



**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/22/3995**

**Re: Property at 293 Broomhill Road, Aberdeen, AB10 7LN (“the Property”)**

**Parties:**

**Mrs Alice De Kauwe, Dr James De Kauwe, 293 Broomhill Road, Aberdeen, AB10 7LN (“the Applicant”)**

**Mr Grant Campbell, Mrs Lynne Campbell, 114 Wittenburgerweg, Wassenaar, 2244C, The Netherlands; 114 Wittenburgerweg, Wassenaar, 2244CE, The Netherlands (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)**

**Decision**

**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 Applicants sought an order for payment against the Respondents for compensation due to the Respondents’ alleged breach of the repairing standard and tolerable standard. The Applicants wished payment of compensation for disrepair at the property from the commencement of the tenancy to date.
- 2** By Notice of Acceptance of Application dated 22 November 2022 the Legal Member of the Tribunal with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was therefore fixed for 23 February 2023. The application paperwork was served upon the Respondents by international tracked postage.

- 3 The Applicants and the Respondents subsequently submitted written representations in advance of the Case Management Discussion.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 23 February 2023. The Applicants were present. The Respondent was represented by Mr Barr and Mrs Card of Martin and Co. The Tribunal noted that the application did not specify the level of damages sought by the Applicant, nor was there a breakdown of any heads of claim. The Tribunal therefore determined to adjourn the Case Management Discussion for the Applicants to provide further specification as to the level of damages they were seeking and the legal basis upon which said damages were sought, together with vouching in the form of receipts or invoices where appropriate. The Case Management Discussion was therefore adjourned for the above reason. A Direction was issued under separate cover confirming the timescales for lodging said documentation and the opportunity for the Respondents to provide further written representations in response.
- 5 The Applicants subsequently submitted further submissions with a breakdown of the claim as follows:-
  - (i) £278.99 for the purchase of various items and services;
  - (ii) £7500 for increased heating bills;
  - (iii) £10,346 for abatement of rent; and
  - (iv) £3000 for distress and inconvenience.
- 6 The second Case Management Discussion took place on 7 July 2023. The Tribunal heard from the parties and identified the issues to be resolved as:-
  - (i) *Whether the property met the Repairing Standard at all times during the course of the tenancy, and if not, during what periods did the property not comply;*
  - (ii) *Whether the Applicant suffered loss as a result of the alleged disrepair and is entitled to compensation as a result, and if so, what level of compensation is due; and*
  - (iii) *Whether the Applicant is entitled to any abatement of rent as a result of the alleged disrepair, and if so, what level of abatement is due.*
- 7 The Tribunal therefore determined to fix a hearing in the matter. Following the Case Management Discussions both parties submitted their complete evidence in the form of inventories of productions for consideration at the hearing.

## The Hearing

- 8 The hearing took place in a hybrid format on 26 January 2024. Dr DeKauwe appeared by video link to give evidence on behalf of the Applicants. Mr Campbell appeared in person to give evidence on behalf of the Respondents. He confirmed that Maxine Card of Martin and Co would also give evidence by video link on behalf of the Respondents. For the avoidance of doubt the following is a summary of the evidence heard that was of relevance to the Tribunal's determination to the application and does not consist of a verbatim account of the proceedings.

### Dr DeKauwe

- 9 Dr DeKauwe gave his evidence. He commenced by referring to the spreadsheet he had submitted which highlighted the increased energy costs as a result of the faulty heating system. The spreadsheet indicated that there was a disproportionate usage of gas, which had resulted in higher costs for the Applicants. The figures took into account energy price issues and the impact of the Covid-19 pandemic. Dr DeKauwe stated it had been difficult to give a full comparison as he could only compare previous years with the time the Applicants had spent in the property. The important part was the usage. Dr DeKauwe explained that it was more expensive to heat the property compared to one of equivalent size. The prices were extortionately high. This was not a result of the increase in the energy prices. It was all related to the problems with the heating and hot water system.
- 10 Dr DeKauwe referred to the various emails between the Applicants and Martin and Co regarding the heating system. He explained that gas engineers had been out on numerous occasions. The Applicants had been told that the boiler required to be replaced by a contractor who stated that this had been his recommendation to the Respondents over the last seven years due to the number of callouts and problems with the boiler. Dr DeKauwe explained that either he or his wife always had to be in the property when the contractors attended. The Applicants were always welcoming and polite and would show them what the problems were. Dr DeKauwe explained that the heating and hot water system was not straightforward. The boiler was in the conservatory area in the cupboard which heated the house. The AGA in the kitchen provided hot water downstairs and contributed to a small extent to the heating. There were also two hot water cylinders, one on the first floor and one on the top floor in the attic area. Dr DeKauwe explained that the Applicants were expected to know where the problems were when contractors attended. Many of the contractors hadn't been given the correct information and the Applicants often had to repeat themselves as a result of information having not been passed on.
- 11 Dr DeKauwe referred to the correspondence which had been submitted between the Applicants and Martin and Co which was evidence of other issues in addition to the heating and hot water. There was damp and mould in the property, particularly in the attic area but also in other areas of the house. The Applicants had asked the Respondents and Martin and Co to look at the issue as a global problem as the one off repairs had not resolved the issues. Dr

