



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/24/3036

Re: Property at Easter Hatton, Aberdeen, AB23 8YY (“the Property”)

Parties:

**Adria Group Limited, Harness Circle, Altens Industrial Estate, Aberdeen, AB12
3LY (“the Applicant”)**

**Mr Bernard Charles Flogdell, Ms Jackie Charles Flogdell, Mr Jonathan Charles
Flogdell, 121F Jeanfield Road, Perth, PH1 1GW; Easter Hatton, Aberdeen,
AB23 8YY; Easter Hatton, Aberdeen, AB23 8YY (“the Respondent”)**

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for payment by
the Respondents to the Applicant in the sum of £7800.00.**

Background

1. By application received on 2 July 2024 the Applicant’s representatives, Lindsays LLP, Solicitors, Dundee applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the Respondents’ tenancy of the property. The Applicant’s representatives submitted a copy tenancy agreement and rent statement together with other documents in support of the application.
2. Following further correspondence between the Applicant’s representatives and the Tribunal administration, by notice of Acceptance dated 8 December 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondents by Sheriff Officers on the Respondents on 11 and 13 March 2025.
4. The 1st and 2nd Respondents submitted written representations to the Tribunal dated 29 March 2025.
5. A CMD was held by teleconference on 29 April 2025. The Applicant was represented by Ms Alison Fitzgerald from the Applicant's representatives. All three Respondents were in attendance. After hearing from the parties, the Tribunal concluded that there were disputed matters of fact and that the application should be determined at a hearing. The Tribunal noted the issues to be determined as:-
 - (i) Whether or not the biomass heating and hot water was included in the monthly rent for the property;
 - (ii) Whether the Applicant has failed to maintain the property to a tolerable standard and/or to the repairing standard;
 - (iii) If so, whether the Respondents are entitled to rent abatement and/or set-off in respect of the additional costs incurred by them;
 - (iv) Whether or not the 1st Respondent ceased to be a tenant with effect from 1st June 2024 and had no liability for rent from that date; and
 - (v) Whether or not the Respondents are jointly and severally responsible for any amount of rent arrears.The Tribunal continued the application to a hearing by video link.
6. By email dated 1 May 2025 the Applicant's representative submitted written representations to the Tribunal with witness details.
7. By emails dated 5 and 20 May 2025 the 2nd Respondent (Ms Jackie Flogdell) submitted written representations to the Tribunal.
8. By email dated 6 August 2025 the Applicant's representative submitted written representations to the Tribunal.
9. By email dated 13 August 2025 the 2nd Respondent submitted written representations to the Tribunal.
10. By email dated 8 September 2025 the Applicant's representative submitted an Inventory of Productions together with an application to increase the sum claimed to £19278.99.
11. By email dated 11 September 2025 the 2nd Respondent submitted further written representations to the Tribunal together with details of a witness.
12. By emails dated 30 September the 2nd Respondent submitted further written representations and productions to the Tribunal.

The Hearing

13. A Hearing was held by video link on 30 September 2025. Mrs Edith McKimmie attended for the Applicant who was represented by Ms Alison Fitzgerald from the Applicant's representatives. The three Respondents were all in attendance and in addition the Tribunal heard evidence from Mr Gareth Cordiner M.R.I.C.S. and from the 2nd Respondent's daughter Ms Carrie Anderson.
14. By way of a preliminary matter the Tribunal established that the Applicant did not object to the 2nd Respondent's written representations of 30 September being received although late and these were allowed into the process.
15. After explaining the purpose of the proceedings and how the hearing would be conducted the Tribunal heard evidence from the Applicant's first witness Mr Gareth Cordiner.

