



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71 of the Private Housing
Tenancies (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/24/1732

**Re: Property at 46/8 Broughton Road, Edinburgh, United Kingdom, EH7 4EE
("the Property")**

Parties:

**Mr Adam McIlroy, Miss Camilla Giannoni, 59/5 Caledonian Crescent,
Edinburgh, United Kingdom, EH11 2AT ("the Applicant")**

**Mr Gary Slymand, 159 James Young Avenue, Uphall Station Village,
Livingston, EH54 5FE ("the Respondent")**

Tribunal Members:

Ms H Forbes (Legal Member) and Mr A Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order for payment should be granted in favour of
the Applicants in the sum of £924.30.**

Background

1. This is a Rule 111 application whereby the Applicants are seeking a payment order in the sum of £2500, in respect of issues that arose during a private residential tenancy between the parties. Partial collapse of the living room ceiling in the Property led to the Applicants having to vacate the Property. The sum sought is broken down as follows:
 - (i) Travel expenses - £311.22
 - (ii) Asbestos test - £108
 - (iii) Rent abatement August - £833.77
 - (iv) Rent abatement September - £499.26
 - (v) Compensation for stress - £747.75
2. The Applicant representative lodged a copy of a private residential tenancy agreement between the parties which commenced on 31st October 2022 with

a monthly rent of £925, photographs, correspondence between the parties, a fibre identification certificate, and travel tickets.

3. By emails dated 7th and 11th October 2024, the Respondent's representative made written representations and lodged productions.
4. By email dated 10th October 2024, the Applicants lodged written representations.
5. A Case Management Discussion ("CMD") took place by telephone conference on 14th October 2024. The application was continued to a hearing.
6. By email dated 13th February 2025, the Respondent's representative lodged further written representations.

The Hearing

7. A hearing took place by telephone conference on 26th February 2025. The Applicants were in attendance. The Respondent was in attendance and supported by his partner. The Respondent was represented by Mr Urquhart, DJ Alexander.

Preliminary Matters

8. The Tribunal referred to the Respondent's representations of 13th February 2025, which included an offer to the Applicants in the sum of £684, broken down as follows:
 - (i) Rent abatement – 12 days - £364
 - (ii) Asbestos test - £108
 - (iii) Disruption during works – 7 days - £212
9. Parties confirmed the offer to the Applicants had been declined. The Applicants said they had lost the appetite for discussion and may have considered the offer if made at an earlier stage. The Applicants confirmed they were certain they wished to proceed to have the matter determined by the Tribunal and did not wish further time for discussion on settlement.
10. Documents to be referred to at the hearing were confirmed as follows:
 - (i) Case file – 182 pages
 - (ii) Respondent's written representations 7th October 2024– 41 pages
 - (iii) Respondent's written representations 11th October 2024 – 5 pages
 - (iv) Respondent's written representations 13th February 2025 – 6 pages

The Applicants' position

11. The Applicants explained the background to the application. A damp stain was seen on the living room ceiling on 24th July 2023 by Mr McIlroy. Ms

Giannoni was out of the country at the time. The stain was reported to DJ Alexander ("the letting agent"). The letting agent told Mr McIlroy to leave the stain to dry out and redecoration would then be arranged.