DeKauwe advised that Martin and Co had known about the problems from the outset of the tenancy. The Applicants had been told by Martin and Co that there were known issues that were going to be looked at by the Respondents. The Applicants were told there were repairs that would be carried out but these were not done.

- 12** Dr DeKauwe advised that the biggest safety issue was the roof. There were loose and cracked tiles which would regularly fall off. These were a safety hazard and could have killed someone. The Respondents had known about this from the outset of the tenancy however the repairs were not carried out until 2023, two years down the line. There was no reasonable explanation for this. Contractors would attend and fix one or two roof tiles but it wouldn't resolve the issue. The Applicants had raised the issue many times however it had not been fixed. It eventually got to a point where the relationship between the two parties had broken down. In February 2022 the Applicants had asked Martin and Co to arrange for an independent contractor to inspect the problems as a whole, as opposed to individual contractors coming out to look at issues in isolation. Martin and Co had refused. The Applicants had raised this again in the summer of 2022. Eventually they had been told that the Respondents had agreed to get a surveyor out to inspect the property. Martin and Co had told the Applicants that the surveyor was booked to come out. They had then received an email from Martin and Co advising that a damp and mould specialist had been booked. The Applicants had queried this with Martin and Co as they understood a surveyor had been booked. The reason they wished a surveyor to inspect the property was to ensure the roof was looked at along with the damp and mould internally. The Respondents had arranged for different roofing contractors to come out to look at the problems with the roof. They had dealt with individual issues, not the roof as a whole.
- 13** Dr DeKauwe explained that the Applicants were constantly chasing Martin and Co. During the term of their tenancy there was a rotating team of staff. When a new staff member took over the property they often weren't aware of the works that had been completed and those that still required completion. The Applicants were asked on every occasion to submit a list of jobs that needed to be done. The Applicants did not think that was the tenant's responsibility. The Applicants had in fact asked Martin and Co if keeping a spreadsheet of the jobs would be of more use, rather than the Applicants sending them on to them. The Applicants felt like they were managing the property. There was regular miscommunication, for example when Martin and Co told the Applicants that repairs to the roof had been completed when this was not the case.
- 14** Dr DeKauwe referred to the Tribunal's decision in a separate case FTS/HPC/RP/22/3981 in which damp was still evident in the property, which had been confirmed by moisture readings and photographs. Dr DeKauwe also referred to the mould plates he had placed in various rooms which showed excessive growth. He had resorted to this as the Respondents were saying there wasn't an ongoing issue when there clearly was.
- 15** Dr DeKauwe then took the Tribunal through various photographs he had submitted as evidence of the disrepair. He then referred to the report from the

damp and mould specialist Envirovent. The report confirming that Envirovent had attended the property and had found water ingress and condensation. The report had been sent to the Applicants and the Respondents however the Respondents did not accept the recommendations in the report on the basis that Envirovent were not experts in the particular area. The Applicants believed that the Respondents should have arranged for an independent surveyor to inspect the property. Dr DeKauwe explained that the Respondents had said there was no issue with water ingress and mould, despite all of the evidence to the contrary.

