

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 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/24/2860

Property : Boghall Farmhouse, Boghall, Dunning PH2 ORE (“Property”)

Parties:

Pitcairns Estate Trust, Pitcairns House, Bridge of Earn Road, Dunning PH2 9BX (“Applicant”)

Pitcairns Estate Trust, The Bothie, Pitcairns House, Bridge of Earn Road, Dunning PH2 9BX (“Applicant’s Representative”)

Helen Jeans, Boghall Farmhouse, Boghall, Dunning PH2 ORE (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £13,249.00 should be made.

1. The Applicant sought an order for payment of £4,774 in respect of rent arrears. The Applicant had lodged Form F. The documents produced were: a Private Tenancy Agreement which commenced on 10 November 2020; rent increase notice dated 14 August 2023 and a statement of rent arrears. The Tribunal had sight of a sheriff officer's execution of service certifying service of the Application on the Respondent on 15 October 2024. On 5 and 15 November 2024 the Respondent lodged a written representation. The representation included copy text messages and emails from the Respondent to the Applicant referring to the need for repairs. The messages were dated 22 September 2023; 16 October 2023, 27 December 2023, 4 January 2024, 2 February 2024 and 6 February 2024.
2. A Case Management discussion (“CMD”) took place before the Tribunal on 18 November 2024 by teleconference. The Applicant was represented by Ian Grinbergs of the Applicant’s Representative. The Respondent was in

attendance. Reference is made to the Note of the CMD. The Tribunal considered that the following was in dispute :

- the amount of rent outstanding in respect of the tenancy of the Property
 - whether the Applicant has complied with their obligation to maintain the Property at all times during the tenancy
 - the extent, if any, to which the Respondent is entitled to an abatement of rent
3. The outcome of the CMD was that the Tribunal fixed a Hearing and issued a Direction in the following terms :

The Respondent is required to lodge with the Tribunal :

1. *A written submission setting out the required repairs at the Property during the Respondent's tenancy of the Property, the date on which each item of repair was notified to the Applicant and confirmation as to whether or not the repair remains outstanding.*
2. *Any available photographs of the required repairs.*
3. *Any available documentary evidence of the need for a repair being intimated to the Applicant.*
4. *Any available "check in" report in respect of the Respondent's tenancy of the Property.*
5. *Evidence of the outstanding rent having been placed in a separate bank account.*

The said documentation should be lodged with the Tribunal no later than close of business on 18 December 2024.

The Applicant is required to lodge with the Tribunal :

1. *An up to date statement of rent arrears which must be intimated to the Respondent and which refers only to outstanding rent in respect of the Property.*
2. *A written submission setting out details of works carried out to the Property prior to the commencement of the Respondent's tenancy and the Applicant's response to the Respondent's written submission referred to above regarding required repairs at the Property.*
3. *Any available photographs of repairs having been carried out at the Property.*
4. *Any available reports regarding the need for repairs at the Property such as the report from Tayside Property Services regarding damp at the Property.*

The said documentation should be lodged with the Tribunal no later than close of business on 20 January 2025.

4. The Tribunal emailed the Respondent on 20 January 2025 reminding the Respondent of the need to lodge a response to the Direction. The Tribunal emailed the Respondent on 24 March 2025 requesting a response to the

Direction within 14 days. On 2 April 2025 the Tribunal emailed the Respondent advising that the Tribunal may refuse to allow any documents to be lodged late. The Respondent did not lodge a response to the Direction.

5. On 17 January 2025 the Applicant lodged a response to the Direction which extended to 13 pages and appendices numbered 1 to 50. On 20 May 2025 the Applicant lodged an up to date statement of rent arrears which showed arrears of £13,249.00.

