

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51 Private Housing
(Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

Chamber Ref: FTS/HPC/EV/23/4182

Property at 60 Inverlochey Crescent, Glasgow, G33 5ES (“the Property”)

Parties:

**Mr Alex Umana, 248 Sandhill Road, Kanata, K2K 2VB Ottawa, Ontario, Canada
 (“the Applicant”)**

**Mr Joseph Oribhabor, 60 Inverlochey Crescent, Glasgow, G33 5ES (“the
Respondent”)**

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment of the sum of £5950 should be
granted against the Respondent.**

Background

1. The Applicant submitted an application for an order for payment in relation to unpaid rent. An application for an eviction order was also lodged and was allocated reference number EV/23/4049. A CMD took place by telephone conference call on 21 June 2024. Following the CMD the Tribunal issued notes in relation to both applications.
- (a) EV/23/4049 – the application for an eviction order. The Applicant was notified that evidence would be required in relation to the eviction ground and the method of service of the Notice to Leave.

- (b) EV/23/4182 – the application for payment. The Respondent was notified that he would require to provide evidence of costs he had incurred in relation to repairs at the property and evidence that the Applicant agreed to reduce the rent to £750 per month.
- 2. The Tribunal determined that a hearing would take place in person at Glasgow Tribunal Centre. This was scheduled for 10 September 2024 and was postponed at the request of the Respondent because he was out of the country. The parties were notified that the hearing would take place on 13 January 2025 at 10am. Neither party lodged any documents in advance of the hearing.
- 3. The hearing took place on 13 January 2025. The Applicant did not attend. His representative Mr Odukudu was present. The Respondent also attended. Mr Odukudu brought an updated rent statement with him and said that he had emailed it to the Tribunal the previous day. Mr Oribhabor said that he had emailed some photographs. Neither email had been received.

Summary of discussion at the hearing on 13 January 2025

- 4. The Tribunal advised the parties that it seemed unlikely that the hearing could proceed as neither party had lodged any documentary evidence in advance of the hearing and the Applicant was not present.

Eviction application.

- 5. Mr Odukudu said that the Applicant was still based in Canada and had not been able to move back to the UK because the property was still occupied by the Respondent. The Tribunal noted that the Applicant had not addressed the evidential issues raised at the CMD and, in particular, had not submitted an affidavit regarding his intentions in relation to the property. The Tribunal also advised that they had expected the Applicant to attend to give evidence in relation to this and the issue of reasonableness. In addition, the Applicant had not provided evidence that the Notice to Leave had been sent by recorded delivery post rather than ordinary post, as this is not a valid method of service. Mr Odukudu said that he had not appreciated that the Applicant was required to attend. He also confirmed that an affidavit had not yet been obtained. In relation to the Notice to leave, Mr Oribhabor said that he could not recall receiving the Notice to leave so could not comment on the method of service. Mr Odukudu said that he had sent it by recorded delivery, but it was too long ago to provide evidence of this.
- 6. The parties were advised that the Tribunal would require to hear evidence in relation to the following
 - (a) Service of the Notice to leave.
 - (b) The eviction ground and whether the Applicant intends to reside in the let property.

- (c) If the ground is established, whether it would be reasonable for the Tribunal to grant the eviction order.

Payment application

7. The Tribunal advised the parties that the Procedure Rules require all documents to be lodged at least 7 days before a hearing so that the other party has time to consider them. In relation to the rent statement Mr Oribhabor said that he did not accept that it was accurate as it showed missing payments which he was sure had been paid. He also said that the statement showed a shortfall every month of £50 although he had agreed a rent reduction with the Applicant. The Tribunal noted that the Respondent also required to provide vouching for the sums he says have been spent on the property. The Tribunal advised that evidence would be required in relation to the following: -

- (a) The amount of rent which is unpaid.
- (b) Whether the parties agreed to reduce the rent to £750 per month.
- (c) Whether the Respondent has carried out repairs at the property.
- (d) How much had been spent on the repairs.
- (e) Whether the Respondent is entitled to be re-imbursed for the cost of repairs.
- (f) Whether the Respondent is entitled to deduct any sums due to him from the rent payments.

