



**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/23/2517

Property : 2 Ben Vorlich Drive, Glasgow G53 7PF (“Property”)

Parties:

Nusrat Ahmad, 69 Waukglen Avenue, Glasgow G53 7YL (“Applicant”)

**Eviction Hotline, 219 Paisely Road West, Glasgow G51 1NE (“Applicant’s
Representative”)**

Lucy Greaves, 2 Ben Vorlich Drive, Glasgow G53 7PF (“Respondent”)

**Govan Law Centre, 18-20 Orkney Street, Glasgow G51 2BX (“Respondent’s
Representative”)**

Tribunal Members:

Joan Devine (Legal Member) Gerard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
 (“Tribunal”) determined that an order for payment of £4,952 should be made.**

Background

1. The Applicant sought an order for payment of £5,975. The Applicant had lodged Form F along with supporting documents. Case Management Discussions (“CMDs”) took place before the Tribunal on 29 February and 5 June 2024. Reference is made to the note of the CMDs.
2. At the CMD on 5 June 2024 the Tribunal noted that the following was agreed :
 - The Applicant was landlord and the Respondent was tenant in terms of a short assured tenancy which commenced on 1 July 2014.
 - With effect from on or about 1 July 2022 the rent was increased to £800 per month.

- The outstanding rent for the year 2022 was £800 which fell due in December 2022.
- The Respondent paid no rent in 2023 aside from a payment of £250 on 23 January 2023.
- The Respondent did not pay the rent due for January, February and March 2024.
- The Respondent paid the rent due in April and May 2024.
- The claim by the Applicant for payment of late payment charges totalling £1025 was withdrawn.

The Tribunal noted that the following was in dispute :

- The extent to which the Respondent is entitled to withhold rent as a result of the Applicant's failure to comply with their obligation to ensure the Property met the repairing standard.

Documents

3. The documents produced by the Applicant were :

- statement of rent arrears
- tenancy agreement which commenced on 1 July 2014
- copy text messages between the Parties
- screenshots showing payment of £800 by the Respondent on 16 November 2022, 17 October 2022 and 20 September 2022
- copy letter from the Applicant to the Respondent regarding a rent increase to £700 dated 18 September 2018
- screenshot of a text message dated 27 September 2019 referring to a rent increase to £750
- an updated statement of rent arrears as at 1 April 2024
- screenshots of text messages numbered pages 1 to 32

4. The documents produced by the Respondent were :

- Written representation lodged on 31 May 2024

- copy text messages on pages 1 to 12
- photographs on pages 1 to 12

Hearing

5. A Hearing took place at Glasgow Tribunals Centre on 15 November 2024. The Applicant was not in attendance and was represented by Mahmood Ullah of the Applicant's Representative. The Respondent was in attendance and was represented by Sophie Berry of the Respondent's Representative. Thomas Murphy, the Respondent's partner, was also in attendance.
6. Mr Ullah told the Tribunal that the Applicant was not in attendance as she had recently suffered a family bereavement. The Tribunal asked if the Applicant sought a postponement of the Hearing. Mr Ullah said that she did not and that she wished the hearing to proceed. The Tribunal asked Mr Ullah if he was content for Mr Murphy to remain in attendance or whether he wished him to attend the Hearing only when giving evidence. Mr Ullah said he was content for Mr Murphy to remain at the Hearing throughout.
7. Mr Ullah said that the Applicant is struggling financially and if the outstanding rent is not paid, she will need to sell the Property. He said that she owns 4 rental properties all of which are subject to mortgages. He said that the Applicant was an "accidental" landlord who had acquired the Property following her divorce. He said that the Property was built around 1996.
8. The Tribunal noted that an updated statement of arrears as at 1 April 2024 had been lodged before the CMD on 5 June 2024 and that once late payment charges were removed that indicated arrears of £12,600. Mr Ullah confirmed that was the case and that was the sum claimed. Ms Berry said that she had no issue with the sum claimed being amended and that the figure of £12,600 was agreed. The Tribunal noted that the issue to be resolved was whether the Respondent was entitled to an abatement of rent equivalent to the sum claimed.
9. Ms Greaves told the Tribunal that she lives in the Property with her partner, Thomas Murphy, and 3 children. She said that the Property has 3 bedrooms, a living / dining room, a kitchen, 1 upstairs bathroom and a garage which is attached to the Property. She said that she had lived in the Property since July 2014.
10. The Tribunal asked Ms Berry to take the Tribunal through each of the items of repair in her written representation and noted that comment would be sought from Mr Ullah in respect of each item as the discussion progressed.