Hearing

6. A Hearing took place at Inveralmond Business Centre on 3 June 2025. The purpose of the Hearing was to resolve the issues in dispute in the application and in the conjoined application for a possession order proceeding under reference FTS/HPC/EV/24/2857. The Applicant was represented by Ian Grinbergs of the Applicant's Representative. On the afternoon of 2 June 2025 the Respondent emailed the Tribunal as follows :

"Sorry, I had the case meeting down for 30th of June not the 3rd. My youngest is an urgent appointment with the optician tomorrow at 9:45 pm in Auchterarder and I'm meant to be at a family funeral afterwards. Details attached. I can arrive later for the funeral but can't miss the optometrist appointment. Is there any indication of how long the case meeting is due to take".

The email was brought to the attention of the Tribunal on the morning of 3 June 2024. The Tribunal delayed commencement of the Hearing until 10.20am to allow the Respondent time to attend. The Respondent did not attend. The Tribunal noted that the correct date for the Hearing had been intimated to the Respondent on 1 April 2025. The Tribunal noted that the Application had been lodged on 21 June 2024. The Tribunal noted that the Respondent had failed to lodge a response to the direction dated 18 November 2024 despite 3 reminders being issued to her. Finally the Tribunal noted the high level of rent arrears. In all the circumstances the Tribunal considered that it was in the interests of justice to allow the Hearing to proceed in the absence of the Respondent and determined to do so in terms of rule 29.

7. The Tribunal asked Mr Grinbergs to describe the Property. He said that it is remote and is on a slope. He said it is an old farm house with stone render and slate roof. He said there is a kitchen, utility, living room and dining room on the lower floor and a bathroom and three bedrooms on the upper floor. He thought one bedroom may have an ensuite. He said he was not that familiar with the upper floor of the Property.

8. The Tribunal noted that the Applicant had lodged a response to the direction on 17th of January 2025. In the direction response the Applicant had noted that the Respondent had suggested a failure to maintain the Property in respect of 5 specific issues being: external / internal brickwork; water ingress / damp; asbestos risk; legionella risk and private water supply quality. The Tribunal reviewed each issue in turn.
9. As regards the **private water supply**, Mr Grinbergs told the Tribunal that the first report to him by the Respondent of an issue with the water was in January 2024. He said that the water supply to the Property was from a spring with the water then running through a micro filter and a UV light. He said that after the Respondent queried the quality of the water supply he had a local company in Perth, PHX Water Ltd, test the water. He said that their findings were that there was some evidence of coliforms. He said the reading was "5". The Tribunal noted the certificate from Eurofins dated 17 February 2024 which formed appendix 23 of the Applicant's direction response. Mr Grinberg said that the view of PHX Water was the reading should be "0" although they would not be concerned unless the reading was in the hundreds. He said PHX Water suggested that the UV light should be cleaned and the filter changed. Mr Grinbergs said that the work was carried out on 28 February 2024. He said that the Council also tested the water on 6 March 2024 at the request of the Respondent and found it to be satisfactory. The Tribunal noted the email from the Communities Business Support Team at Perth & Kinross Council dated 8 March 2024 which formed appendix 29 of the Applicant's direction response. The Tribunal noted that there had been reference to water discolouration by the Respondent. Mr Grinbergs said that he had been managing the Property since August 2023. He said that before August 2023 there had been a significant flooding incident that had caused discolouration of the water. He said that the contractor testing the water found no evidence of water discolouration.
10. As regards **asbestos**, Mr Grinbergs told the Tribunal that before the Respondent moved into the Property the Applicant had carried out an extensive renovation of the Property at a cost of approximately £35,000. The Tribunal noted the receipts at appendix 49 of the Applicant's direction response. He said that if there had been asbestos in the Property the contractors carrying out the renovation would have noted that. Mr Grinbergs said that during the renovation work the flue was removed and a hole was left in the plasterboard. He said the Respondent was concerned that asbestos appeared to be present in the hole in that area. He said that she requested an asbestos test of material within the old flue vent on 8 December 2024. Mr Grinbergs said that a sample was taken and a report was prepared which said there was no evidence of asbestos in the Property. The Tribunal noted the certificate issued by Scopes Asbestos Analysis Services Ltd dated 22

February 2024 which formed appendix 21 of the Applicant's direction response and which stated "No asbestos detected in sample".