12. Three days later, Mr McIlroy saw a mouse climbing the bedroom curtains. The letting agent took eight days to arrange a visit by pest control, which was arranged for 7th August 2023.
13. On 4th August 2023, part of the living room ceiling collapsed as shown in photographs on pages 144 to 147 of the case file and page 17/41 of the Respondent's productions. There had not been a previous issue with the ceiling. There was a pungent smell of damp and thick dust. There was no door between the living room and the kitchen, so the kitchen was also affected. There were no windows in the kitchen.
14. Mr McIlroy was working on his MA thesis and felt he could not stay in the Property. It was not possible to stay with friends locally. Due to the Edinburgh Fringe taking place, alternative accommodation would have been expensive and difficult to find. There was no option to stay in Edinburgh, so, on 4th August 2023, Mr McIlroy caught the train to Aberdeen to stay with his parents, in order to continue working on his thesis.
15. The living room ceiling was patched and the rubble cleared on 15th August 2023. The Applicants understood that insurance issues contributed to the delay. Throughout this period, in discussions with the letting agent, which mostly took place by telephone, the Applicants were informed that the Respondent considered the Property to be habitable. No rent abatement was to be offered and no reimbursement for alternative accommodation.
16. The Applicants were concerned there may be asbestos in the ceiling, as the building was built pre-1999. The possible presence of asbestos also led the Applicants to consider the Property was not habitable. Mr McIlroy said he was assured over and over by the letting agent that there was no asbestos present, and the Respondent was not willing to have a test carried out. The letting agent said a test would cost £600 or £700. The Applicants were not reassured by the letting agent's advice, having taken their advice on the matter of the ceiling, which advice had turned out to be incorrect. Mr McIlroy informed the letting agent the test could be carried out for £90 plus VAT, but the Respondent refused to pay for the test. The Applicants had the test carried out and paid for it. They informed the letting agent by email dated 10th August 2023 (p154/182) that the test was to be carried out, suggesting they wait until they had the result before contractors attended to repair the ceiling. There was no response to this email, but the contractors delayed starting the work. A certificate was issued on 14th August 2023 (p155/182) showing no asbestos fibres in the sample tested. The ceiling was patched temporarily on 15th August 2023 (p21/41).
17. Ms Giannoni returned to Edinburgh on 12th August 2023. Mr McIlroy returned from Aberdeen at that time. The Applicants stayed in a friend's property in

Edinburgh until 19th August 2023, before both travelled to Aberdeen. Ms Giannoni said no support was offered by the Respondent or the letting agent in finding alternative accommodation. They were fortunate to have the use of the friend's property as Ms Giannoni could not have commuted from Aberdeen to Edinburgh for her work.

18. The Applicants had arranged to travel to Canada for a three-week holiday on 23rd August 2023. As the full repair to the ceiling was to be carried out while they were away, they felt they had to take their valuable items from the Property to Aberdeen to keep them safe. They travelled back from Aberdeen on 22nd August 2023. They had been told they would not be able to remain in the Property while the repair was carried out. The Applicants were assured cleaning works would be carried out after the repair.
19. Ms Giannoni returned to the Property on 14th September 2023. She found the Property had not been cleaned properly. Issues included the table being covered in dust and plaster. There were plumes of dust from the sofa, and footprints in dust on the floor (pp148-153/182). The amount of dust meant it was difficult to breathe in the Property. She sent videos to the letting agent. Cleaners attended at the Property on 16th September 2023. It took forty days from reporting the issue to the matter being concluded.
20. The Applicants said they had to find their own accommodation, the matter was on their minds when in Canada, they received repeated bad advice, and no one was considering their best interests or taking responsibility, all of which caused additional stress.
21. The Applicants referred to various travel tickets (pp132-140/182) for journeys between Aberdeen and Edinburgh as follows:
 - (i) 4.8.23 – Mr McIlroy Edinburgh to Aberdeen - £13.90
 - (ii) 10.8.23 – Mr McIlroy Aberdeen to Edinburgh - £17.60 (pest control & asbestos)
 - (iii) 10.8.23 – Mr McIlroy Edinburgh to Aberdeen - £17.83
 - (iv) 12.8.23 – Mr McIlroy Aberdeen to Edinburgh - £26.40 (to stay in friend's property)
 - (v) 19.8.23 – Applicants Edinburgh to Aberdeen - £71.50 (with valuables & to stay pending holiday)
 - (vi) 13.9.23 – Applicants Edinburgh to Aberdeen - £51.80 (collect valuables)
 - (vii) 14.9.23 – Ms Giannoni Aberdeen to Edinburgh - €26.25
 - (viii) 15.9.23 – Mr McIlroy Aberdeen to Leuchars - £29.90 (drop off books at university)
 - (ix) 15.9.23 – Mr McIlroy Leuchars to Edinburgh - £17.20
22. The Applicants said the rodent issue was a contributing factor in their decision to leave the Property, but the main reasons were the ceiling collapse and Mr McIlroy's MA thesis, which was the priority. His laptop had been covered in dust and had to be cleaned.