- 16** Dr DeKauwe explained that Martin and Co had carried out various inspections and had produced inspection reports. The inspections were carried out more frequently than would be the norm due to the ongoing issues. The reports would be sent to the Applicants and the Respondents however nothing was done, or the Applicants were told things would be done which weren't. This ultimately resulted in the Applicants submitting a repairing standard application to the Tribunal in addition to the present application.
- 17** Dr DeKauwe conceded that some issues had been addressed by the Respondents however not within reasonable timescales. He explained that there had been multiple occasions when the Applicants were left without heating or hot water. They had not been provided with any alternative heating system by Martin and Co. On one occasion they had no heating or hot water for a week. The Respondents had simply advised that there were two gas fires downstairs in the property. The Applicants couldn't use any of the other areas of the house, they were expected to live in the two rooms with the gas fires with no beds. They eventually had to purchase heating equipment themselves. It was only after meeting with Maxine Card that they had been offered compensation for purchasing two heaters. However that offer came at a late stage. The Applicants had asked Martin and Co multiple times if they could stay somewhere else so that they had access to hot water for their infant child but they received no answer. This was often the case and they would have to chase up Martin and Co again. It was frustrating.
- 18** Dr DeKauwe explained that the relationship between the Applicants and the Respondents and Martin and Co had broken down to a point where it was impossible to be amicable. The Applicants felt they were being gas-lit. Dr DeKauwe referred to an interim inspection report where Martin and Co had made reference to damp and water ingress. However the Respondents had denied there was water ingress. This was despite photographs evidencing this as well as confirmation from contractors. The Applicants were constantly being told different things by contractors and by Martin and Co. It was upsetting. All the Applicants were asking for were reasonable steps and reasonable timeframes to address the problems. Dr DeKauwe explained that the roof was not fixed until the end of the tenancy. Dr DeKauwe outlined the stress the matter had caused to the Applicants. It had gotten to the point where they didn't want to stay in Scotland any longer. They had however felt validated when the Tribunal made a repairing standard enforcement order.

## Mr Campbell's evidence

- 19** Mr Campbell gave evidence on behalf of the Respondents. With regard to the energy costs he confessed that he had found it difficult to understand the spreadsheet that the Applicants had submitted. Mr Campbell pointed out the increase in energy prices following the Russian invasion of Ukraine, stating that gas prices had gone up by 500% and electricity 300%. This was not unusual, most owners were in the same position. Mr Campbell couldn't see any correlation between a failure to repair the heating system and the costs outlined by the Applicants. Mr Campbell explained that the property was not an average property therefore it was difficult to compare. It was on five levels with an extension out the back. The EPC showed the house was inefficient and this had been taken into account when the rent was calculated.
- 20** Mr Campbell noted that the Applicants had stated that the heating system had broken several times when in fact it had only broken once. Mr Campbell took the Tribunal through the setup of the heating system. The hot water downstairs was taken from the AGA in the kitchen. The top floor had a water cylinder. The property was heated by a central heating boiler which had a back up immersion tank. Mr Campbell explained that the boiler needed to be turned up for the heating system to work and instructions had been given to the Applicants at the start of the tenancy on how to do this. The hot water tanks were a back up system and ran on electricity. There was an electric shower in the attic floor ensuite. Mr Campbell explained his belief that the Applicants were simply not using the system correctly. There were three separate hot water systems in the house, it was not a combi boiler system. Mr Campbell explained there had been numerous tenants in the property prior to the Applicants and there had been no such issues. Mr Campbell confirmed that the downstairs boiler immersion heater had failed on one occasion and had been repaired.
- 21** Mr Campbell explained that the energy bills that had been used as a comparator by the Applicants were estimates from the supplier and based on usage over the previous year when the property would have been empty for a period of time. The Applicants were also working from home. Mr Campbell reiterated that the property was not an average property, being larger than most properties with the same number of rooms. Mr Campbell advised that the Applicants had taken on the property without viewing it. They had been insistent upon moving in.
- 22** Mr Campbell referred to the invoices that had been submitted. He advised that he had faced issues with contractors, particularly during the Covid restrictions and thereafter. The supply chain was decimated. Mr Campbell pointed out that the Applicants had been advised by contractors that in order to get the hot water to work the boiler had to be turned up high. Once the system was used correctly the boiler became the heating cylinder. There were two hot water systems, one connected to the AGA cooker in the kitchen and one to the boiler. These were fed by hot water tanks backed up by immersion heaters. Mr Campbell conceded that the heating system was not the best design but that was what was recommended at the time. The first three floors could be switched off with the exception of the top floor. The immersion tank on the top

floor could be switched on to use the hot water in one bathroom. It was not a simple system. Mr Campbell explained the AGA in the kitchen was not cheap to run, however the property had been advertised with the AGA included. Mr Campbell explained that he couldn't see anything in the spreadsheet from the Applicants that indicated excess usage, only excess costs which had been a result of external and global impacts. There was no evidence of disrepair in the system.