11. Ms Berry said that certain repairs had been resolved, specifically the leak in the toilet, the leak in the bath, the leak in the bathroom sink, the leak in the kitchen ceiling and the garden fence. Ms Berry said that the leak in the toilet, bath and bathroom sink were first reported in 2018. She said the leak was fixed by Mr Murphy in January 2022 and the damage caused by the leak to the kitchen ceiling was repaired on the instruction of the Applicant in May 2023. Mr Murphy told the Tribunal that he is a joiner. He said that the sink and the toilet were on the same run of pipework and that the leak was coming from the outlet pipe at the junction with the downpipe. Ms Greaves told the Tribunal that the bathroom could be used but the bathroom was above the kitchen and the leak caused brown spots to become evident on the kitchen ceiling. She said that Mr Murphy cut a small hole in the kitchen ceiling to identify the cause of the leak. She said that he fixed the leak in January 2022. Ms Greaves said that the hole in the kitchen ceiling was not re-plastered and painted until May 2023 on the instruction of the Applicant. Ms Berry noted that the leak in the bathroom, which impacted the kitchen ceiling, was first notified in a text message dated 13 April 2018 and was referred to in a subsequent text messages including one dated 19 September 2018.
12. The Tribunal asked Ms Berry about the impact on the Respondent of the repairs not being carried in respect of the bath, toilet and sink. Ms Greaves said that she did not like having family and friends to visit the Property as there was a hole in the kitchen ceiling and the bathroom was such a mess. She said at one point she had to isolate the water at the sink. She said that the family had to continue to use the bathroom as there is only 1 bathroom in the Property. She said the leaks in the bathroom had a knock on effect in the kitchen. She said she was concerned the ceiling would come down. She said that there were no inspections of the Property carried out by or on behalf of the Applicant between 2018 and 2022 or after Mr Murphy repaired the leak in January 2022. She said that the local authority did inspect the Property in March 2023 and that resulted in the Applicant sending someone (she could not recall the name) in May 2023 to plaster and paint the ceiling in the kitchen.
13. As regards the garden fence, the Tribunal noted the photograph lodged. Ms Greaves said that the fence had come away from the wall to which it was fixed. She said her concern was that it could be blown down entirely by a strong wind. Ms Berry said that the need to fix the fence was notified to the Applicant in May 2024 and that it had been fixed around 6 weeks before the Hearing.
14. The Tribunal asked Mr Ullah about the leak from the bathroom and the garden fence. He said that the Applicant did not dispute anything that the Respondent said about the need for and reporting of the need for repairs. He said the Applicant agreed that repairs needed done.

15. As regards the guttering, Ms Berry said that this issue was also reported on 19 September 2018. She said the need for repairs to the gutters was still outstanding. She said that the issue related to gutters on the garage and at the back of the Property. Ms Greaves said that water seemed to be coming from the gutter above the garage which then runs down the side of the Property onto the driveway. She thought this may have caused water ingress to one of the bedrooms. She said she had noted black mould spots in the bedroom which she had cleaned. She said that the gutter to the back of the Property caused a large puddle to form in the garden. She said that the problem with the gutters did not affect the inside of the Property.
16. As regards the gutters Mr Ullah said that he was not in a position to contradict anything that Ms Greaves had said.
17. As regards roof tiles, Ms Greaves said that she had her window cleaner clear the gutters and he reported to her that there were cracked roof tiles. She said she reported this to the Applicant. She said that the cracked roof tiles were not causing any issue as regards the Respondent living in the Property. Ms Greaves said she was not aware of any water penetration due to the cracked roof tiles. Ms Berry said that this issue was reported to the Applicant on 19 September 2018.
18. As regards the roof tiles, Mr Ullah said that he did not dispute anything that Ms Greaves and Ms Berry had said.
19. As regards the garage door, Ms Greaves said that this issue was reported in 2015 but she no longer had the copy text messages. Mr Murphy said that the door had not been operational since they had moved into the Property. Ms Greaves said that Mr Murphy has a van which he uses for work and that it had been broken into 3 times. She said it would have been helpful if it could have been put in the garage. Mr Murphy said there is a back door into the garage which means the garage can be accessed for storage.
20. As regards the garage door, Mr Ullah said that he did not dispute anything that Ms Greaves had said.
21. As regards the back and front doors to the Property, Ms Greaves said that the issue was the same for both doors. She said you can see daylight where the door meets the door frame. The Tribunal noted the photograph lodged. Ms Greaves said that the photograph is of the back door but the same issue arises for the front door. Ms Greaves said that there is a significant draft through the gap and that the Property is freezing. She said she needs to have the heating on all the time and heating costs have increased. She said that the need for this

repair was reported to the Applicant at least in 2018. She said that in May 2023 the Applicant had a tradesman attend the Property. She said he looked at the doors and fitted a draft excluder. She said it fell off within 2 days. Mr Murphy told the Tribunal that the doors are metal clad with glass panels. He said the draft comes from the gap between the door and the frame and not from the glass panels. Mr Murphy said that the doors need to be replaced.