23. The Applicants said there had been many phone calls with the letting agent over the whole period. Mr McIlroy had been in the Property on 15th August 2023 when the patch repair was being carried out. He was working on his thesis in the bedroom.
24. Ms Giannoni returned to live in the Property on 14th September and Mr McIlroy on 15th September 2023.
25. Under cross-examination by the Respondent, the Applicants said they did not have contents insurance.
26. Responding to questions from the Tribunal regarding clause 37h of the tenancy agreement, which includes ‘... the Landlord will not be liable to the Tenant for the temporary deprivation of occupancy of the Let Property by or through bursting, leakage or failure of gas, water and oil pipes or the choking, stoppage or overflow thereof ...’, the Applicants said this felt like an unfair clause. Even if it was applicable, there were sums due for stress, bad advice, and poor treatment.

The Respondent’s position

Evidence of Mr Urquhart

27. Mr Urquhart said the letting agent understood the inconvenience suffered by the Applicants. The letting agent had asked the Applicants to knock on the door of the upstairs flat when the stain was reported, but the property was unoccupied. The letting agent had contacted Environmental Health, who contact the owner of the upstairs flat and discovered that the water had been turned off. It transpired that the water ingress was coming from two floors above and was due to loose bath fittings.
28. The Respondent was informed of the issue and a contractor came out on 4th August 2023. There were issues with insurance and the contractor did not carry out the work. Mr Urquhart said the living room and kitchen should have been made safe and cleaned up at that time. It was his position that the letting agent could have handled the situation better and he apologised to the Applicants. Mr Urquhart said there was work going on in the background to address the matter.
29. Mr Urquhart said he did not have access to all the communications regarding the matter of the asbestos. The original contractor assessed this and said there was no asbestos. The Respondent had lived in the building for many years and considered there was no asbestos. The insurer would not cover the cost of a test unless there was something to cause alarm. Mr Urquhart said, in his experience, it was 99.99% certain there would be no asbestos in a building over 100 years old unless there had been subsequent works carried out. Mr Urquhart said the letting agent had not conveyed the information

available to the Applicants in such a way as to give them reassurance there was no asbestos. This could have been handled better.

30. Mr Urquhart said the delay in carrying out the work was due to awaiting insurance approval, and not due to the issue of asbestos. The letting agent relies on the contractor to carry out work. The letting agent arranged cleaners as soon as they were aware that the Property had not been properly cleaned.
31. Mr Urquhart said an offer had been made to the Applicants to cover a rent abatement for twelve days from 4th August when the Property could have been deemed uninhabitable. It was recognised that the Applicants were away when the works were carried out, and were not directly impacted. However, had they been present, it would have caused some disruption and there would have been a discussion at that time. Consequently, the Respondent was agreeable to offering seven days' rent abatement to cover the inconvenience caused to the Respondent. Mr Urquhart said the issue of habitability was a grey area. If the rubble had been cleared and the ceiling made safe, the Property would have been habitable. It was felt that offering the above abatement was fair, reasonable, and proportionate. Mr Urquhart said the Respondent should maybe have been advised to have the work carried out as soon as possible and make the insurance claim thereafter. The Property was habitable after the initial works were carried out on 12th August. Mr Urquhart said the travel costs should not be payable by the Respondent. He posed the question, what if the relatives had lived in London? Would it have been reasonable to expect the Respondent to pay for travel to London?
32. In cross-examination, Mr Urquhart said there had been an inadequate response by the letting agent to the matter of repair initially and that it should have been referred to a more senior member of staff. The delay in carrying out the work, after insurance matters were settled, was due to the contractor's availability. It was felt the Property was completely habitable on 23rd August and full rent was then due. The letting agent relied on contractors that work was carried out and the Property tidied. They were provided with photos of the work. It was accepted the Property was not cleaned to the required standard. The letting agent was satisfied that the rodent issue had been properly dealt with. Pest control was confirmed on the day the matter was reported, and was postponed due to the ceiling collapse.
33. Mr Urquhart said it was accepted that, although the Applicants were on holiday when the full repair was carried out, the matter would have caused them stress and the Respondent was willing to make a goodwill gesture of one week's rent towards their inconvenience.
34. Mr Urquhart said a contractor would know if there was asbestos present. Insurers never cover the cost of asbestos tests in Edinburgh. The letting agent was aware there was no asbestos, but it is accepted that this was not explained to the Applicants clearly.