The Evidence of Mr Gareth Cordiner

16. Mr Cordiner explained that he was a Chartered Building surveyor having been admitted MRICS on 4 July 2005. Mr Cordiner said he had been instructed to inspect the property by Mrs McKimmie and had attended on 22 July 2024 with a junior colleague. He said that the inspection had lasted about two and a half hours and his findings had been contained in his report numbered 241021 and dated 2 August 2024. In response to a query from Ms Fitzgerald, Mr Cordiner said that he had not found any structural issues of concern but there were a reasonable number of repairs required to the property that would require a reasonable amount of work both externally and internally and to the basement. Mr Cordiner went on to say that there were issues with the bathroom which was in fairly poor condition and that the aluminium windows on the first floor had not been replaced and were in poor condition resulting in water ingress at the sides along with the surrounding timber rotting. Mr Cordiner spoke of the basement at the property suffering from significant water ingress as the tanking had failed and that this required to be addressed. He also spoke of the bath in the bathroom not operating as a spa bath. Mr Cordiner referred to the render on the west gable wall as looking okay but was "boss" in places meaning that the render was coming away and would need to be re-rendered. Mr Cordiner also said that the chimney stacks were in a similar condition. Mr Cordiner explained that he had been unable to inspect one room at the property due to it being full of personal items that had been removed from the home of a relative of the Respondents.
17. In response to a query from the Tribunal as to whether the property met the repairing standard, Mr Cordiner said it was not wind and watertight and with regards to fixtures and fittings the kitchen and bathroom fixtures and fittings were not in proper working order nor were the upstairs windows.

18. Mrs McKimmie said that she was the group financial officer and HR Manager for the Applicant and also dealt with all the Applicant's properties that consisted of 17 commercial and 3 residential properties. Mrs McKimmie explained she had a colleague who goes round the properties and that she instructed tradesmen to attend at the properties when required. Mrs McKimmie said that she had never met the 2nd Respondent but had spoken to her on the telephone many times. Mrs McKimmie confirmed that the Respondents' tenancy had commenced on 11 February 2022 and that she had not had any dealings with the Respondents prior to the commencement of the tenancy as that had been carried out by Stonehouse Lettings. When asked to comment on the document submitted by the 2nd Respondent namely the advertisement for the property prepared by Stonehouse Lettings, Mrs McKimmie said that she agreed that it should not have said that there was a working sauna as the sauna had never worked since the property had been purchased on 27 March 2015. Mrs McKimmie said that shortly after the Respondents had moved into the property the 2nd Respondent had contacted her about the sauna and the jacuzzi and had been told that the Applicant did not wish to repair them. Mrs McKimmie went on to say that after that conversation in March 2022 the 2nd Respondent had asked for a rent reduction because the sauna and jacuzzi was not working. Mrs McKimmie went on to explain that the heating at the property was provided from the biomass plant at the neighbouring landfill site owned by the Applicant although not part of the tenancy. Mrs McKimmie said that the heating and hot water at the property could also be provided by an oil fired boiler and that tenants were provided with a level at the commencement of a tenancy and had to leave with the tank at the same level at the end of the tenancy. Mrs McKimmie said that the biomass plant operated on woodchip but had stopped working about six months previously or perhaps earlier as no spare parts were available. Mrs McKimmie said that the heating supplied from the biomass plant was a courtesy and not part of the tenancy.
19. Mrs McKimmie said that after the initial difficulties things had progressed quite well for a while but in about 2023 or 2024 Presly Pest Control had commented on the build-up of black bags in the garage which they thought were attracting rodents and the 2nd Respondent had been told to remove them. Mrs McKimmie said that the Applicant had provided a skip free of charge and this had been filled by the Respondents.
20. In response to a further query from Ms Fitzgerald, Mrs McKimmie said that a lot of the repairs mentioned by the 2nd Respondent in her written submissions had not been reported to the Applicant but that an electrician and plumber had been sent as had the engineer from the landfill site. Mrs McKimmie said that Alan, the engineer from the landfill site had attended at the property on eight occasions in the last eight months to reset the boiler as the Respondent had let the tank run dry.
21. Mrs McKimmie confirmed that the rent due by the Respondents as at 8 September 2025 amounted to £19278.99.

22. In response to a query from the First Respondent, Mrs McKimmie said that when the original request to remove his and the 3rd Respondent's names from the lease had been made in 2022 it had been refused as it was not thought that the 2nd Respondent had the financial resources to meet the rent on her own and when the 1st Respondent asked to be removed as a tenant in 2024 there were rent arrears for which he was liable.
23. In response to a query from the Tribunal Mrs McKimmie said that Mr Simpson was a self-employed handyman and that she was not sure of his qualifications but that he was employed to cut grass and take meter readings.
24. In response to a further query from the Tribunal Mrs McKimmie said she had not visited the property since the Respondents moved in but that she had lived at the property for a week previously. Mrs McKimmie said that during her time at the property she had not been in the basement and that the previous occupant had left it beautifully decorated and she had not been aware of the issues raised by the 2nd Respondent.
25. In response to a further query from the Tribunal Mrs McKimmie accepted she had not checked the Stonehouse Lettings advert and offered her apology for the misleading statements as regards the sauna and luxury bathroom. Mrs McKimmie said that at the time it had been suggested the Respondents could walk away from the lease no offer of compensation had been made but that if this had been made it would have been raised with the Applicant. With regards to the Respondents' request for a reduction in rent Mrs McKimmie submitted that the provision of the biomass heating was sufficient to offset any reduction and that the rent was fair.
26. Mrs McKimmie said that it was unknown what the main issue was with the basement but that a budget of £90000.00 had been allocated for the repairs. This would include removing the sauna and pipework and investigating the water ingress, replacing the bathroom, carrying out any electrical work, re-rendering the gable wall, replacing windows and repairing the roof and chimney stacks.