Both applications

8. The Tribunal decided to adjourn the hearing. Following discussion, both Mr Odukudu and Mr Oribhabor confirmed that a hearing by video conference could be accommodated. This would allow the Applicant to participate from Canada if he is unable to be in the UK at the relevant date. Mr Odukudu asked that an afternoon hearing be arranged to take account of the time difference. The parties were also advised that they could call witnesses to give evidence at the hearing, if required. Mr Oribhabor said that he would like his wife to attend and give evidence. He also said that his child is due to return to Poland shortly for medical treatment and his wife will have to accompany him. Mr Odukudu will also need to travel to Poland to bring them home. This could affect his availability.
9. Following the hearing, the Tribunal issued a note and a direction which required both parties to lodge further documents. The parties were notified that a hearing would take place by video conference on 15 May 2025 at 2pm. Prior to the hearing the Applicant lodged documents in response to the direction. The Respondent did not. The Applicant, his representative and witness Mr Odukudu and the Respondent all participated in the hearing.

The Hearing

10. Mr Oribhabor confirmed that both applications are still opposed. He said that he had been unable to find alternative accommodation for himself and his family.

Mr Odukudu's evidence

11. Mr Odukudu told the Tribunal that he had taken the Notice to leave to the Post Office near to his home and asked to send it recorded delivery. He was given the receipt that he lodged with the application paperwork. He thinks that it was the only receipt that he was given and kept it as evidence that the Notice had been sent. He informed the landlord that the Notice had been sent and checked with the Respondent who confirmed it had been received. When the 84 day notice period had elapsed, he sent a text to the Respondent to let him know that the Applicant would be moving into the property in October 2023. Mr Oribhabor replied saying that he was not able to move out as he had not found anywhere to go. Mr Odukudu said that after the last hearing, he went to the Post Office to see if they could provide him with evidence that recorded delivery post had been used but they said that it was not possible after all this time. He could not remember what he paid, maybe £5 or £7. In response to a question from the Tribunal Mr Odukudu said that he is a friend of the Applicant and offered to deal with the tenancy because Mr Umana was going to be in Canada. He said that it was made clear to the Respondent that if a repair was needed, he had to notify Mr Odukudu who would discuss it with the landlord. It was never agreed that he could deduct the cost of repairs from the rent. As he is a handyman, they were happy for him to do repairs, but any costs had to be agreed. He said that the Respondent had complained about having to pay Council Tax, but this is stipulated in the tenancy agreement. There was no discussion about the rent being reduced. He noticed that the Respondent had started paying £750 and not £800. He sent a text. He got a reply stating that the Council Tax issue was unresolved. There is a clause in the tenancy agreement that states that the Respondent will carry out repairs. The background to that is that Mr Umana decided to offer the property to the Respondent because he is handyman and could maintain the property while he was in Canada. In exchange for this, the Applicant agreed to a rent that was well below the market rate. The property is a four bedroom house and could attract a significantly higher rent. The Respondent was expected to deal with minor repairs. However, he was paid for the repairs and had to get prior approval before carrying them out. For example, there was damage to flooring and a carpet following a flood. He was paid for the replacement carpet and flooring.

Mr Umana's evidence

12. Mr Umana told the Tribunal that he had come back to Glasgow in July 2023 and went to see the Respondent. He told him that he intended to move back to the property when the 3 month notice period had passed. He explained that he had been offered a job in Scotland. Mr Oribhabor did not claim that he had not received the notice and only asked if he could get a bit more time, until December 2023, to find a new home. Mr Umana refused the request. He said that he and his family are currently stranded in Canada and have been for the

last year. He and his wife and three children are currently living in the basement of a friend's house. He is now working for the UK based company as a safety engineer but only part time because he can only carry out those aspects of the job that can be carried out remotely. His children are 13, 10 and 9. He is paying rent to his friends but cannot afford to rent a whole property for his family. He needs to be able to return to his own house. He has a mortgage over the house.