22. As regards the front and back door, Mr Ullah said that he did not dispute anything that Ms Greaves had said.

23. As regards the windows in the Property, Mr Murphy said that the mastic on every window has perished. Ms Greaves said that when the tradesman attended the Property in May 2023 he fitted a draft excluder to the window in the living room. She said that had remained in place. She said she was not sure if draft excluders were fitted to any other windows. Mr Murphy said that the window in the dining area of the living / dining room does not open and has not opened since the Respondent took up occupation of the Property. He said this was a fire risk. Ms Greaves said that there was condensation in the double glazing unit in 1 bedroom and the dining room window. Mr Murphy said that the double glazing units had failed.

24. As regards the windows, Mr Ullah said that he did not dispute anything that Ms Greaves had said.

25. The Tribunal asked Ms Berry if the Respondent had applied for a repairing standard enforcement order. Ms Berry said that had been done in the past few days.

26. The Tribunal asked whether rent withheld had been placed in a separate account. Ms Greaves said that she had intended to do that and had put some money away but then the covid pandemic happened and she had to use the money for other expenses.

27. The Tribunal invited Ms Berry to make a submission as regards why any abatement of rent should be equivalent to the sum claimed. Ms Berry said that given the length of time the repairs had been outstanding the abatement of rent should be £12,600. She said the significant increase in heating costs should be taken into account. Ms Berry invited the Tribunal to dismiss the application as the rent is currently being paid on a monthly basis. Alternatively Ms Berry asked the Tribunal to delay determination of the application until the outcome of the application for a RSEO was known.

28. The Tribunal invited Mr Ullah to make a submission summarising the Applicant's position. Mr Ullah said that if the rent had been paid on time the

repairs may have been done. He confirmed that the Applicant was aware of her obligations regarding maintenance of the Property in terms of the Housing (Scotland) Act 2006 (the "Act"). Mr Ullah submitted that the outstanding rent was due in its entirety. He said that the Applicant's Representative was going to take over management of the Property but the Respondent would not sign a new tenancy agreement. He said the Applicant would have carried out the repairs if a new tenancy agreement had been signed. Mr Ullah said that he was sympathetic to the Respondent living in a property that was in need of repair but in his view it was unfair for the rent to be withheld.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement which commenced on 1 July 2014 ("Tenancy Agreement").
2. In terms of the Tenancy agreement the rent was £650 per month.
3. The rent was increased to £700 per month in September 2018, to £750 per month in September 2019 and £800 per month in May 2022.
4. The Respondent failed to pay the rent of £800 which fell due on 12 December 2022.
5. The Respondent failed to pay the rent of £800 per month for the period 16 February 2023 to 1 March 2024. The unpaid amount was £11,750.
6. The Respondent failed to pay in full the rent of £800 due on 1 April 2024. The unpaid amount was £50.
7. The total rent outstanding and due by the Respondent to the Applicant is £12,600.
8. The Respondent reported to the Applicant the need to carry out repairs to deal with a leak in the bathroom sink, the bath and the toilet which impacted the ceiling in the kitchen, on 13 April 2018.
9. Thomas Murphy fixed the leaks in the bathroom in January 2022.
10. On the instruction of the Applicant, the kitchen ceiling was re-plastered and painted in May 2023.
11. The Respondent reported to the Applicant the need to carry out repairs to the garden fence on 8 May 2024.

12. On the instruction of the Applicant, the garden fence was repaired in October 2024.
13. The Respondent reported to the Applicant the need to carry out repairs to guttering, roof tiles and windows on 19 September 2018.
14. No repairs have been undertaken in respect of guttering, roof tiles and windows.
15. The Respondent reported to the Applicant the need to carry out repairs to the front and back door of the Property at some point in 2018.
16. A temporary repair was carried out to the front and back door of the Property in May 2023 which was ineffective. No further repairs have been undertaken in respect of the front and back door of the Property.
17. The Respondent reported to the Applicant that the garage door was not operational.
18. No repairs have been undertaken in respect of the garage door.
19. The Respondent's use and enjoyment of the Property has been negatively impacted as a result of the failure by the Applicant to instruct necessary repairs at the Property.