The 2nd Respondent's Evidence

27. The 2nd Respondent said that the Applicant had no intention of carrying out repairs until she had fallen out with Mrs McKimmie's colleague Martin Stephen. The 2nd Respondent said Mr Stephen was being awkward and had said the rent was going up by 3% and then about two hours later she said she received a call from the letting agents telling her she was going to be evicted. The 2nd Respondent spoke of being accused of being a bad tenant and that Mr Simpson's report was lies. She spoke of asking Alan the engineer from the landfill site for a skip in order to clear out the black bags and he had said he would ask Mrs McKimmie but she had heard nothing more. The 2nd Respondent said she believed the biomass heating had been turned off on purpose and that in so doing it had cost the Respondents a lot of money.

28. Ms Fitzgerald asked the 2nd Respondent why she thought the Applicant should pay for a skip to remove the rubbish from the property and the 2nd Respondent said that she had been happy to pay for the skip and had previously asked Alan the Landfill engineer for one and had never said she would not pay.
29. In response to a further query from Ms Fitzgerald, the 2nd Respondent said the Respondents had stopped paying rent because of the deterioration in the condition of the property and the additional cost incurred for oil and also being unable to claim additional benefits after the 1st Respondent had left the property but not had his name removed from the lease. The 2nd Respondent went on to say that she had offered at that time to pay about £600.00 per month. The 2nd Respondent said that she was now in a dire situation as she could not afford to obtain another property in the area and although she had tried had kept being rejected. The 2nd Respondent also said that she did not want to be accommodated in temporary accommodation by Aberdeenshire Council.
30. In response to a further query from Ms Fitzgerald as to why she had not made further enquiries about the property before signing the lease the 2nd Respondent said that the letting agents employed by the Applicant had known nothing about the property and that everything was just guess work and that even Mrs McKimmie did not know the answers.
31. In response to further queries from the Tribunal the 2nd Respondent said that she now felt that paying rent of £600.00 per month was too much as she was living in a cold damp house and that perhaps £400.00 was more appropriate. The 2nd Respondent said the Respondents had been given false information about the property and the bath was still full of sludge and could not be used. In addition, the 2nd Respondent said she had to meet the cost of oil and electricity and there was no heating in the two top rooms. She said that the way the Respondents had been treated was unfair and also that as there was no immersion heater all hot water had to be heated by oil in the absence of the biomass heating. The 2nd Respondent went on to say that she had been unable to establish from the Applicant if the coal fires could be used despite asking and that although some repairs such as that to the toilet had been done others such as repairs to the windows had not. The upper rooms were unusable because of a lack of heating and her son Jonathan's bedroom was damp.

The Evidence of Carrie Anderson

32. Ms Anderson spoke of noticing that the property had become increasingly damp and cold with more mould growing. Ms Anderson said that the Applicant had failed to repair the windows at the property and this was causing damp. She also said that there was an unpleasant smell from the basement and that as an asthma sufferer she found that when she stayed at the property, she could feel it affecting her chest. Ms Anderson spoke of staining above the third Respondent's bed getting worse and that the wallpaper above the window was falling down and had become worse since the previous year.

