



Decision with reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 70 of the Rules

Ref: FTS/HPC/CV/23/4411

Re: Property at 2/10 Arneil Drive, Edinburgh, EH5 2GS (“the Property”)

Parties:

LAR Housing Trust, F3 Buchan House, Carnegie Campus, Enterprise-Way, Dunfermline, KY11 8PL (“the Applicant”)

Mr Thomas Smith, Flat 24, 9 Glenforth Court Ferrymuir, South Queensferry, Edinburgh, EH30 9BQ (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The Tribunal determined that an Order for Payment in the sum of TWO THOUSAND ONE HUNDRED AND EIGHTY ONE POUNDS and NINE PENCE (£2,181.09) Sterling be granted.

Background

1. By application received between 7 December 2023 and 15 January 2024 (“the Application”) the Applicant applied to the Tribunal for an Order for Payment of rent due and owing by the Respondent amounting to £2,181.09 in respect of a former tenancy of the Property. The Application comprised a copy of the written short assured tenancy agreement between the previous landlord and the Respondent, evidence of acquisition by the Applicant, copy rent statement and copy correspondence between the Parties.

CMD

2. The Application was accepted by the Tribunal Chamber, and a Case Management Discussion (the "CMD") was fixed for 30 May 2024 by telephone conference. The Respondent lodged written representations prior to the CMD. The CMD took place on 30 May 2024. The Applicant was neither present nor represented. The Respondent was present and supported by his partner, Ms Deborah Parker. As the applicant was not present, the application was refused.
3. An application to recall the decision to refuse was lodged and considered at a further CMD by telephone conference on 13 January 2025. The Applicant was represented by Mrs Nicole Maxwell, senior property manager. The Respondent was represented by his partner, Ms Parker. The Tribunal firstly dealt with the application for recall. The earlier decision to refuse the Application was recalled in the interests of justice.
4. At the CMD on 13 January 2025, the Tribunal heard the Parties in respect of the dispute between them. Mrs Maxwell explained that the Applicant purchased the property on 4 May 2021, and at that time, no rent was due and owing by the Respondent. She stated that the Respondent gave notice to terminate the tenancy and the tenancy was terminated by the Parties' agreement on 16 September 2021. The balance due by the Respondent as at that date was £2181.09, following the release to the applicant of the tenancy deposit of £830.00. Mrs. Maxwell stated that only one payment of rent was made by the Respondent to the Applicant and that was made in May 2021.
5. For the Respondent, Ms Parker confirmed that that sum was unpaid by the Respondent. She explained that the landlord had changed a number of times and that the Property suffered from dampness and mould which had not been addressed by any of the landlords. She confirmed that only the rent due to the Applicant had been withheld and asserted that the Applicant had agreed to reduce the rent due because of the condition of the Property.
6. For the Applicant, Mrs. Maxwell denied that any agreement had been made with the Respondent to reduce the rent and disputed that there were any major issues with the property. She explained that following the Respondent leaving the Property, it had been redecorated and the kitchen upgraded but no damp works were required and no subsequent reports of damp or mould growth had been received. Mrs. Maxwell stated that the Applicant had not been afforded a reasonable opportunity to address any complaints by the Respondent and that the Respondent was not entitled to withhold rent due to repairing issues.

7. The CMD was adjourned to a Hearing of evidence on the following matters:

- (i) Was there an agreement made between the parties that rent would not be charged given the condition of the property?
- (ii) Was the condition of the property such that it did not meet the repairing standard in terms of section 13 of the Housing (Scotland) Act 2006 and/or the tenancy agreement?
- (iii) If so, was there a breach of repairing duties on the part of the Applicant and was the Applicant liable for any such breach on the part of the predecessor landlord at the point of purchasing the property?
- (iv) In the event this was the case, was the Respondent entitled to an abatement of the rent outstanding and to what extent?

8. The following Direction was issued:

“The Respondent is required to provide:

- 1. Representations as to the detailed repairing issues relied upon, the date each repairing issue began, how and when it was reported to the landlord and the response of the landlord including any inspection or repairs carried out;*
- 2. Representations as to the exact nature of any loss suffered by the Respondent and how this has been quantified;*
- 3. Copies of any correspondence between the Respondent and Applicant and/or their predecessors concerning repairing issues at the property;*
- 4. A bundle of documents lodged in support of their position, including those lodged to date, with said documents numbered and individually paginated and lodged with an inventory or cover sheet. The said documentation should be lodged with the Chamber no later than close of business on 28 February 2024.*

The Applicant is required to provide:

