

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 (1) of the Private Housing (Tenancies) (Scotland) Act 1971 ("The Act")

Chamber Ref: FTS/HPC/CV/24/3215

Re: Property at 46A Dempsey Court, Queens Lane North, Aberdeen, AB15 4DY ("the Property")

Parties:

Mr Glen Rose, 46A Dempsey Court, Aberdeen, AB15 4DY ("the Applicant")

Mr Alan Donald, Mrs Maureen Donald, 112 Fairview Circle, Danestone, AB22 8YR ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") refused the Application and made no order.

Background

[2] The Applicant seeks a Payment Order in the sum of £1,827.31 from the Respondents. His case is premised on the fact that he signed a tenancy and moved into the Property, but the Property was not habitable. The Applicant claims financial compensation for various losses he says he incurred until the issues were remedied. The Respondents oppose the claim and say that no payment is due. Both sides have submitted written representations outlining their position.

The Hearing

[3] The Application called for a Hearing by video conference at 10 am on 29 August 2025. The Applicant was personally present. He gave evidence and called his father, Michael Rose to give evidence on his behalf. The Respondents were both personally present together with their letting agent, Mr Stuart Carnie. Mr Carnie gave evidence on behalf of the Respondents and thereafter the Respondents decided that they did not wish to give any further evidence themselves.

[4] After each witness gave evidence, the other party was allowed to cross-examine the evidence. The Tribunal also asked questions throughout to ensure that it understood the evidence and each party's respective position. After evidence had been heard the Tribunal also heard closing submissions from both parties. The Tribunal comments on the evidence heard as follows.

The Applicant, Mr Glen Rose

[5] On 6 June 2024, the Applicant viewed the Property in the company of a letting agent to establish whether he wished to take up a lease of it. He spent 15-20 minutes in the Property and decided that he wanted to sign a tenancy. On 21 June 2024, the Applicant signed a tenancy and explained that he was emailed a copy of the tenancy and an accompanying handwritten inventory very shortly after.

[6] The Applicant explained that he then took entry into the Property at the commencement of the tenancy. The Applicant very clearly described this date as being a Saturday which meant he had no means of contacting the letting agent but there is no doubt that 21 June 2024 was in fact a Friday. The Tribunal comments on that anomaly further as it persisted throughout the Applicant's case. The Applicant's evidence was that he arrived at the Property with his parents and was hit by this "*overpowering smell from the carpet cleaning.*" The Applicant described it as a toxic smell. He also described sections of the carpet being badly stained. The Applicant described "*the rest of the flat being a mess*" and later referred to the oven and the fridge being dirty and there being a stain on the mattress.

[7] The Applicant appears to have remained in the property for around ten minutes before deciding "*to call the move off*". The group then left the Property and abandoned the plan of moving in. The main reason given was the alleged overpowering smell. The Tribunal asked the Applicant why he wouldn't have opened the windows and given it some time for the smell to dissipate. The Applicant explained that he hadn't really thought of that. Later, his father would give the same answer to that question.

[8] The Tribunal found this a rather strange situation. The Applicant referred to suffering from health conditions, but the Tribunal was not given any detail of those by the Applicant. The Applicant's account of the alleged issues with the mattress were also somewhat curious. He said he felt unable to talk about that issue and that his father

should tell the Tribunal about the mattress. The Applicant stated that he could not bring himself to view the mattress on the day, which is why his father would have to speak to the matter.

[9] The Applicant didn't phone the letting agent because he said it was a Saturday and that they would be unavailable. Of course that was simply not true. It was a Friday. The Tribunal asked the Applicant about whether he thought about buying a new mattress. He said he couldn't because it was a Saturday and all the shops would be closed. This again seemed odd as the Tribunal imagined that Saturday is probably the busiest day for such shops. The Applicant described the idea of him buying a new mattress as *"completely out of the question"*.

[10] In reviewing matters further after the Hearing, the Tribunal notes that in an email dated 8 August 2024 at page 147 of the bundle the Applicant wrote that:

"The official move in date as per the tenancy agreement was Friday 21st June 2024, however, I didn't "move in" until the following day - Saturday 22nd June 2024. Upon inspection with my father, we noticed all the issues that you will have been sent as evidence - please see the photo's I sent. Unfortunately, the flat wasn't in an acceptable condition to move into at that point."

[11] However, in his evidence to the Tribunal during the Hearing the Applicant spoke exclusively about moving in on 21 June 2024.

