



**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/24/0912

**Re: Property at 139, Flat 4, Hutchison Road, Edinburgh, EH14 1PG (“the
Property”)**

Parties:

**Mr Andrew Lorimer and Miss Carolina Camacho, both 4/5 McNeil Street,
Edinburgh, EH11 1JN (“the Applicants”)**

**Mr Paul Willes, care of Clan Gordon Limited, 2 Anderson Place, Edinburgh,
EH6 5NP (“the Respondent”)**

Tribunal Member:

George Clark (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be refused.**

Background

1. By application dated 21 February 2024, the Applicants sought an Order for Payment in respect of a partial abatement of rent for the period of their tenancy of the Property.
2. The Applicant stated that when they moved into the Property on 7 August 2023, they were unaware that the shower leaked into the flat below and that the problem pre-dated their tenancy by a number of years. Due to the faulty shower, the Property did not meet the Repairing Standard. On 24 October 2023, they were instructed not to use the shower and had no access to it between then and the date they departed the Property (30 November 2023). This situation caused them distress and inconvenience. The Respondent had neglected his duty to take reasonable care for the safety of his tenants.
3. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 7 August 2023 at a rent of £1,050 per month. The Applicants also provided copies of email exchanges

between them and the Respondent's letting agents from 29 August 2023 onwards. These emails are summarised in the following six paragraphs.

4. On 29 August 2023, the letting agents advised the Applicants that the owners of the flat below had reported a leak into their property. On 18 October 2023, they updated the Applicants to say they were still waiting for the insurers to grant authorisation, but that they were chasing them daily.
5. On 24 October 2023, they told the Applicants to stop using the shower with immediate effect. They stated that they had been trying to obtain from the insurers the go-ahead for alternative accommodation. Meantime, they had found a local gym, whose bathing facilities the Applicants could use. They said that "I appreciate that this is inconvenient and we are working as quickly as we can to get a longer term solution in place for you to minimise the disruption as much as possible." On the same day, the Applicants confirmed that they agreed with the instruction not to use the shower, but pointed out that there had been seven visits by a plumber/handyman since they moved in. They did not consider the proposal to use gym showers to be an acceptable solution and suggested a 50% reduction in the rent. Mr Lorimer was already a Pure Gym member and amended his membership to be able to use the local gym, and Miss Camacho signed up on 25 October 2023.
6. On 27 October 2023, the letting agents advised the Applicants that the first availability of the insurers' loss adjuster was 1 November. They offered, as a gesture of goodwill, a refund of 25% of the rent for the days on which the Applicants had to make use of alternative bathing facilities, this sum to be refunded once suitable alternative accommodation had been agreed. They added that the delay in getting the loss adjuster to inspect was outwith their control. On the same day, the Applicants agreed to the 25% rent reduction from 24 October 2023 until they were back in the Property with a shower that they could use. The letting agents, on 31 October 2023, responded that the proposal was not a rent reduction, but a gesture of goodwill.
7. On 9 November 2023, the Applicants sought a 25% rent reimbursement from the start of the tenancy, on the ground that the leak appeared to go back to 2021 and had been reported to the letting agents five times since then. They contended that the Respondent had breached the obligation of the tenancy agreement to ensure the Property met the repairing standard at all times and to ensure that the leak was fixed in a reasonable amount of time.
8. On 14 November 2023, the letting agents confirmed that the insurers had approved the works.
9. On 16 November 2023, the Applicants intimated their intention to terminate the tenancy on 30 November 2023.
10. The Applicants also provided the Tribunal with a screenshot of a message from the downstairs neighbour in which he said he reported water ingress on 28 April and 7 November 2021, 22 January 2022, 19 March, 1 June and 19

August 2023, as well as several dates after the reported leak on 19 August 2023 which gave rise to the present application.

11. On 12 June 2024, the Tribunal advised the parties of the date and time of a Case Management Discussion and the Respondents were invited to make written representations by 3 July 2024.
12. On 1 July 2024, the Respondent's letting agents provided written submissions on his behalf. They stated that he had spent £4,500 on upgrading the Property before the Applicants moved in. They provided a timeline showing the first report of the leak on 24 August 2023, with details of temporary repairs, which allowed the Applicants to use the shower whilst the letting agents awaited the go-ahead from the insurers. On 24 October 2023, the Applicants were instructed to stop using the shower, as no further options remained to stop the ingress to the flat below. Gym membership and a 25% refund of rent were offered. It took a long time to obtain the necessary authorisation from the insurers. Once the scope of works was agreed, the insurers told them that the anticipated 3-4 weeks' timescale was too short for them to propose alternative accommodation options. Mr Lorimer advised the insurers that he owned a property that was currently vacant, but the insurers were wary that he might be "profiting from the loss". The Respondent could have served notice on the Applicants on the grounds that refurbishment was required, but he preferred to work with them, so that they did not have to find a new property in an extremely busy and competitive rental market. The Respondent did not consider the Applicants' request to be reasonable. A 100% rent refund would not be proportionate, as the rest of the Property, namely the living room, two bedrooms, kitchen, toilet and sink, were still usable.
13. The Respondent also provided a written statement that he had only owned the Property for one year. The previous problems with the shower were addressed by a professional and, so far as he knew, were resolved. When water ingress to the flat below was finally found, a repair was initiated as soon as was possible. Delays did happen, but they were not the fault of the Respondent or his letting agents. They were constantly trying to move matters along with emails and phone calls several times a week.