35. Responding to questions from the Tribunal, Mr Urquhart said the letting agent could have arranged access to the Property for pest control and the asbestos company on 10th August. Mr Urquhart said the Applicants would be expected to have contents insurance to cover their belongings. The Respondent should not be responsible for the costs of travel to convey their valuables to Aberdeen. Clause 37h of the tenancy agreement has been in the letting agent's standard tenancy agreement for years. There is always scope for discussion about disputed terms at the time of putting the tenancy agreement in place. Mr Urquhart said it was good practice to offer a rent abatement in respect of the issues in question, and this should cover the cost of alternative accommodation. The cost of alternative accommodation may also be covered if the insurer deems a property uninhabitable. All discussion with the insurer was carried out by the Respondent.

Respondent's evidence

36. The Respondent explained that he was certain there was no asbestos as it was not used until the 1920s or 30s. He had been brought up in a neighbouring flat, where his mother still lives. There was no knowledge of asbestos being found within these properties. He had received assurance from the letting agent, and a handyman had told him there was horse hair in the plaster, which meant asbestos was unlikely. Despite this, the Respondent said, he had now agreed to cover the cost of the test.

37. The Respondent made an insurance claim on 4th August and it was settled on 4th September. There was no delay over the matter of the asbestos, which was not mentioned to the insurer. The Respondent said he was not advised to make the repair ahead of getting the insurance settled. In hindsight, that could have been done. It was not inevitable that the ceiling would come down. No one could have known the weight of the water. The Respondent appreciates it was not a pleasant situation, but he would expect tenants to open windows and take reasonable steps to make the Property habitable. He did not consider, on the basis of photographs, that it was uninhabitable. This had not been discussed with the insurer at the time, but he had spoken to them afterwards and they said if they had been asked to look at this, it would have delayed matters further. He did not think the insurer would have covered alternative accommodation. The Respondent did not accept responsibility for travel costs or alternative accommodation. He should not be responsible for the Applicants' valuables. They would have been recommended to have contents insurance. The Respondent would not expect contractors to be going near possessions left in a property.

38. The Respondent did not see the initial email concerning the mouse, as he was moving house, and he apologised in that regard. There was one mouse, and this is not uncommon in Edinburgh tenements. One mouse is not an infestation.

39. In cross-examination, the Respondent said the Property was habitable throughout. He was confident there was no asbestos but apologised that the

Applicants were not assured of that. The Respondent said he offered £200 in compensation as it seemed a reasonable compromise and he wanted to move matters on. He did not feel he was bound to provide his contact details to the Applicants on request. He pays the letting agent for their expertise and felt they would be able to answer any questions professionally.

Summing up by the Applicants

40. This was an extremely stressful experience for the Applicants. The quality of advice given by the letting agent was poor and the service was slow. They were constantly having to explain matters to different members of staff. They were unable to trust the advice given. There were a number of broken promises around the standard of cleanliness. The Applicants found the Respondent to be evasive and difficult to reach. The Applicants had to find their own accommodation. They had to pay expenses for travel. Mr McIlroy was working on his thesis; Ms Giannoni was working full time. They were fortunate to have Mr McIlroy's family to stay with. They were paying good money for the Property. To have it disrupted was very stressful and they had to cobble together plans for alternative accommodation. The Applicants did open the windows in the Property and the smell was pungent even after the patch repair. They took advice from a contractor on the official register regarding asbestos.

Summing up for the Respondent

41. The source of the leak was difficult to get to and that was outwith the control of the Respondent or the letting agent. The letting agent worked in the background to get a resolution. Issue do arise in the course of tenancies. It was accepted that the initial repair could have been more prompt. Earlier mediation may have prevented some of the issues, but a fair and reasonable offer had been made.

Findings in Fact

42.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 31st October 2022 with a monthly rent of £925.
- (ii) The Property is a one-bedroom, first-floor tenement property.
- (iii) The kitchen is directly off the living room. There is no door between the living room and kitchen. There are no windows in the kitchen.
- (iv) On 24th July 2023, the Applicants notified the letting agent of a damp mark on the ceiling of the living room in the Property.
- (v) On 27th July 2023, a mouse was seen in the Property.