13. Mr Umana said that he never agreed to reduce the rent. The rent stated in the tenancy agreement is £800. A couple of months after moving in, Mr Oribhabor called him and asked why he was having to pay Council Tax. Mr Umana explained that he had to do so because he was the occupier of the property. After that discussion, he started paying £750 and not £800. There was no discussion or agreement about it. There was also no agreement that he could carry out repairs and deduct the cost from the rent without approval. On one occasion he replaced a carpet without permission and was then told not to do this again.
14. In response to further questions from the Tribunal, Mr Umana said that his employer is based in the UK. When he returns, he will continue to work for that employer. At the moment he is desk based because he is stuck in Canada. He and his family only have two rooms in the basement of his friend's house. He lived in Glasgow for five years before going to Canada. This was a temporary move for a contract. His children were all born in Scotland.

Mr Oribhabor's evidence

15. Mr Oribhabor told the Tribunal that he does not recall getting a letter about eviction. He remembers being told that the landlord was coming to see him and that the landlord wanted the house back. He was given three months. When Mr Umana visited, he asked for more time as three months was not enough. In relation to the Council Tax, he said that this was included in the rent at his previous home. He said that the Applicant approached him to take the house, and they agreed the rent of £800. He was not aware that council tax was not included in that. He said that he contacted Mr Umana and said that the Council Tax was too much and could they reduce the rent to £750. He said that Mr Umana would ask his wife. He spoke to them both and they accepted it. He cannot recall the exact words, but it was agreed. Then Mr Oduku contacted him to challenge it, it was his issue.
16. In relation to repairs, Mr Oribhabor said that there was a problem with the ensuite, a leak. He contacted Mr Umana, but he did not respond. He offered to modernise the ensuite, but they didn't give him the go ahead. Mr Oduku came and said that nothing was needed. In relation to the flood from the kitchen, they only paid him for the materials, not the work. It was never agreed that he had to get permission before carrying out any repairs. He has carried out lots of work such as fixing the garden tap and flooring the loft.
17. In response to questions about the rent statement and missed payments, Mr Oribhabor said that he withheld the June 2023 payment to offset costs he incurred repairing the ensuite. He is not sure if the other alleged missing

payments were made or not, although he accepts that the payment for January 2025 was missed. Since the last hearing he has been paying £800 per month. In response to further questions from the Tribunal Mr Oribhabor said that he accepted that the rent for the property is below market value, then said that he was not sure. He said that his children are 18, 16, 11 and 4. The oldest is now at college, the 11- and 16-year-old children are at school and the youngest is at nursery. The school and nursery are nearby. He is a sculptor but also works doing home improvements and maintenance. He has approached the Local Authority and Tollcross Housing Association and is on a list, but it will be difficult to get a property which meets his family's needs. He has not made a homeless application yet.

18. Mr Oribhabor advised the Tribunal that his son had to go to Poland for an operation to remove his tonsils but is fine now. The family does not have any health issues. They are in receipt of child benefit. He has recently started receiving universal credit. He does not know if it includes housing costs. He has to tell UC what he earns each month and then they decide what he is due to receive.

Final submissions

19. Mr Umana told the Tribunal that the process has been ongoing for two years and that he needs to move back to the property. He said that in July 2023, the Respondent asked for an extension to December 2023 but it's now 2025. Their current living conditions are not good and are having an impact on his children. They are struggling financially, and the rent arrears are making things worse. In relation to the possibility of a delay in enforcement, if eviction is granted, Mr Umana said that the Respondent has already had two years.
20. Mr Oribhabor told the Tribunal that he has tried to find somewhere else to live but it's been impossible, due to the increased cost of living. He said that if they are evicted, they will need to make a homeless application.

Findings in Fact

21. The Applicant is the owner and landlord of the property.
22. The Respondent is the tenant of the property in terms of a private residential tenancy.
23. The rent due in terms of the tenancy contract is £800 per month.
24. The Respondent reduced his payments to the rent account from July 2021 to £750 per month. The Applicant did not agree to the reduction.
25. In terms of the tenancy agreement the Respondent is liable for the Council Tax at the property and agreed to carry out repairs at the property.

- 26. The Respondent failed to make payment of any rent for the months of June 2023, November 2023, January 2024, January 2025 and March 2025
- 27. The Applicant did not agree that rent payments could be offset against the cost of repairs carried out by the Respondent.
- 28. The Respondent has incurred rent arrears of £5950.

