposit paid out to the Landlords at the end of the tenancy (£1,455).
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 1 May 2020 at a rent of £1,155 per month with a deposit of £1,455. It was a matter of agreement between the parties that the rent was subsequently increased to £1,290 per month.

3. The Applicants stated that a water leak from a mutual tank in the attic of the tenement of which the Property forms part had occurred in December 2022, causing large amounts of mould to grow on internal walls. This particularly affected one bedroom, which became uninhabitable and had been vacated for 3 months due to major health hazards. A smoke detector in one of the bedrooms had been disabled and there had been an issue with the boiler, with repairs not being done in a reasonable time. At the termination of the tenancy on 24 June 2023, the full deposit had been paid to the Respondents, who are, in a separate application, seeking an Order for Payment of unpaid rent in the sum of £852.86, being the amount of rent withheld by the Applicants, less the deposit of £1,455.
4. The Applicants were seeking an Order requiring the Respondents to pay back the deposit to them and to annul the rent to the extent of £2,307.86 as compensation for the two months of inconvenience, stress and detriment to which the withheld rent related.
5. The Applicants also provided the Tribunal with copies of emails between the Applicants and the Respondents' letting agents, Sandstone UK Property management, Dundee and photographs of the Property sent by the Applicant, Miss Ryan, to the letting agents on 16 September 2023.
6. On 29 November 2023, the Tribunal issued a Direction to the Applicants, requiring them to clarify exactly what they were looking for from the Tribunal, why the sum of £2,307.86 was withheld, when it did not represent two months' rent. There was also an issue regarding the ability of the Tribunal to take evidence from a Party, namely Miss Ryan, living outwith the UK, but this matter was resolved, as Miss Ryan was again resident in the UK on the day of the Hearing.
7. On 23 December 2023, the Applicants responded to the Tribunal's Direction, clarifying that they wished to get their deposit back and for the rent withheld to be declared as annulled. The difference between the amount claimed as withheld and two months' rent was explained by the fact that the tenancy had ended on 24 June 2023, but the Applicants had paid the full rent for June. The Respondents had refunded £272.14 for the days between 24 and 30 June, so the Applicants had deducted the same figure from the amount they were seeking.
8. The emails provided by the Applicants included an email of 25 April 2023 to the Applicant, Miss Ryan, from the Respondents' letting agents, in which they offered £286 by way of compensation. They stated that one bedroom was affected, The Property has 3 bedrooms, a lounge, kitchen and bathroom. The Property was not uninhabitable. Their calculation was that the cost for each room would be £107.50, so the loss of one bedroom for two months would be £210, but, as a gesture of goodwill, £286 was being offered, which was more than reasonable. They would not be offering compensation to either of the other Applicants, as it was Miss Ryan's decision to share rooms within the Property. The letting agents had not enforced this. They would also not offer further

compensation for other issues not related to the bedroom. Maintenance issues do happen and do take time to resolve.

9. The offer of £286 was rejected by the Applicants on 25 April 2023, based on the fact that the Property was almost uninhabitable for two months, with one room unusable and all the other issues the Applicants had faced with a smoke detector being taken off, the boiler having a missing cap which could have led to a gas leak, the mould being painted over as a temporary solution and the inconvenience to Miss Casono of having to share her room with Miss Fronda.

### **The Hearing**

10. A Hearing took place by means of a telephone conference call on the morning of 14 May 2024. All three Applicants were present, and the Respondents were represented by Miss Leona Forshall, Regional Manager of Sandstone UK Property Management, Dundee.
11. The Tribunal Members had noted that the deposit had been paid in full to the Respondents when the tenancy ended and wondered why the Applicants did not appear to have disputed it. The Applicants responded that they had been in contact with SafeDeposits Scotland and understood that the deposit could not be disputed if there was a current application to the Tribunal.
12. The Applicant, Miss Ryan, told the Tribunal that, in January 2021, water came through a wall in a storage room off one of the bedrooms, resulting in a mould issue, which she reported to the letting agents. Nine months later, as nothing had been done (including a failure to carry out remedial works over the summer, when the Applicants had gone home for the summer), she threatened to withhold her rent. It was only then that the Respondents, through the letting agents, took action to deal with the matter. She accepted that this issue did not form part of the present application, but she wanted the Tribunal to be aware of it in the context of the Applicants' decision to withhold rent in 2023 when the further mould issue, the subject of the present application, emerged.
13. The Parties were agreed that the mould problems in the bedroom emanated from a burst water tank in the attic and were not connected to a separate problem relating to the roof and gutters of the tenement. The Respondents' representative told the Tribunal that it had been discovered when water entered the flat beneath the Property on 19 December 2022. The Applicants were not in the Property over the University Christmas holidays, so had not been the ones to report it. The Respondents could not put in a dehumidifier when the Property was unoccupied and had to wait until the Applicants returned. Miss Forshall said that, whilst it was accepted that the affected bedroom was uninhabitable for two months, the Applicant had not in fact returned to live there until on or about 14 January 2023. She confirmed that an insurance claim had been made, but that it did not include loss of rent.
14. The Applicant, Miss Fronda, advised the Tribunal that she had had to move out of her bedroom and share with Miss Casono. Questioned by the Tribunal, the Applicants said that they remained in the Property until 24 June 2023 rather

than simply leave when the mould issue emerged, because they were all heavily involved working towards deadlines for final assignments leading to their graduations, and moving out for the last few months of their studies would have been even more disruptive. They had spent more and more of their time on University premises because of the extent of the mould. The letting agents had supplied a dehumidifier, but Miss Ryan said that it did not seem to work properly and so was not used.