- (vi) On 4th August 2023, a portion of the living room ceiling in the Property collapsed.
- (vii) On 4th August 2023, Mr McIlroy travelled by train to Aberdeen to stay with his parents.
- (viii) On 10th August 2023, Mr McIlroy travelled by train back to Edinburgh to allow access to the Property for pest control and asbestos testing, returning to Aberdeen by bus on the same day.
- (ix) On 10th August 2023, a sample of the living room ceiling was taken for asbestos testing.
- (x) On 12th August 2023, Mr McIlroy travelled by train from Aberdeen to Edinburgh.
- (xi) From 12th to 19th August, the Applicants stayed in a friend's property in Edinburgh.
- (xii) On 14th August 2023, a Fibre Identification Certificate was issued showing no asbestos fibres in the ceiling material.
- (xiii) On 15th August 2023, the living room ceiling was patched and the rubble cleared.
- (xiv) On 19th August 2023, the Applicants travelled by train from Edinburgh to Aberdeen.
- (xv) On 23rd August 2023, the Applicants travelled to Canada for a three week holiday.
- (xvi) The living room ceiling was repaired while the Applicants were in Canada.
- (xvii) On 14th September 2023, Ms Giannoni travelled from Aberdeen to Edinburgh by train. She discovered the Property had not been cleaned to a sufficient standard. She moved back into the Property on that date.
- (xviii) On 15th September 2023, Mr McIlroy travelled from Aberdeen to Edinburgh via Leuchars by train.
- (xix) On 16th September 2023, the Property was cleaned to a sufficient standard at the arrangement of the letting agent.
- (xx) The Property was not habitable from 4th to 15th August 2023.
- (xxi) The Property was not habitable for a period of around seven days while the ceiling was being repaired in September 2023.

- (xxii) The Applicants are entitled to compensation for their travel costs related to the initial period when the Property was uninhabitable.

Reasons for Decision

43. The Tribunal considered the Property was not habitable following the collapse of the ceiling on 4th August until it was patched on 15th August 2023. It is a small property with the kitchen directly off the living room, and with no windows in the kitchen. It was not incumbent upon the Applicants to clean up the rubble and dust caused by the ceiling collapse, and it was not reasonable to expect them to remain in the Property in that condition, particularly given the dust and smell. The Tribunal considered the Applicants were entitled to the sum of £364 as a rent abatement for this period. Although the Respondent stated in evidence that he believed the Property to be habitable, it was also stated on his behalf that the rent abatement was accepted by the Respondent, as previously offered to the Applicants.
44. The Tribunal considered the Property was not habitable for a period of seven days in September 2023 when the final repair was being carried out, as accepted by the Respondent. The Tribunal considered the Applicants were entitled to the sum of £212 as a rent abatement for this period, as offered by the Respondent, despite the fact they were not in the country at that time.
45. The Tribunal considered the Applicants were entitled to reimbursement of the sum of £108 for the asbestos report, given the agreed position that sufficient reassurance had not been given by the letting agent that there was no asbestos in the Property.
46. The Tribunal considered the Property was habitable from 15th August 2023. It may not have been in an ideal state, but the ceiling had been patched. The Tribunal was not persuaded that the existence of one mouse and pest control measures contributed to any great extent to the habitability of the Property. It is an unfortunate fact that mice are not unusual in Edinburgh tenements, and one mouse does not constitute an infestation. The Tribunal observed that, had it found the Property to be uninhabitable at this time, it would not have considered it reasonable to order the Respondent to cover the cost of removing valuables from Edinburgh to Aberdeen. That was a choice made by the Applicants, and the Tribunal was not persuaded that other options, such as contents insurance or leaving a work laptop at the workplace, were not available to the Applicants.
47. The Tribunal considered the Applicants would have been entitled to the cost of alternative accommodation when the Property was not habitable. Accordingly, the Tribunal found the Applicants were entitled to compensation for some of their travel costs, while the Property was not habitable. These costs include the following journeys:
- (i) 4.8.23 – Mr McIlroy Edinburgh to Aberdeen - £13.90
 - (ii) 12.8.23 – Mr McIlroy Aberdeen to Edinburgh - £26.40

48. The Tribunal was not persuaded it was necessary for Mr McIlroy to travel to and from Edinburgh on 10th August for the purpose of giving access to the pest controller and the asbestos sampling company. Access could have been arranged with the letting agent. Given that the Tribunal found the Property was habitable from 15th August 2023, no travel costs after that date should be payable by the Respondent.

49. The Tribunal considered the Applicants were entitled to the sum of £200 for the stress and inconvenience of having to seek alternative accommodation when the Property was not habitable.

Decision

50. An order for payment is granted in favour of the Applicants in the sum of £924.30.

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.

H. Forbes

Legal Member/Chair

3rd March 2025
Date