33. Ms Anderson spoke of the biomass heating not functioning and that this had massively affected the 2nd Respondent's health and made her more stressed and anxious. Ms Anderson said that the Respondents had initially been told the heating would be off for a couple of weeks but were eventually told the Applicant could not get parts and that it was defunct. Ms Anderson recalled that there had been no hot water for showers and that the 2nd Respondent had spoken to Mrs McKimmie about using the open fires but had been told she knew nothing about them and had not sent anyone out. Ms Anderson said she thought it particularly bad that the Applicant had not provided any other source of heating.
34. In response to a query from the 2nd Respondent Ms Anderson said she did not think that Alan from the landfill site had been out eight times in eight months to reset the oil boiler but that he had been a few times.
35. In response to a query from Ms Fitzgerald as to why the Respondents had not used oil for heating and hot water Ms Anderson said it was because they had been expecting the biomass heating to be restored within a few weeks and because they had asked about using the open fires. Ms Anderson explained that if the Respondents had been able to use the open fire she could have arranged for them to be supplied with wood to burn free of charge.
36. Ms Anderson went on to say that she attended at the property every week and had never seen any repairs been done only the pest control contractors and they only went into a kitchen cupboard, the utility room and an upstairs cupboard. Ms Anderson said there had been no inspections done and the property was in the same state of disrepair.

Closing Submissions

37. For the Applicant Ms Fitzgerald asked the Tribunal to find that the rent claimed was due and payable. She submitted that there was no real basis for abatement and sought an order for payment in the full sum of £19278.99 but if the Tribunal felt otherwise, she was in the Tribunal's hands.
38. For the Respondents, the 2nd Respondent said the tenancy had been a nightmare. She submitted that she had tried to find an amicable solution but had been treated abominably and that this had affected her physical health. The 2nd Respondent blamed the actions of the Applicant's former employee, Martin Stephen for the issues that had arisen. The 2nd Respondent submitted that the Respondents should not have to pay the full rent claimed by the Applicant for the reasons stated.

Findings in Fact

39. The Respondents commenced a Private Residential tenancy of the property on 11 February 2022 at a rent of £1200.00 per month.

40. The property does not currently meet the repairing standard.
41. The first floor windows at the property are in need of repair and are the cause of water ingress and damp in the first floor bedrooms.
42. The property was advertised by the Applicant's letting agents as having a large basement with a sauna and a luxury bathroom.
43. The basement is subject to flooding and cannot be used by the Respondents and has an unpleasant smell that affects the property.
44. The basement sauna was not in working order and the spa bath in the bathroom was likewise not operational. The Applicant was not prepared to carry out repairs to or replace the spa bath.
45. The property was advertised by the Applicant's letting agents as having heating supplied as part of the rental.
46. In or around the first quarter of 2024 the biomass heating failed and is no longer operative.
47. The 1st Respondent moved out of the property on 1 June 2024.
48. The Respondents stopped making regular rent payments in February 2024.
49. Since February 20 24 the Respondents have made two payments of rent amounting to £3600.00.

Reasons for Decision

50. The 1st Respondent has submitted that since he moved out of the property on 1 June 2024, he should not be liable for any rent from that date. The Tribunal considers that the 1st Respondent's submission is ill founded. Section 78(3) of the Private Housing (Tenancies) (Scotland) Act 2016 provides that in a joint tenancy even although one tenant is no longer living in a property they remain a tenant until such time as either the other tenants agree to serve notice bringing the tenancy to an end or the tenancy is brought to an end by the landlord serving a Notice to Leave and the tenants agree to leave or the First-tier Tribunal grants an eviction order. The Tribunal is therefore satisfied that the 1st Respondent is still a tenant and that all three Respondents are jointly and severally liable for any rent that is due.
51. Although the biomass heating system is not mentioned in the tenancy agreement that does not preclude it forming part of the agreement between the parties. Mrs McKimmie suggested that the heating was supplied to the Respondents as a courtesy and could effectively therefore be withdrawn at any time. However, the Applicant's letting agents Stonehouse Lettings in their advertisement marketing the property for rent specified that the biomass

heating would be supplied as part of the rental for some of the year. In terms of the Law of Agency as Stonehouse Lettings were acting for a disclosed principal the Applicant is liable for their actions. The Tribunal is satisfied from the Respondents' evidence and from the fact that the biomass heating was supplied from the commencement of the tenancy until the plant broke down and replacement parts could not be sourced in the first quarter of 2024 that it was intended to be provided as part of the tenancy.