- 23** Mr Campbell took the Tribunal through the timeline lodged by the Respondents in response to the Applicants' chronology of events. The boiler had failed in November 2022 and had been repaired. That was the only evidence of it having failed during the tenancy. Mr Campbell explained that things had been a bit chaotic at that point, there were numerous contractors called out. Martin and Co had arranged for a contractor, as had the Applicants. There were several attempts at fixing it and eventually the issue was identified as a replacement valve. This was sourced and the boiler was fixed. The contractor was out on the Friday when the issue arose and the boiler was fixed the following Thursday. Mr Campbell confirmed that the Applicants had been refunded for the cost of additional heaters. Mr Campbell referred to the terms of the tenancy agreement whereby the Landlord has a duty to have repairs carried out as soon as practicable. The Respondents had done that. A contractor was on site within 24 hours and made two or three attempts at fixing the problem. As soon as the replacement valve was sourced the boiler was repaired. Mr Campbell confirmed that there had been some issues with the quality of the contractors however the Respondents had complied with their obligations. Mr Campbell noted that the Applicants were seeking an abatement of rent for the whole tenancy when in fact they had been without the boiler for a short period of time in November 2022.
- 24** Mr Campbell confirmed that the relationship between the Applicants and the Respondents had deteriorated very quickly. Recollections varied on who said what and when. Contractors had faced some difficulties with the Applicants and they had been reminded of their tenancy obligations with regard to access for repairs. Dr DeKauwe in particular had been quite confrontational.
- 25** Mr Campbell conceded there had been problems with the roof and resulting damp. However there had never been any active mould identified, albeit mould could be seen on the wall. Mr Campbell referred to the photographs of petri dishes submitted by the Applicants. He submitted that there would be evidence of mould spores in any room. He wasn't entirely sure what that showed. Mr Campbell confirmed that he had arranged for a contractor from Envirovent to attend the property however he had refused to come back. He felt he had received grief from the Applicants. Mr Campbell pointed out the obligations on tenants to wipe down mould and condensation, and to ensure proper ventilation by opening windows. It had to be actively managed. Mr Campbell confirmed that since he had returned to the property there had been no issues. He referred to the Tribunal's decision in the repairing standard application which did not identify any active water leaks or mould.

- 26** Mr Campbell referred to the photographs submitted by the Applicants which had mostly been taken in August 2022. The Applicants had complained to Aberdeen City Council. Martin and Co had been in touch with the Council. The Respondents had arranged for decorating and wiring issues to be sorted shortly thereafter. Mr Campbell noted the Applicants had referred to an issue with wiring externally to the rear of the property however he understood that had been addressed. The Applicants had then met with Martin and Co in September and a schedule of works had been drawn up. The Respondents were working through that. The Council had been in touch and confirmed they were content with what was happening. Mr Campbell explained that he didn't realise that the Applicants had submitted a repairing standard application to the Tribunal. Mr Campbell stated that the Applicants were incorrect when they said nothing was being done. The Respondents were actively working with them to resolve the issues. It had been a real shock when they applied to the Tribunal. There had been conflicting conversations with the Applicants throughout the process which was not helpful.
- 27** Mr Campbell noted that the Applicants were claiming rent abatement in respect of the top floor of the house, which they stated to be a third of the house. Mr Campbell explained that this was incorrect, it was not a third of the house. He was also unclear on over what period of time they were claiming the rent abatement for. He referred to a previous submission from the Applicants which stated that they had been using the exercise room on the top floor until March 2022 when Dr DeKauwe had to stop due to illness. They were therefore using the room. Every time Martin and Co carried out an inspection the top floor appeared to be in use. It was fully furnished. There was no significant mould in the property, and no evidence of penetrating damp. Mr Campbell conceded that there had been some mould behind the wallpaper but this had been addressed. Where there were repairs required these had been carried out. The attic bedroom had been mentioned as mouldy and damp but was full of clothes and carpeted.
- 28** Mr Campbell commented on the independent surveyor that had been referred to by the Applicants. He explained that he had arranged for roof specialists and damp and mould specialists to attend the property. An independent surveyor would not have told them anything they didn't already know. There had been damp patches on occasion after rain but never water leaking into the property. Surveys had identified damp in behind plaster and roofing contractors had been called in to look at that. There had been repair after repair and Mr Campbell referred to the evidence he had submitted which showed the actions taken as soon as reasonably practicable.
- 29** Mr Campbell explained that the process had been stressful for the Respondents. He himself had spent 40 years living in rented accommodation and it wasn't always perfect. Tenants had to take some responsibility for managing systems and cleaning things.