Reasons for the decision

- 29. The Applicant submitted an updated rent statement in advance of the hearing. However, this included the payment due on 20 May 2025. As the hearing took place on 15 May 2025, this instalment was not yet due, and the Tribunal is satisfied that it should be disregarded. The sum which the Applicant states is unpaid at the date of the hearing is £5950.
- 30. There are three aspects to the Respondent's defence to this application. Firstly, he denies that some of the missing payments on the rent statement were unpaid. Secondly, he states that the parties agreed to reduce the rent to £750. Lastly, he says that he was entitled to deduct the cost of repair work carried out at the property from the rent.
- 31. The Tribunal had issued a direction to the parties on 17 January 2025. This stipulated that the Respondent should provide evidence to support the various aspects of his defence. He failed to do so. The Tribunal found the Applicant and his witness to be generally credible and reliable. Their evidence was largely supported by the documents lodged. The Respondent was less credible. He failed to provide any documentary evidence in support of his claims and his evidence was at times vague and unclear.

The missed payments

- 32. At the hearing which took place in January 2025, the Respondent indicated that he did not believe that all the alleged missing payments were unpaid. He was directed to provide evidence of this, in the form of bank statements or transaction records, but failed to do so. At the hearing he was asked about each of the missing payments. He said that one was to cover the cost of a repair, but he could not confirm if the others were paid or otherwise. The Tribunal notes that both the Applicant and his representative state that the rent statement is an accurate account of the rent paid. In the absence of bank records or other documentary evidence, the Tribunal is satisfied that the Respondent failed to make payment of the rent due for the months of June 2023, November 2023, January 2024, January 2025 and March 2025.

Rent reduction.

- 33. The tenancy started on 20 September 2020. The agreement, which was signed by both parties, specifies a monthly rent for the property of £800. In July 2021,

the Respondent reduced his payments to £750. He said that he contacted the Applicant, who consulted his wife, and they agreed to the reduction. However, he could not recall the precise words used and indicated that it was his understanding that they had agreed to the request. The Respondent conceded during the hearing that his motivation for the request was that he had received a Council Tax demand. He stated that Council Tax had been included in his rent at a previous property, so he was confused. The Applicant acknowledges that he was contacted by the Respondent in relation to Council Tax. However, he explained to the Respondent that it is the occupier who is liable. He denies that there was any discussion or agreement about reducing the rent and stated that this only came to light when the reduced payments were noted.

34. As the Applicant points out, tenants are liable to pay the Council Tax for a property unless they are exempt. This is also specified in the tenancy agreement. The Respondent provided no evidence that a rent reduction was agreed and acknowledged that he was contacted by Mr Odukudu when the payments reduced and notified that he had to pay the agreed rate.
35. The Tribunal is satisfied that the Applicant is entitled to a payment order for the shortfall between the payments due and payments received for the months that £750 was paid.

Whether the Respondent was entitled to deduct the cost of repairs carried out at the property from his rent.

36. The tenancy agreement between the parties contains an unusual additional clause, namely that the "Tenant agreed to carry out all repairs outside structural damage". This clause is unenforceable. In terms of the Housing (Scotland) Act 2006, a landlord is responsible for ensuring that the property meets the repairing standard and it is not possible for parties to contract out of this obligation, unless sanctioned by the Tribunal. The Tribunal was told that the property had been offered to the Respondent at a reduced rent on condition that he would carry out basic maintenance and repair. However, the tenancy contract does not explain whether Respondent is to be paid for his work. Mr Odukudu said that he is paid, when he has prior approval for the work. Mr Oribhabor said that he has only occasionally been paid for materials. At other times he has deducted the cost from his rent. However, his evidence was not convincing about whether this had been agreed with the Applicant or whether he had sought and obtained permission before carrying out any work.
37. In the absence of a clear provision in the tenancy agreement, the Tribunal is not satisfied that the Respondent has established that he was entitled to deduct the cost of repair work from his rent. It appears that the Applicant expected some work to be carried out for free, because the rent was low. In any event, the Respondent also failed to provide any evidence that he had incurred costs in carrying out essential work to the property or even that he reported repair issues to the Applicant.

Decision

- 38.** The Tribunal determined that an order for payment of the sum of £5950 should be granted.

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.

Mrs Bonnar, Legal Member

Date: 7 June 2025