Findings in Fact and Law

The Tribunal made the following findings in fact and law:

1. The Applicant failed to comply with her obligations under the Act to ensure that the Property meets the repairing standard at all times during the tenancy.
2. The Respondent is entitled to an abatement of rent in respect of the failure by the Applicant to ensure that the Property meets the repairing standard at all times in the sum of £??.
3. A balance of £?? is due by the Respondent to the Applicant in respect of outstanding rent.

Reasons for the Decision

29. In terms of the Tenancy agreement the Applicant undertook to keep the Property wind and watertight and in a reasonable state of repair in accordance with the Act. In terms of the Tenancy Agreement the Respondent undertook to keep the interior of the Property in good tenable condition and not to damage the Property. There was nothing in the Tenancy Agreement which prohibited the retention of rent.

30. The legislation which governs a landlord's obligation to repair is the Act. Section 12 of the Act provides that the repairing standard applies to any house let for human habitation. Section 13 sets out the detail of the repairing standard, including the obligation to keep the house wind and watertight and to ensure that the installations for the supply of water are in a reasonable state of repair and in proper working order. Section 14 provides that a landlord's duty is to ensure that the house meets the repairing standard at the start of the tenancy and at all times during the tenancy. It provides that the duty to maintain the house at all times during the tenancy applies only where the tenant notifies the landlord or the landlord otherwise becomes aware that work requires to be carried out for the purposes of complying with the repairing standard. Section 14 goes on to state that the landlord should carry out the required works within a reasonable time of the landlord being notified of the need to carry out repairs.
31. The Respondent gave evidence that she had notified to the Applicant the need for repairs to be carried out in respect of leaks in the bathroom. A text message dated 13 April 2018 was lodged evidencing this. The Respondent gave evidence that she had notified to the Applicant the need for repairs to be carried out in respect a garden fence. A text message dated 8 May 2024 was lodged evidencing this. The evidence of The Respondent and Mr Murphy was that the leaks were fixed by Mr Murphy in January 2022 and that the kitchen ceiling, which had been impacted by the leaks, was repaired in May 2023. The evidence of the Respondent was that the garden fence had been fixed at some point in October 2024. None of this evidence was disputed on behalf of the Applicant. Whilst the repair of the garden fence was dealt with within a 5 month period, the leaks in the bathroom were outstanding for nearly 4 years and even then, the leak was not attended to by the Applicant. The leaks were fixed by Mr Murphy. The damage to the kitchen ceiling was outstanding for a further 16 months. Mr Ullah told the Tribunal that repairs may have been done if the rent had been paid. The rent statement lodged did not go back as far as April 2018. The statement lodged showed the position from 1 August 2020 and showed that the rent was paid throughout 2020, 2021 and 2022 with the first rental payment being missed on 1 December 2022. It was evident that the rent was being paid during the majority of the time that the bathroom repairs were outstanding.
32. The Respondent gave evidence that she had notified to the Applicant the need for repairs to be carried out in respect of guttering, roof tiles and windows. A text message dated 19 September 2018 was lodged evidencing this. It was also her evidence that the need for repairs to the front and back doors was notified to the Applicant in 2018 although a specific date was not identified and no supporting text message was lodged. The Respondent's evidence was that the

repairs remained outstanding. None of this evidence was disputed on behalf of the Applicant. As noted above, the rent was paid for a significant period whilst the repairs were outstanding.

33. The Respondent gave evidence that she had notified to the Applicant the need for repairs to be carried out to the garage door in 2015. The Respondent's evidence was that the need for repair remains outstanding. No documentary evidence was lodged in support of this but this evidence was not disputed on behalf of the Applicant. Again, the rent was paid for a significant period whilst this repair was outstanding.
34. Ms Berry invited the Tribunal to delay making a decision in this case until the outcome of the application for a repairing standard enforcement order was known. As the need for repairs and the failure to carry them out was not disputed on behalf of the Applicant, there seemed to the Tribunal to be no merit in delaying the decision.
35. Tenants who notify landlords of the need for repairs in order to ensure the repairing standard is met at a property have various rights in the event of a failure by the landlord to meet the required standards. One remedy is to claim an abatement of rent as the Respondent has done.
36. The leading authority on abatement is the opinion of Lord President Inglis in *Muir v McIntyre* 1887 14 R 470 at page 472 where he said "*...it is quite settled in law that an abatement is to be allowed if a tenant loses the beneficial enjoyment of any part of the subject let to him either through the fault of the landlord or through some unforeseen calamity which the tenant was not able to prevent.*" This opinion is affirmed in *Renfrew District Council v Gray* 1987 SLT (Sh Ct) 70, where Sheriff Principal Caplan said that abatement is based on the fact that the tenant should not pay for rights he never enjoyed.
37. Mr Ullah referred to the Applicant being an "accidental" landlord. The Tribunal notes however that title to the Property has been in the name of the Applicant since 2 August 2013 and that she is named as the landlord on the Tenancy Agreement which commenced on 1 July 2014. Mr Ullah told the Tribunal that the Applicant was aware of her obligations under the Act to maintain the Property in an appropriate state of repair. He said that the repairs may have been done if the rent had been paid timeously and he said that they would have been done if the Respondent had signed a new tenancy agreement. The rent statement lodged indicated that the rent was paid timeously for many years after the need for repairs was notified to the Applicant. In any event, failure to pay rent or to sign a new tenancy agreement does not excuse a landlord from