## Ms Maxine Card

- 30** Ms Card gave evidence on behalf of the Respondents. She explained that both Martin and Co and the Respondents had been actively trying to resolve the repair issues. There had however been periods when it was difficult to gain access. Inspections had been routinely carried out by Martin and Co and a report was prepared thereafter. It could be seen from those reports that there were clothing and belongings in each room. Ms Barr stated that she had not seen the Applicants physically using every room. However the inspection reports showed the top floor to be fully furnished and it appeared to be in use. Ms Card confirmed that it was simplistic to say that the top floor was a third of the property. The property itself was substantial.
- 31** With regard to the roof tiles Ms Card explained that there had been a dispute with one of the slating contractors because they had failed to tidy up after themselves leaving debris. The photos produced by the Applicants of roof tiles on the ground outside showed some of that debris. It was therefore difficult to say what tiles were there because they had been left by contractors, and what tiles had actually fallen off the roof.
- 32** With regard to the central heating costs, Ms Card confirmed that the repair to the boiler had been done as soon as reasonably practicable. She confirmed that there had been treatment carried out in October 2022 to address some mould patches. Ms Card confirmed that she had been back in the property since the tenancy ended and there was no evidence of mould nor any active leaks. The property had been sitting empty for five months until such time as the Respondents return to Scotland.

## Dr DeKauwe's closing submissions

- 33** Dr DeKauwe made his closing submissions. He explained that the spreadsheet he had submitted with the energy costs was based on estimates. The Applicants knew how to use the heating system perfectly well. The works had not been carried out in a timely manner, and he cited the two years it had taken to fix the roof. He confirmed that the Applicants had taken on the tenancy following a virtual viewing due to restrictions arising from the pandemic and their circumstances. Dr DeKauwe denied that the Applicants had access to hot water when the boiler broke. He confirmed that the AGA was working but it only provided hot water to the kitchen and downstairs sink, and it was not possible for them to wash in the kitchen. The Applicants knew how to work the controls. Dr DeKauwe confirmed that the shower upstairs was not electric, it was gas powered with an electric pump and the middle floor shower had very low pressure.
- 34** Dr DeKauwe stated that the comments from the Respondents were typically inflammatory and designed to cause arguments, such as the suggestion that the Applicants were not carrying out cleaning. There was no evidence for this. Dr DeKauwe explained that just because rooms were furnished did not mean they were being used. Dr DeKauwe also advised that he was confused by the

term “active water leak”. The property was not watertight. Dr DeKauwe confirmed that his family were keen to stay in the property. They liked the area. The upper floor consisted of the attic bedroom, ensuite toilet and exercise room. He considered that to be a third of the house. The house was on five floors but there were mezzanine levels. Dr DeKauwe pointed to the documentary evidence that the Applicants had submitted. He had accepted that on occasion his emails may not have come across well but he had apologised for that.

### Mr Campbell’s closing submissions

- 35** Mr Campbell advised that he didn’t have much to add. The Respondents had done their best to complete every piece of work. There had however been huge disruptions in the supply chain and a relationship breakdown between the parties which had not assisted the process.

### Findings in Fact

- 36** The parties entered into a private residential tenancy agreement which commenced on 26<sup>th</sup> July 2021.
- 37** Clause 20 of the said tenancy agreement states *“The Landlord is responsible for ensuring that the Let Property meets the Repairing Standard. The Landlord must carry out a pre-tenancy check of the Let Property to identify work required to meet the Repairing Standard...and notify the Tenant of any such work. The Landlord also has a duty to repair and maintain the Let Property from the start date of the tenancy and throughout the tenancy. This includes a duty to make good any damage caused by doing this work. On becoming aware of a defect, the Landlord must complete the work within a reasonable time.”*
- 38** The Applicants took up occupation of the property on or around 26<sup>th</sup> July 2021. Prior to taking up occupation the Applicants were advised by the Respondent’s agent Martin and Co that there were works planned to the roof to address water ingress.
- 39** On or around 3 August 2021 a contractor attended the property to address a leak from the piping underneath the bath.
- 40** On or around 4 September 2021 a contractor attended the property to address an issue whereby water was not draining from the shower.
- 41** On 5 October 2021 the Applicants contacted Martin and Co seeking an update on the works to the roof and listing other issues that required attention including blocked guttering, damage to internal decoration and plaster caused by damp, holes in the pantry wall, a loose front door handle, curtains not closing and carpet coming away at the top of the stairs. Martin and Co responded on 7 October 2021 to confirm that a roofing contractor was due to attend the property and the Respondents were aware of the other issues.