11. As regards **legionella**, Mr Grinbergs said that a new boiler was fitted during the renovation as was a new heating system. He said the system would have been "flushed" which was similar to carrying out a legionella risk assessment. He said that the Respondent was concerned that no legionella risk assessment had been done. The Applicant's direction response indicated the concern was raised by the Respondent on 15 January 2024. Mr Grinbergs told the Tribunal that on 17 May 2024 the plumber carried out a legionella risk assessment and found there to be no risk.
12. As regards **water ingress**, Mr Grinbergs told the Tribunal that the Property is situated on a slope. He said there was a paddock towards the back of the Property. He said that the Respondent had covered the paddock in material which had become compacted. In addition he said that the Respondent had installed raised flower beds on either side of the door which faced the paddock. He said that they were approximately 4 feet high. He said that there was very bad weather which caused water to run across the compacted area, across the channel created by the raised flower beds and through the door of the Property. He said that the water settled below the floorboards and that damp was starting to develop. The Applicant's direction response indicated the bad weather was on 8 October and 27 December 2023.
13. Mr Grinbergs told the Tribunal that sandbags were provided to stop the water ingress. He said that the Applicant's ground worker re-contoured the land to divert the water. The Applicant's direction response indicated this was done on 22 January 2024. He said that the compacted material and raised flower beds were removed.
14. Mr Grinbergs told the Tribunal that a damp expert, Tay Property Services, were instructed to survey the Property. He said that they made recommendations in their report dated 15 February 2024 (appendix 48 of the Applicant's direction response), all of which were implemented. The Applicant's direction response indicated this was done in the week commencing 22 April 2024 after failed attempts to secure an earlier date for the work to be done. Mr Grinbergs said that part of the floor in the Property is solid concrete and part is suspended wooden floorboards. He said the concrete parts of the floor were not impacted by the water ingress. He said that the laminate flooring was replaced in the areas that had floorboards. The Applicant's direction response indicated this was also done in the week commencing 22 April 2024.

15. The Tribunal noted that the Respondent had referred to damp in the bedrooms on the upper floor of the Property. Mr Grinbergs said that the damp specialist considered that the damp in the upper floor was due to poor ventilation and lack of heating. He said that he spoke to the Respondent about improving the ventilation and heating. Mr Grinbergs said that a roofer also attended the Property. He said that he found no evidence of water ingress in the roof space. He said he did find some loose tiles which were secured. The Applicant's direction response indicated this was done on 23 January 2024. Mr Grinbergs told the Tribunal that the door between the raised flower beds was replaced with a double glazed door on 26 April 2024. Mr Grinbergs told the Tribunal that the Respondent had not made any other reports of water ingress since the recommendations from Tay Property Services had been implemented in April 2024.
16. As regards **brickwork**, Mr Grinbergs said that there was a hole in the brickwork where the flue had been removed. He said this was repaired. Appendix 16 of the Applicant's direction response indicated this was done in early December 2023.
17. The Tribunal noted that the written representations lodged by the Respondent had referred to an issue with a tap in the bathroom and a leaking shower tray. Mr Grinbergs said that both were fixed in May 2024. The Tribunal noted that there was also reference to a leak in the kitchen ceiling. Mr Grinbergs said that there was no evidence of an issue with the ceiling in the kitchen. He said that the kitchen does not have a separate roof and is below the rooms on the upper floor of the Property. The Tribunal noted that the representations lodged by the Respondent indicated an issue with a lack of an EPC and carbon monoxide detectors. Mr Grinbergs said that the EPC was provided at the start of the tenancy, and a carbon monoxide detector had been in the Property when the Respondent took entry. He said that a carbon monoxide detector was required because of the presence of a wood burner. He said that new detectors were delivered to the Respondent. He advised that EPCs for all of the properties in the Applicant's portfolio were currently being updated in preparation for forthcoming changes in legislation / requirements. The Tribunal noted that the representations for the Respondent referred to a cracked fire box. Mr Grinbergs said he did not know what that referred to. He said he had sought clarification but none had been provided.
18. Mr Grinbergs told the Tribunal that £12,262 had been spent on the Property between May 2021 and June 2024. The works were listed at page 3 of the Applicant's direction response with the receipts forming appendix 50.