- 1. Any records or documents pertaining to an inspection of the property on or after 8 June 2021;*
- 2. Any records or documents in the Applicant’s possession obtained from their predecessor as landlord relating to the condition of the property.*
- 3. A bundle of documents lodged in support of their position, including those lodged to date, with said documents numbered and individually paginated and lodged with an inventory or cover sheet. The said documentation should be lodged with the Chamber no later than close of business on 28 February 2024.*

The Applicant and Respondent are required to provide:

- 1. Lists of any witnesses parties intend the Tribunal to hear from at the hearing to be assigned;*
- 2. A note of any legal submissions as to the Respondent’s entitlement to withhold rent in response to a failure to carry out repairs, the Respondent’s entitlement to an abatement of any rental debt in the event of a breach of repairing duty and the liability of the Applicant for any breach of repairing duty by a predecessor landlord as at 4 May 2021.”*

9. The Applicant complied with the Direction and its responses were copied to the Respondent. The Respondent did not comply with the Direction to any extent.
10. As part of their compliance with the Direction, the Applicant submitted a legal opinion by DD Anderson, Advocate, which sets out clearly and simply the law in respect of a tenant's right and entitlement to withhold rent in full or in part and to an abatement of rent.

Hearing

11. A Hearing of evidence took place on 1 July 2025 by telephone conference call. The Applicant was represented by Mrs Nicole Maxwell, senior property manager. The Respondent was not present and was not represented. The Tribunal, having made enquiries with the chamber administration, was satisfied that the Respondent was aware of the proceedings. The tribunal clerk telephoned the Respondent without success. The Tribunal being satisfied that the Respondent was aware of the proceedings and that he should attend, proceeded in his absence.
12. Mrs. Maxwell confirmed to the Tribunal that the Applicant's position was that, as set out in the Opinion by DD Anderson, Advocate, the Respondent had not established or proved any right or entitlement to withhold rent in full or in part or to any reduction in or abatement of rent in full or in part. In the absence of any evidence to the contrary, the Tribunal agreed with the Applicant's position.
13. Mrs. Maxwell confirmed to the Tribunal that no payments have been received from the Respondent and so the sum sought by the Applicant is £2,181.09.

Findings in Fact

14. From all of the information before it, the Tribunal made the following findings in fact: -
 - i) There was a tenancy of the Property between the Applicant and the Respondent which ended on or around 16 September 2021;
 - ii) At the close of the tenancy, the balance of rent due and owing by the Respondent to the Applicant amounted to £3,011.09;
 - iii) The Applicant held a tenancy deposit of £830.00 on behalf of the Respondent and deducted this from the rent due and owing, reducing the sum due by the Respondent to £2,181.09;
 - iv) The Applicant acquired ownership of the Property in May 2021;
 - v) The Respondent was not in arrears or rent at that date;
 - vi) The Respondent made only one payment of rent to the Applicant after they acquired ownership of the Property;

- vii) The Respondent's arrears of rent accrued after May 2021;
- viii) The Respondent accepts that rent amounting to £2,181.09 is unpaid;
- ix) The Respondent alleged that the Property was affected by dampness and that he is withholding or retaining rent in this respect;
- x) The Respondent did not give the Applicant proper notification of the alleged dampness in the Property and did not give the Applicant a reasonable opportunity to remedy the alleged dampness in the Property;
- xi) The Respondent did not give the Applicant proper notification that he was withholding or retaining rent because of the alleged dampness in the Property;
- xii) The Respondent has not evidenced dampness in the Property and
- xiii) Rent amounting to £2,181.09 remains unpaid and is due and owing by the Respondent to the Applicant;

Decision and Reasons for Decision

15. The Tribunal had regard to all the information before it and to its Findings in Fact.
16. The Tribunal's view is that the position which the Respondent attempted to argue and put forward is that he is entitled to an abatement of rent due to the Property being in disrepair to the extent that the Applicant, as landlord, breached their contractual, common law and/or statutory duties. In the Tribunal's view, the written representations and photographs submitted prior to the initial CMD do not support this position. At the CMD on 13 January 2025, the Parties were advised of the legal tests which applied and the standard of proof which was required. The Direction issued at that time guided the Parties and the Respondent, in particular, to the range of evidence which should be produced. However, the Respondent did not comply with the Direction and did not produce evidence to show that the Property was in disrepair to the extent that he is entitled to an abatement of rent.
17. At the CMD on 13 January 2025, it was accepted on behalf of the Respondent that rent amounting to £2,181.09 is unpaid by him. Therefore, as the Respondent has failed to show any right or entitlement to withhold rent in full or in part or to any abatement of rent in full or in part, the Tribunal has no hesitation in granting the payment order as sought.
18. This decision is unanimous.

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.

K Moore

Legal Member/Chair

— 1 July 2025
Date