- 42** On or around 7 October 2021 a contractor attended the property to carry out various unspecified works.
- 43** On or around 1 November 2021 a contractor attended the property to inspect and repair the washing machine.
- 44** On 2 November 2021 Martin and Co emailed the Applicants to seek an update on whether the works had been completed. The Applicants responded in the negative and included a supplementary list of issues including a broken toilet door handle, a toilet roll holder which had fallen off the wall, a loud noise from the washing machine, a complicated hot water and heating system and a right curtain string which was close to breaking.
- 45** On or around 5 November 2021 a roofing contractor carried out works to the roof including restoring tiles at a skew and cleaning out gutters.
- 46** On or around 8 November 2021 a contractor attended the property to supply and fit new curtains.
- 47** On 2 January 2022 the Applicants emailed Martin and Co to provide an updated list of outstanding issues following the completion of works by the Respondents over the festive break. The Applicants stated that there was damage to internal plasterwork and some swelling, the curtains in the front bedroom had not been fixed nor had the downstairs bathroom door handle, the lock on the downstairs bathroom was failing and the issue with the washing machine was recurring.
- 48** On or around 18 January 2022 a gas engineer carried out the annual safety check on the boiler and heating system.
- 49** On or around 27 January 2022 a contractor attended the property to repair the bathroom door handle and lock.
- 50** On 4 February 2022 the Applicants emailed Martin and Co to confirm that the lock and handle on the bathroom door handle had been fixed. The Applicants further advised that a contractor had attended to inspect the cracks in the plasterwork and had indicated there was damp in the attic rooms and there may be a leak in the bathroom causing the cracks in the hall.
- 51** On or around 14th February 2022 a roofing contractor attended the property and carried out further works to the roof. The works included restoring slates at the main roof and chimney skews, clearing out the front gutter and replacing slates. On 25 February 2022 Martin and Co emailed the Applicants to confirm completion of the works.
- 52** On 9 March 2022 the Applicants emailed Martin and Co to advise that the damp appeared to be worsening in one room. On 11 March 2022 Martin and Co attended the property to carry out an inspection. On 15 March 2022 Martin and Co emailed the Applicants to confirm the issues to be actioned including

the removal of table and chairs from the garden, possible replacement of washing machine which would be kept under review, cosmetic work on the walls, replacement attic cupboard door, further investigation with issues arising from the wall and roof in the attic bathroom and attic dressing room, blocked guttering and treatment of kitchen worktop.

- 53** On or around 31 March 2022 a contractor attended the property to remove the items from the garden.
- 54** On or around 12 May 2022 a contractor attended the property to repair the garden gate lock.
- 55** On or around 16 June 2022 a contractor attended the property to repair the washing machine.
- 56** On 22 June 2022 the Applicants emailed Martin and Co seeking an update on the outstanding issues. On 19 July 2022 Martin and Co emailed the Applicants to confirm that the roofing contractor believed no remedial works were outstanding. Martin and Co agreed that the damp was worsening and that further investigation would be required to address the cause. Martin and Co confirmed that there were delays in sourcing a contractor to carry out some of the decorative works.
- 57** On 21 July 2022 Martin and Co emailed the Applicants to confirm that Envirovent would carry out a survey of the property, that a plumber would attend to fix the shower and that a roofing contractor would come back out to inspect the loose tiles. A plumber attended the property on or around 23 July 2022 to carry out a repair to the shower.
- 58** On 11 August 2022 the Applicants emailed Martin and Co to request instructions on operating the heating and hot water system due to its complexities.
- 59** On 12 August 2022 Martin and Co carried out an inspection of the property. Martin and Co subsequently emailed the Applicants to confirm the list of outstanding issues as loose roof tiles, unsecured wires outside the property, lack of hot water, complex heating and hot water system, loose door handle on downstairs toilet door, toilet roll holder in downstairs toilet which had fallen off and evidence of damp and cracked plasterwork.
- 60** On or around 17 August 2022 Envirovent attended to survey the property. In terms of their report condensation and mould was found in the main bathroom and the attic bedroom. Evidence of water staining was found in a bedroom, hallway and landing and the conservatory. Evidence of water ingress was found in a bedroom and in the ensuite bathroom. Loose tiles were noted on the roof. The report proposed installation of an Envirovent ventilation system in the main bathroom and ensuite, and, as an added measure, the installation of a second Envirovent ventilation system in the loft. Following receipt of the report the Respondents declined to implement the recommendations, having stated that

there were alternative measures that could be undertaken to address the ongoing issues.