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 10 November 2020.
2. In terms of the Tenancy Agreement the rent was £775 per month.
3. The rent was increased to £795 per month with effect from 1 December 2023.
4. The Respondent failed to pay the rent in full for the period 1 November 2023 to 1 May 2025. The unpaid amount was £13,249.
5. The UV light was cleaned and the filter for the private water supply at the Property was replaced on 28 February 2024.
6. On 8 March 2024 the Communities Business Support Team at Perth & Kinross Council issued an email stating that the water supply at the Property showed no indication of harmful bacteria being present.
7. Scopes Asbestos Analysis Services Ltd issued a certificate dated 22 February 2024 which stated there was no asbestos detected in the sample tested for the Property.
8. On 17 May 2024 a legionella risk assessment for the Property was carried out which found there to be no risk.
9. On 12 February 2024 Tay Property Services carried out a damp survey of the Property.
10. Tay Property Services issued a report dated 15 February 2024 which contained recommendations for repairs following water ingress at the Property.
11. The works recommended by Tay Property Services were instructed in full by the Applicant and carried out in the week commencing 22 April 2024.
12. A hole in the brickwork of the Property resulting from removal of a flue was repaired in early December 2023.

Findings in Fact and Law

The Tribunal made the following findings in fact and law:

1. The Respondent is not entitled to an abatement of rent.

Reasons for the Decision

19. In terms of the Tenancy Agreement the Applicant undertook to keep the Property wind and watertight and in a reasonable state of repair to ensure the Property met the Repairing Standard in accordance with the Housing (Scotland) Act 2006 ("2006 Act").
20. The legislation which governs a landlord's obligation to repair is the 2006 Act. Section 12 of the 2006 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. 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.
21. 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. At the CMD held on 18 November 2024 the Respondent told the Tribunal that she was withholding rent as necessary repairs had not been carried out.
22. The Respondent did not provide a response to the direction dated 18 November 2024 nor did she attend the Hearing fixed for 3 June 2025. The Respondent did lodge written representations in advance of the CMD held on 18 November 2024. These allowed the Tribunal to identify the issues raised by the Respondent and the dates on which they were raised. The Applicant lodged a detailed response to the direction and their Representative, Mr Grinbergs attended the Hearing on 3 June 2025.
23. A number of issues were raised by the Respondent in respect of repairs. The evidence before the Tribunal indicated that the issue raised by the Respondent about the presence of asbestos, the quality of the private water supply and legionella risk assessment did not indicate a failure on the part of the Applicant to comply with the Repairing Standard. The Respondent raised these issues and the Applicant had necessary testing and assessments carried out within a reasonable timeframe which indicated no repairs were required.

24. The evidence indicated that there was clearly an issue regarding water ingress at the Property. The evidence indicated this was at least partly due to weather in October and December 2023, with a particularly severe weather event in December 2023. The Applicant appointed a damp specialist who carried out a survey on 12 February 2024. The evidence before the Tribunal was that all recommendations in the report were completed in the week commencing 22 April 2024. Considering the nature and extent of the repairs required, the Tribunal considered the repairs to have been carried out within a reasonable timescale.
25. Having considered the written representations lodged by the Parties and the oral submission of Mr Grinbergs, the Tribunal was of the view that the Applicant had complied with their obligations under the 2006 Act to ensure the Property met the Repairing Standard. In those circumstances the Tribunal did not consider that the Respondent was entitled to an abatement of rent.
26. The Tribunal determined to make an Order for payment. In terms of the tenancy agreement rent was due at the rate of £775 per month. The rent was increased to £795 per month with effect from 1 December 2023. The Respondent failed to pay the rent in full for the period 1 November 2023 to 1 May 2025. The unpaid amount was £13,249. The Respondent is not entitled to an abatement of the rent due.

Decision

27. The Tribunal determined that an order for payment of £13,249.00 should be made.

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.

**Joan Devine
Legal Member**

Date: 3 June 2025