Case Management Discussion

14. A Case Management Discussion was held by means of a telephone conference call on the morning of 17 July 2024. The Parties were all present and the Respondent was assisted by Mr Mike Brogan of Clan Gordon, his letting agents.
15. The Applicants confirmed that they had no knowledge of any problem until they heard from the letting agents on 24 August 2023. The tenancy began on 7 August 2023, but they did not move in until the following week. A plumber had re-sealed the shower and filled some holes higher up. He identified moisture beneath the shower tray and told the Applicants he was carrying out a stop-gap repair. Later, the handyman sealed the shower again. He took off

some tiles and carried out re-grouting. They accepted that they had full use of the remainder for the Property throughout the tenancy, but had no access to the shower after 24 October 2023.

16. The Respondent's letting agents told the Tribunal that an all-trades contractor had been instructed as the plumber had indicated that the tiling might be an issue. The plumber had recommended repairs, which had been tried, but it became apparent that the smaller repairs were not going to be adequate and that the shower would have to be replaced.
17. At the conclusion of the Case Management Discussion, the Parties confirmed that they were content for the Tribunal to determine the application on the basis of their written and oral representations and that they did not consider a Hearing to be necessary.

Reasons for Decision

18. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation it required to enable it to decide the application without a Hearing.
19. The Tribunal considered carefully all the evidence, written and oral, before it.
20. The Tribunal did not consider the fact that there may have been problems of water ingress to the flat beneath the Property prior to the commencement of the present tenancy to be relevant to the application. There might be an issue between the Respondent and the downstairs neighbour in this regard, but the question of whether the Property met the repairing standard because previous leaks from the shower had not been fully addressed was not a matter on which the Tribunal could make a finding. Any such finding would have been based on speculation. The Applicants could have made an application, under Section 22 of the Housing (Scotland) Act 2006, alleging failure to comply with the requirement that the Property meets the repairing standard, at any time during the tenancy, but they had not done so. In the absence of a determination following a Section 22 application, the Tribunal could not decide that the Respondent was in breach of his obligation under the Tenancy Agreement in that regard.
21. The Tribunal had to consider, therefore, whether the Respondent had failed to comply with any obligation under the Tenancy Agreement to carry out repairs within a reasonable timescale. Clause 18 of the Tenancy Agreement states that "The Landlord is responsible for carrying out necessary repairs as soon as is reasonably practicable after having been notified of the need to do so".
22. The Parties were in agreement that the Applicants had full use of the shower until 24 October 2023, apart from a small number of days following the

temporary repairs when they had to wait for sealant or grouting to dry. The Tribunal's view was that for those few days following repairs, no refund of rent should be ordered. The Respondent had carried out repair work and it was reasonable to expect the Applicants to refrain from using the shower for a few odd days when such drying out was required. They had not, however, had any use of the shower at all from 24 October 2023 until 30 November 2023 and the Tribunal's view was that this justified an expectation of a rent refund.

23. The Tribunal noted that the Respondent had offered a 25% refund and had also offered to pay for gym memberships to enable the Applicants to have access to bathing facilities whilst the work was being carried out. In the event, the Applicants gave notice and left the Property before it started and the Respondent accepted a period of notice of less than the 28 days provided for in Clause 24 of the Tenancy Agreement.
24. The view of the Tribunal was that the Applicants' request for a 25% reduction in rent from the start of the tenancy and 100% from 24 October 2023 until the termination of the tenancy was not proportionate. They had full use of the shower, apart from a small number of interruptions until 24 October 2024, so were not entitled to any refund for the period prior to that date. It appeared to the Tribunal that the Respondent had at no time been unwilling to carry out whatever repairs were required and, when it became apparent that major work was needed, the earlier repairs having been unsuccessful, it was reasonable to expect him to involve his insurers. There was no evidence to suggest that the Landlord or his letting agents were responsible for the delays which followed, and the Tribunal held that it was not satisfied that the Respondent had not breached Clause 18 of the Tenancy Agreement.
25. The Tribunal decided that the Respondent's offer of a 25% refund of rent from 24 October 2023 to 30 November 2023 was fair and reasonable in all the circumstances. The Applicants had continued to live in the Property throughout that period and had full use of the living room, two bedrooms, kitchen, toilet and wash hand basin. In addition, the Respondent had offered to pay for their use of a gym facility which, whilst not ideal, was a reasonable offer to make in circumstances where it appeared that a temporary move to alternative accommodation was not practicable. The Tribunal decided, therefore, that the application for a 100% refund of rent for that period should be refused.
26. The Tribunal decided to delay issuing its determination pending confirmation from the Respondent that the 25% refund of rent had been made and from the Applicants that it had been received. Shortly after the conclusion of the Case Management Discussion, the Respondent's letting agents confirmed that the refund had not yet been made. They said that they had requested bank details for the Applicants on 31 October 2023 and apologised for not having followed up when they were not provided. They copied the email to the Applicants and requested bank details to enable them to arrange a transfer. They calculated the sum due as £327.95, being 25% of the rent from 24

October 2023 to 30 November 2023. On 19 July 2024, the Applicants confirmed receipt of a bank transfer in the sum of £327.95.

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.

George Clark

Legal Member/Chair

22 July 2024

Date