- 61** On or around 18 August 2022 Martin and Co obtained authorisation from the Respondents to proceed with works to the roof. The Respondents also provided authorisation for further works to be carried out in respect of other matters that were outstanding.
- 62** On 22 August 2022 the Applicants emailed Martin and Co to confirm that the toilet roll holder and downstairs bathroom door handle had been fixed. The Applicants noted that a roofing contractor would attend to address the loose roof tiles and a painter would be in touch to carry out redecoration. The Applicants queried the remainder of the outstanding works including the loose cabling, blocked guttering, damp, defect with Aga, inability to isolate gas hob, loss of water pressure in the shower and defective bedroom blinds.
- 63** On 24 August 2022 Martin and Co emailed the Applicants to confirm that the roofing contractor would address the loose cable and blocked gutters and the painter would address the decorative repairs. A handyman could attend to fix the blinds.
- 64** On 25 August 2022 a roofing contractor attended the property to inspect the roof. On that same date the Applicants emailed Martin and Co to confirm that the damp was worsening in two bedrooms.
- 65** On 5 September 2022 the Applicants emailed Martin and Co to confirm that the water ingress to the porch was worsening and there was new water staining to the ceiling above the stairs. The Applicants provided a photo showing mould spores in the attic rooms and requested a copy of the Envirovent report. The Applicants stated that they were unable to use the attic floor of the house.
- 66** On 8 September 2022 the Applicants emailed Martin and Co to confirm that the mould was worsening in the attic rooms and wallpaper was coming away from the wall in the bedroom. The wall in the bathroom was also wet to touch.
- 67** On 8 September 2022 the Applicants contacted Martin and Co to confirm that following a visit from an electrician the previous day the electrics had failed again. On or around 9 September 2022 Martin and Co arranged for an electrician to return to the property.
- 68** On or around 14 September 2022 the Applicants contacted Martin and Co to report an ongoing issue with the water pressure. Martin and Co responded by advising that the contractor who had previously attended had found a leaking pipe and required further parts in order to fix this. The contractor returned to the property on or around 20 September 2022.
- 69** On or around 30 September 2022 a contractor attended the property to inspect and repair the washing machine.

- 70** On 23 October 2022 the Applicants emailed Martin and Co to advise that some decorative works had been completed but not all, and a water pipe leak from the bathroom and the loose roof tiles were still outstanding. Martin and Co responded by emailed dated 24 October 2022 to confirm that he had been in touch with the roofing contractor seeking an update and they were due to start works that week. Martin and Co further confirmed that they would instruct a plumber to attend and seek information from the Respondents about further decorative works.
- 71** On 22 November 2022 the Applicants reported to Martin and Co that the boiler was not working. A contractor attended the property that day. On 23 November 2022 the Applicants reported to Martin and Co that the boiler was not fixed and the immersion heater upstairs was also not working. A contractor attended the property that day and noted that the boiler required a replacement part. The boiler was repaired on or around 29 November 2022.
- 72** On or around 23 November 2022 a roofing contractor attended the property and carried out works to the roof including checking over elevations, repairing slates, fixing loose cables and resealing gutters.
- 73** On 7 December 2022 Martin and Co carried out an inspection of the property.
- 74** On or around 10 December 2022 Martin and Co emailed the Applicants to confirm that two roofing contractors would attend the property to complete the outstanding works. On 11 December 2022 the Applicants emailed Martin and Co to confirm that they had been contacted by one roofing contractor who was due to attend the property the next day. The other roofing contractor had also attended the property that morning.
- 75** The Applicants have been refunded the cost of alternative washing facilities and heaters in the sum of £108.99.

### **Reasons for Decision**

- 76** The Tribunal reached its decision taking into account the application paperwork, the documents submitted by both parties and the verbal submissions from the parties at the Case Management Discussions and the hearing. The Tribunal was satisfied that it had all of the available information before it in order to reach a decision on the application.
- 77** The Applicants in this case had also submitted a repairing application under reference FTS/HPC/RP/22/3981. The Tribunal therefore had the findings from the Tribunal's determination in that application before it when considering the present application.
- 78** The Tribunal accepted that there had been periods during the tenancy where the property had not met the Repairing Standard. This was confirmed by the Tribunal's decision in the case FTS/HPC/RP/22/3981 and the Tribunal's

findings in fact. However the Tribunal did not accept that the Respondents had ignored their obligations under Clause 20 of the tenancy agreement. It was clear, based on the evidence produced by the Respondents, that contractors had attended the property on numerous occasions in an attempt to remedy the areas of disrepair. As an example, when the boiler had failed a contractor had attended that same day to inspect the system which ultimately required a replacement part. The Tribunal accepted that it would have taken time to source said part, and that any delay in this regard was out with the control of the Respondents. Whilst the Tribunal did appreciate that the Applicants would have suffered inconvenience as a result of said delay, the Tribunal was unable to conclude that the Applicants had no access to any heating or hot water during the period during which the boiler was inoperable. The Tribunal noted the complex heating and hot water system that was present in the property, with back-up immersion heaters and secondary heat from the AGA, gas fires and portable electric heaters. There was insufficient evidence before the Tribunal that would enable it to make a finding that no heating or hot water source was available during that time.

