

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/24/4801

Re: Property at 68 HAZELDEAN CRESCENT, WISHAW, ML2 8RB (“the Property”)

Parties:

KWAI WA NG, 0/2 20 CLARENCE STREET, PAISLEY, PA1 1PU (“the Applicant”)

**West View Park Homes Ltd, POBOX 15712, Bathgate, West Lothian, EH48 9DP
 (“the Respondents”)**

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of £365.50 should be granted.

- Background

By application dated 15 October 2024 (the Application) the Applicant seeks a payment order against the Respondents. With the Application, the Applicant has lodged supporting documents which include the following:

- 1) Lease agreement dated 20 September 2024; and
- 2) Copy email correspondence between the Applicant and the Respondents.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 30 May 2025 to be heard by way of conference call. Prior to the CMD, the Respondents sent an email dated 21 April 2025 by way of a response which disputed the Applicant’s claim and indicated that, in their view, the Applicant owed them money. Despite the written response, the Respondents did not appear, nor were they represented. As result the CMD was continued to give the Respondents an opportunity to appear and produce evidence in support of their response and were warned that, if

they did not, the matter could be dealt with in their absence and potentially on the basis there was no defence. A further CMD was fixed, again to be heard by way of conference call, for 3 September 2025. Details of which were intimated to both parties along with a copy of the note issued following the previous CMD. At the further CMD the Applicant appeared and represented himself. His wife (Jianxai Tao) was again present but did not take part in proceedings. The Respondents did not appear and were not represented. No further submissions were received from them. Notwithstanding this failure to appear or be represented, the Tribunal was of the view that they were aware of the CMD, their requirement to attend and therefore matters could proceed in their absence.

- The Case Management Discussion

The Applicant indicated that he was seeking a payment order in the sum of £731 which was the balance of the sums that had been paid to the Respondents in relation to their tenancy at the Property. He indicated that he felt that he was due repayment of all sums (including the balance of £731) he had paid for the tenancy of the Property because, in his view the property was uninhabitable, and he and his wife were entitled to an abatement of any rent due amounting to 100%.

Mould

The Applicant stated that the Property was affected by “black mould”. In particular the bathroom within the Property had visible mould on the ceiling of same especially in the corners. He also indicated that both bedrooms were affected by mould on the corners of the ceiling and in the main bedroom within the built-in cupboard. He also stated that the bedroom blinds had black mould on them. He stated that this caused a particular concern for them due to his 8 year old son’s asthma.

Heating

The Applicant indicated that the heating system within the Property “did not work at all”. He also indicated that, as a result, they had required to take showers at a friend’s house due to a lack of hot water.

Appliances

The Applicant stated that the washing machine within the Property was “broken” and, as a result, his wife had to wash clothes by hand in cold water. He also indicated that no fridge was supplied with the Property and that there was not even a place to put one or plug it in within the kitchen within the Property. He had not realised that there was no fridge supplied with the tenancy.

Other issues with the bathroom

The Applicant stated that the bath screen was detached, broken and left propped up against the bath on the floor within the bathroom, the toilet seat was broken, and the shower hose was leaking.

Overall, as a result of these issues, he felt the Property was uninhabitable and he should not be required to pay rent for same. The Applicant confirmed that they did use the Property to an extent and occupied it from 21 September 2024 to 26 September 2024. He stated that the day they had taken possession of the Property (21 September 2024) he emailed the Respondents to complain about the condition of the Property. He confirmed that he gave notice to the Respondents of his intention to leave the Property on 23 September 2024 by email and stated that he would vacate by 27 September 2024 although he and his family vacated on 26 September 2024.

Whilst there was no appearance by the Respondents, the position advanced in the written response dated 21 April 2025 was that the Applicant had signed a "binding contract", took occupation of the Property and then gave notice to leave on 23 September 2024. That the Property was not uninhabitable, There was "no mold" and they were not given the chance to "fix any problems he may have had". That the £731 was the rent due for the 28 day period from the start of the tenancy but that they would have been entitled to hold the Applicant for a 28 day period from the date of the notice to leave and not the start date of the tenancy. That, they claimed, would mean that the Applicant owed them £182.95, but they had been "super fair" by not insisting on or charging for the full period of notice. The response of 21 April 2025 also suggested that the Respondents were happy to rest their position on the written response and stated that they were content to let this Tribunal "...decide the best route forward..". Whilst the Respondents lodged a written response to the Application, no documentary evidence was lodged in support of their position, for example a check-in inventory to record the condition of the Property.