52. The Tribunal was satisfied from the documents submitted and the oral evidence of both Mr Cordiner and the 2nd Respondent that the property was in a poor condition and in need of substantial repair. The Tribunal found Mr Cordiner to be a credible and reliable witness and that he provided an accurate and unbiased report of the work that was required at the property. In Mr Cordiner's opinion the property did not meet the repairing standard and from the description of the property in his report and from the evidence of the 2nd Respondent and Ms Anderson both of whom the Tribunal found in this regard to be credible, the Tribunal had no difficulty in accepting that this was indeed the case. Although the Applicant had carried out some repairs at the property significant issues remained including the very significant water ingress in the basement and the damp issues caused by the failure to replace the first floor windows or replace the bath in the ground floor bathroom. The Tribunal was therefore satisfied that the Applicant had failed to maintain the property to the repairing standard.
53. The Respondents have claimed that as a result of the Applicant's failings they have incurred additional costs for oil and electricity in order to heat the property and to provide hot water. The Respondents have not provided any invoices to support their claim but Mrs McKimmie said in evidence that the Applicant's employee Alan from the landfill site had attended at the property eight times in eight months because the Respondents had allowed the oil tank to run dry. That would suggest that the Respondents were having to add oil to the tank every month although how much has not been proved. The 2nd Respondent in her written submission dated 29 March 2025 said that the Respondents were paying £400.00 per month for 500litres of oil. That figure was not challenged by Ms Fitzgerald in her cross examination of the 2nd Respondent but to be fair the 2nd Respondent did not specify in her evidence how much was being spent on oil. On balance all the Tribunal can conclude is that given the size of the property the Respondents would have incurred a not insubstantial cost for oil during the period since the biomass plant ceased to function.
54. The Respondents have not been able to enjoy the full use of the property. The bath in the ground floor bathroom was supposed to be a spa bath but is unserviceable and the Tribunal was satisfied from the surveyor's report and the 2nd Respondent's evidence that, despite a plumber having attended it still cannot be used.
55. The upstairs bedrooms are suffering from mould, damp and water ingress. There is a significant amount of water in the basement that requires to be regularly pumped out and causes an unpleasant smell in the property. The Respondents had been led to believe that they would have the use of a sauna

at the property but this was incorrect. The property is infested with rodents although to be fair to the Applicant it has instructed pest control contractors to deal with the problem. Nevertheless, in light of these issues and the additional cost incurred heating the property and supplying hot water the Tribunal is satisfied that it is appropriate that there should be an abatement of rent due to reflect this and to reflect the worry stress and inconvenience experienced by the 2nd Respondent in particular.

56. 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 as the Respondent has done in this case. The leading authority on abatement is the opinion of Lord President Inglis in *Muir v McIntyre* 1887 14 R 470 at page 472 where he said "...it is quite settled in law that an abatement is to be allowed if a tenant loses the beneficial enjoyment of any part of the subject let to him either through the fault of the landlord or through some unforeseen calamity which the tenant was not able to prevent." This opinion is affirmed in *Renfrew District Council v Gray* 1987 SLT (Sh Ct) 70, where Sheriff Principal Caplan said that abatement is based on the fact that the tenant should not pay for rights they never enjoyed. When abatement is being claimed, consideration needs to be given to the extent and the duration over which the Respondent was denied beneficial enjoyment of part of the Property. In assessing what would be a reasonable abatement the Tribunal requires to take into account the overall inconvenience which the Respondent had to suffer.

57. The Applicant has claimed rent of £19200.00 together with the additional surcharge of £78.99 for late payment. The Tribunal as indicated above does not consider that the Respondents should pay the full amount of rent claimed and are entitled to a significant abatement for the reasons stated. Having carefully considered the likely additional costs for heating together with the loss of use and enjoyment of the property and the impact the failures of the Applicant to maintain the property to the repairing standard has had particularly on the 2nd Respondent but also on the other Respondents that an abatement of 50% of the rent is appropriate from March 2024 to date a period of 19 months. This amounts to £11400 being due by the Respondents to the Applicant but as they have already paid £3600.00 the balance remaining is £7800.00. The Tribunal will issue an order in that amount. The Respondents are asked to note that as an order for their eviction has been granted in case reference FTS/HPC/EV/24/3035 but enforcement of the order has been suspended until 5 January 2026 the Tribunal would expect the Respondents to continue to make payment of the abated rent (£600.00 per month) until the tenancy ends on 5 January 2026.

Decision

58. The Tribunal finds the Applicant entitled to an order for payment by the Respondents to the Applicant in the sum of £7800.00.

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.

Graham Harding

Legal Member/Chair

30 September 2025

Date