15. The Tribunal asked the Respondents' representative if she agreed that the Property did not meet the Repairing Standard and might even not meet the Tolerable Standard. Miss Forshall accepted that was the case but added that they were endeavouring to work on the Property as quickly as they could. The Applicants had reported a problem with the boiler. An engineer had declared it unsafe to use, but a second engineer had confirmed there was no leak and had issued a Gas Safety Certificate. She stressed that, as letting agents, they are completely reliant on the findings and recommendations of suitably qualified contractors. She confirmed that, following the precautionary removal, in case it had suffered water damage, of the smoke detector in the affected bedroom, the electrics throughout had been checked by an electrician and had been found to be safe.
16. Miss Forshall felt that the compensation offered was reasonable. The burst water tank had been reported to them on 19 December 2022 and on 3 February the letting agents instructed that the affected areas be washed down, treated with stain block and repainted. In addition, the Applicants had not been living in the Property until 14 January. The remedial work was eventually carried out at the beginning of March.
17. The Applicants told the Tribunal that, whilst one bedroom was completely unusable for two months, there was mould everywhere in the Property, including the now shared bedroom. Miss Fronda did not feel safe in her bedroom without a smoke detector. Miss Casono said that she had not minded having to share her bedroom with Miss Fronda. Miss Ryan stated that the whole flat had suffered from the burst tank and it was uninhabitable, especially when the boiler was not functioning.
18. In her concluding remarks, Miss Forshall said that she completely understood that the Applicants had had issues for two months.
19. The parties then left the Hearing and the Tribunal Members considered carefully all the evidence, written and oral, presented to them.

### **Reasons for Decision**

20. The Tribunal noted that the basic facts do not appear to be in dispute. A water tank in the attic of the tenement burst in December 2022, causing water ingress, which resulted in significant mould within the Property. The Applicants were not in the Property at the time. The worst affected room, one of the bedrooms, was uninhabitable for a period of two months. Photographs provided by the

Applicants showed the presence of mould in various parts of the Property, but the bedroom in question had water running down the glass door and significant mould on the ceiling and walls, including the area adjacent to a power point. The smoke detector had been removed.

21. It was clear to the Tribunal and ought to have been clear to the Respondents that the mould damage was so bad that it might be damaging to the health and safety of the Applicants and that the Property did not meet the Repairing Standard and might also not meet the Tolerable Standard. There was no evidence that the Respondents or their letting agents had considered offering the Applicants alternative accommodation whilst the remedial work was carried out. They had made an insurance claim and could presumably have included loss of rent in that claim.
22. The Tribunal accepted that the decision of the Applicants to remain in the Property was understandable, given the stage at which they were with their studies and the upheaval they would have faced had they opted to end the tenancy earlier and move to alternative accommodation, assuming such accommodation could be found at that time of year. In other circumstances it would have been reasonable for the Applicants to have vacated the Property and the Respondents would have been left without rent for a longer period with no-one there to heat the Property during that time of the year. The Respondents are, in effect, trying to penalise the Applicants for remaining in the Property.
23. The Tribunal did not agree with the basis on which the Respondents had made their offer of compensation of £286. All 3 Applicants were affected by the mould issues in the Property. One of them was unable to use her bedroom at all, which resulted in two of the Applicants having to share a bedroom. That room and other areas of the Property were affected by mould. In these circumstances, the Tribunal regarded the offer of £286 as completely inadequate. The Applicants did have some enjoyment of parts of the Property, but had to put up with a flat that was potentially a health hazard and did not meet the Repairing Standard for a period of two months. The view of the Tribunal was that they should not have been required to pay any rent during the two-month period, as their enjoyment of the Property was so compromised. It is obvious from the photographs that the leak and subsequent mould were significant, that the Applicants had to suffer considerable upheaval and had the uncertainty of not knowing when the remedial work was to be undertaken. In addition, the boiler was out of action for a while during a winter month,
24. The Applicants were entitled to withhold rent during the period in question, but, in normal circumstances, rent withheld would fall to be made over to the Respondents when the remedial work was carried out or when the tenancy ended. The decision of the Tribunal was, however, that the Applicants should have been afforded a complete abatement of rent for the period during which one bedroom was uninhabitable and the Applicants were having to endure significant issues of mould. Accordingly, the Tribunal decided that the sum of £2,307.86 should be refunded to the Applicants by way of an abatement of rent and compensation for inconvenience and distress. That compensation offsets the use of the Property that the Applicants had.

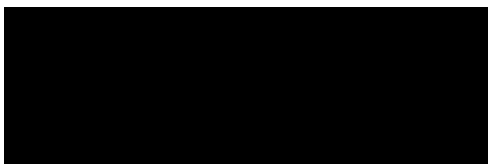
25. The Tribunal could not make an Order for Payment for this sum and also require the Respondents to refund the deposit. The Respondents had used it to reduce the sum they were seeking in their own application to the Tribunal.

26. The Tribunal noted that the Respondents had retained the deposit of £1,455 and that they are understood to be pursuing the Applicants for £852.86. The Tribunal would regard it as an acceptable arrangement if the Respondents pay the sum of £1,455 to the Applicants and withdraw their application for £852.86. The Tribunal, however, has no power to dismiss the Respondents' application and its Order is, therefore, for payment of the full sum of £2,307.86.

27. The Tribunal's Decision was unanimous.

### **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.**



G.Clark

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**Legal Member/Chair**

**14 May 2024**

**Date**