- Findings in Fact and Law

- 1) That the Applicant and his wife Jianxai Tao entered into a Private Residential Tenancy Agreement with the Respondents which commenced on 21 September 2024.
- 2) That the rent payable under the said tenancy was £795 per calendar month.
- 3) That on 21 September 2025, the Applicant emailed the Respondents complaining about condition of the Property.
- 4) That on 23 September 2024, the Applicant emailed the Respondents seeking to give notice to leave to terminate the tenancy for the Property as at 27 September 2024.
- 5) That the Applicant and his family vacated the Property on 26 September 2025.
- 6) That the Respondents accepted the notice to leave but insisted on the Applicant giving 28 days from the commencement date on 21 September 2024.
- 7) That the Applicant's tenancy for the Property therefore terminated on 18 October 2024.
- 8) That the contractual rent for the period 21 September 2024 to 18 October 2024 is £731.
- 9) That the ceilings within the Bathroom and both bedrooms in the Property were affected by black mould.
- 10) That the blinds within both bedrooms were affected by black mould.
- 11) That the built-in cupboard within the main bedroom of the Property was affected by black mould.

- 12) That the central heating within the Property was inoperable and there was no hot water during the period of the Applicant's occupation of same..
- 13) That the Applicant and his family attended a friend's house to shower.
- 14) That the washing machine supplied by the Respondents as part of the tenancy was inoperable and any clothes were washed by hand in cold water.
- 15) That within the bathroom the bath screen was detached, broken and left propped up against the bath on the floor within the bathroom, the toilet seat was broken and the shower hose leaked.
- 16) That the Applicant and his family's ability to use the Property and its fixtures was affected as a result of the Property's state of repair and that they are entitled to an abatement of rent payable for the period 21 September 2024 to 18 October 2024 to the extent of 50%.

- Reasons for Decision

The Tribunal considered the Applicant's position and the response lodged by the Respondents. Whilst the Respondents were not present to insist upon their response, the Tribunal took the view that the Respondents had at least notionally put at issue the question of the condition of the Property and disputed what was said by the Applicant on the Application at least in so far as it related to the Property being affected by black mould. Notwithstanding, no evidence in support of that position was led by them or on their behalf. The Applicant described the rooms affected by mould and the extent of that mould. In the absence of contrary evidence, the Tribunal accepted that as credible and reliable. Whilst not entirely clear from the response, the Tribunal took the view that the Respondents were also disputing that the central heating did not work. Again, no evidence was led in support of that position, and, in the absence of contrary evidence, the Tribunal accepted the Applicant's evidence in that regard as being credible and reliable. In terms of other issues with the Property, it did not seem that the Respondents took specific issue with the Applicant's claims in the Application but rather complained that they were not given the opportunity to resolve them. The Tribunal therefore accepted the Applicant's evidence in relation to those issues too.

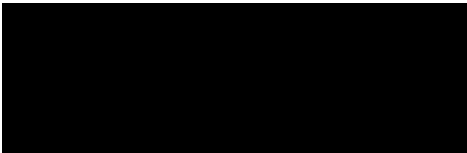
Both parties were in agreement that notice to leave was given by the Applicant and his wife on 23 September 2024. With private residential tenancies, the requirement on a tenant is to give at least 28 days notice to leave to a landlord to terminate their lease, unless the landlord agrees to a different period (section 49(3) of the Private Housing (Tenancies)(Scotland) Act 2016). Whilst the Applicant and his wife sought to terminate the tenancy on 27 September 2024, the Respondents did not accept that but did indicate (at least by implication) that they would restrict any period of notice to a date 28 days from the commencement of the tenancy on 21 September 2024. Having done so, they are not entitled to try to extend that period retrospectively for the purpose of these proceedings. That being the case, the question that remained for the Tribunal was the question of any abatement that was appropriate for this 28 day period. Having heard the Applicant and having considered the response (so far as was material), the Tribunal decided that the appropriate abatement was 50% of the rent due for that period or an amount of £365.50. The Applicant's suggestion of 100% was not, in the view of the Tribunal appropriate. The Applicant did have use of the Property and whilst their enjoyment of same was clearly affected due to its condition, a full abatement of rent was not appropriate.

- Decision

The Tribunal decided to issue a Payment Order in favour of the Applicant against the Respondents in the sum of £365.50.

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.



3 September 2025

Legal Member/Chair

Date