- 79** The Tribunal noted the Applicants' position in respect of the attic floor, namely that they were unable to use the rooms on that floor during the tenancy as a result of ongoing damp and mould. The Applicant had submitted a number of photographs showing evidence of water staining and petri dishes containing mould spores. However the Tribunal noted the findings from the Tribunal's inspection in February 2023 which did not support this view. The Tribunal was aware that mould spores would be present in normal conditions. The photographs of the petri dishes did not necessarily evidence excessive mould growth in the absence of any suitable comparator. The Tribunal could not therefore conclude that the attic floor was uninhabitable at any specific point during the period of the tenancy.
- 80** The Tribunal concluded that the issues with the roof had not been ignored by the Respondents, with several different contractors having attended to try and source the root of the problem. The Tribunal accepted that there had been delays in carrying out repairs to the roof but it appeared that this was due to the lack of availability of contractors, as opposed to the Respondents who had shown a willingness to address the issue in arranging for said contractors to attend. With regard to the Envirovent report, the Tribunal found it difficult to give significant weight to this, on the basis that the recommendation provided a solution that would be supplied by the company who had carried out the report. The Tribunal considered that it could instead rely on the findings from the Tribunal's own inspection of the property in February 2023 in the absence of any conclusive evidence that would establish the condition of the property prior to that date.
- 81** The Tribunal then considered the various elements of the Applicant's claim. The Applicants sought a refund of costs which they had incurred in purchasing various items and services as a result of the alleged disrepair. The Tribunal noted that they had received a part-refund for some of the costs in respect of the alternative washing facilities and additional heaters. The Tribunal considered that said refund was sufficient to compensate them for the

reasonable costs they had incurred, taking into account the extent of the Respondents' compliance with their obligations under the tenancy agreement.

- 82** The Applicants had also sought to claim for the increased energy costs that they believed were a result of the inefficient heating system. They made reference to comments from various contractors regarding the condition of the boiler and efficiency of the system. There was however no evidence before the Tribunal to establish any fault within the heating system that would cause it to be inefficient. Ultimately, the efficiency of the heating systems is not a matter that falls within the Repairing Standard applicable during the tenancy.
- 83** The Applicants had provided data from OFGEM regarding the energy consumption of a typical house. However the Tribunal accepted based on its own knowledge of the property that this was not a typical five bedroom house. Accordingly the Tribunal could not rely on the OFGEM data as a proper comparison. The high energy consumption could be attributed to various factors such as the construction, size and layout of the property, the type and age of the heating systems, the levels of insulation, the presence of the AGA range cooker, and the occupancy patterns and preferences of the occupants which could vary dependent on lifestyle. The Tribunal considered the Energy Performance Certificate ("EPC") for the property. It was clear that the property was at the lower end of the scale in terms of energy efficiency. However the Tribunal was conscious that this in itself did not amount to a breach of the Repairing Standard. The purpose of the EPC was to alert future occupants to the energy efficiency of a property so that this could be borne in mind when calculating the potential costs of renting a property. The Respondent had in fact confirmed that the EPC had been taken into account in the calculation of the rent.
- 84** The Tribunal was also unable to make any findings that the increased energy costs were a result of excessive ventilation as alleged by the applicants as being required to alleviate damp and mould, or caused by having to use alternative heating for the period when the boiler was unserviceable, based on a lack of evidence before it.
- 85** The Applicants further sought an abatement of rent over the course of the tenancy as a result of the Respondents' alleged failure to comply with their repairing obligations under the terms of the tenancy agreement between the parties. The Tribunal therefore had to consider whether any failure by the Respondents in the particular circumstances of this case was sufficiently serious to merit a finding that rent, either in whole or in part, was not payable throughout the course of the tenancy between the parties.
- 86** Based on the reasons set out above the Tribunal did not consider that an abatement of rent in this case was due. Whilst the Tribunal accepted that the property had not met the Repairing Standard at all times during the term of the tenancy, the Tribunal was satisfied that the Respondents had sought to address the issues and that any failure in that respect was out with their control. The Tribunal was therefore satisfied that the Respondents had complied with their obligations under Clause 20 of the tenancy agreement.



- 87** Furthermore the Tribunal did not consider that any damages in terms of inconvenience were due to be paid by the Respondents on the basis that they had complied with their tenancy obligations. The Tribunal noted the Applicants' submissions regarding the disruption caused by the frequent attendance by contractors and the requirement upon the Applicants to provide said contractors with information from time to time. However the Tribunal did not consider it unreasonable for tenants, as the occupants of a property, to be expected to accommodate contractors and provide information upon request.
- 88** The Tribunal therefore determined to make no order in this case for the reasons set out above.
- 89** The decision of the Tribunal 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.**

# R O'Hare

**29 May 2024**

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**Legal Member/Chair**

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**Date**