their obligations under the Act to ensure a let property meets the repairing standard.

38. When abatement is being claimed, consideration needs to be given to the extent and the duration over which the Respondent was denied beneficial enjoyment of part of the Property. In assessing what would be a reasonable abatement the Tribunal requires to take into account the overall inconvenience which the Respondent had to suffer. It was apparent from the evidence that aside from a short period when the water supply to the bathroom had to be shut off, at no time was any part of the Property incapable of being used. It was clear that inconvenience was suffered as a result of the leaks in the bathroom and the enjoyment of the Property has been negatively impacted by the failure to repair the doors which results in significant drafts in the Property. The inability to use the garage to store a vehicle has meant that the garage cannot be used for its intended function although access for storage is available through a back door. The repair of the garden fence was attended to within some 5 months and therefore caused less inconvenience. The Tribunal did not consider that the need for repairs to roof tiles and windows negatively impacted the Respondent's use and enjoyment of the Property. The Tribunal took a similar view as regards the issue with the guttering. There was a suggestion that the defect in the gutters caused damp in a bedroom but there was insufficient evidence before the Tribunal to allow the Tribunal to determine that the defect in the gutters caused damp in the Property.
39. As regards the leaks in the bathroom which impacted the kitchen the Tribunal considered that an abatement equivalent to 10% of the rent due for the period the issue was outstanding was appropriate. The need for repairs was first notified on 13 April 2018. It would have been reasonable for the necessary works to have been carried out within 8 weeks. The repair was not completed until May 2023. The Tribunal therefore considered that the rent should be abated for the period June 2018 to May 2023 which is 60 months. For 3 of those months the rent was £650 which produces an abatement of £195. For 12 of those months the rent was £700 which produces an abatement of £840. For 32 of those months the rent was £750 which produces an abatement of £2400. For 13 of those months the rent was £800 which produces an abatement of £1040. The total abatement is £4475.
40. As regards the front and back doors, the Tribunal considered that an abatement equivalent to 3% of the rent due for the period the issue was outstanding was appropriate. The need for repairs was first notified at some point in 2018. It would have been reasonable for the necessary works to have been carried out within 8 weeks. The repair has still not been carried out. As no specific date in 2018 was identified as the date of notification the Tribunal is unable to make a

precise calculation. In order to arrive at a figure the Tribunal takes January 2019 as the date from which the repair should have been completed. The Tribunal therefore considered that the rent should be abated for the period January 2019 to November 2024 which is 71 months. For 9 of those months the rent was £700 which produces an abatement of £189. For 32 of those months the rent was £750 which produces an abatement of £720. For 30 of those months the rent was £800 which produces an abatement of £720. The total abatement is £1629.

41. As regards the garage door the Tribunal considered that an abatement equivalent to 2% of the rent due for the period the issue was outstanding was appropriate. The need for repairs was first notified at some point in 2015. Again, it would have been reasonable for the necessary works to have been carried out within 8 weeks. The repair has still not been carried out. As no specific date in 2015 was identified as the date of notification the Tribunal is unable to make a precise calculation. In order to arrive at a figure the Tribunal takes January 2016 as the date from which the repair should have been completed. The Tribunal therefore considered that the rent should be abated for the period January 2016 to November 2024 which is 107 months. For 32 of those months the rent was £650 which produces an abatement of £416. For 12 of those months the rent was £700 which produces an abatement of £168. For 32 of those months the rent was £750 which produces an abatement of £480. For 30 of those months the rent was £800 which produces an abatement of £480. The total abatement is £1544.

42. The rent admittedly due is £12,600. The Tribunal determined that the rent due should be abated by a total of £7,648 which leaves a balance due of £4,952.

Decision

43. The Tribunal grants an order for payment of £4,952.

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.

J.Devine

Legal Member

Date: 18 November 2024