[12] The Applicant left the Property and went back to the old tenancy he had just vacated. He stayed there for two nights. He had to pay his previous landlord £82.30 for a further two-night stay at 42 Strawberry Bank as extra rent. This sum represented one of his heads of claim. After two nights there, the Applicant then booked himself into a hotel for what the Applicant described as being *"7-9 nights"*. He couldn't exactly recall. The Tribunal also does not know how long a stay the Applicant initially booked or whether he regularly extended his stay as he went. The sum of £640.90 spent on the hotel formed one of the heads of claim. The Applicant also claimed the sum of £60.00 for the costs he said he incurred in the wasted initial van hire.

[13] The Applicant also claimed £320.00 which he said he spent on rent on the Property which he said should be repaid to him because the Property was not habitable for this period. It was put to him that even if his claim was successful, this would result in *'double counting'* as he would then have recovered hotel costs and rent costs meaning that he would have enjoyed no accommodation costs at all for those two weeks. The Applicant didn't appear to grasp that point. The Applicant appeared to use the figure of half the monthly rent here which suggests that the Applicant considered that the Property was uninhabitable for a period of two weeks. The Applicant also claimed the sum of £700.00 for stress and anxiety and the sum of £24.12 for an electrical charge which the Applicant says that he should not have been liable for given that he could not occupy the Property for the relevant period. The total claimed by the time of the Hearing

was therefore £1,827.31. It is of note though that various heads of claim appear to have been added in as the case progressed. The stress and anxiety figure was not included in the original Application and was then added in when the Applicant sent an email to the Tribunal dated 8 August 2024 which was at page 148 of the bundle.

[14] The head of claim of £24.12 for the electricity bill was also not included in the original Application which was dated 14 July 2024) but was also first mentioned during the email dated 8 August 2024.

[15] The Applicant spoke to various receipts for his outlays and was asked about these both by the Tribunal and in cross by Mr Carnie. The Applicant couldn't really say much about how he computed the sum of £700.00 for stress and anxiety. There appeared to be no science behind that. The electricity bill also seemed somewhat odd. The Applicant was not very well informed about the details of the bill and appeared to accept that it was perhaps a bill that should have been paid by the previous tenant. The Applicant appeared not to have sought much clarification from the utility company before he paid it.

[16] The Applicant's evidence was that he moved back into the Property on 5 July 2024. Quite why the Applicant decided that the Property was acceptable from this date onwards is not clear. The Property received an additional deep clean on 24 June 2024- which was the first working day after the commencement of the tenancy.

[17] A new carpet was bought on 29 June 2024 and fitted on 3 July 2024 . A new mattress was also bought on 29 June 2024. The Applicant was asked the question " *With the existing carpet still in place, was the Property habitable*" He answered in the affirmative. This seemed very much to confirm that the Applicant's primary concern was the chemical smell from the carpet when he first moved in. However later in submissions the Applicant said: "*Thanks everybody for purchasing the carpet and the mattress- it's a night and day difference after the deep clean. In my opinion the flat was not habitable until the new mattress and the new carpet were installed. The flat is beautiful. Anyone would want to live here.*"

[18] Given the Applicant's primary concern was the smell and that he acknowledged that the carpet alone didn't render the Property uninhabitable, the Tribunal could not understand why then the Applicant didn't open the windows, leave it a bit and come back later. Instead, he left the Property and appears not to have returned for two weeks. The Applicant's evidence was odd and unconvincing. His actions didn't seem reasonable. He had also inspected the Property before and clearly been satisfied with its condition. His evidence conflicted with Mr Carnie's evidence and was also inconsistent with his mother's email of complaint to the letting agents which is referred to further below. It was also odd because he said he would prefer that his father spoke about the issue with the mattress in a way that suggested it was either too traumatic for him to speak about, or he didn't remember much about it. It was hard for the Tribunal to take

the evidence given at face value. Also, If the move had happened on the Friday there seemed no reason why the Applicant wouldn't have contacted the letting agents who would have been still open for business.

Mr Michael Rose

[19] Michael Rose is the Applicant's father. He explained that *"we went to move in on 21 June"*. This means that Mr Michael Rose had the move in date as the Friday which was one of the many contradictions in the Applicant's case. Mr Michael Rose explained that *"we were hit by this overpowering smell from the carpet cleaning process"*.

[20] He explained that it was badly stained around the sides of the bed. The Tribunal asked Michael Rose why they didn't open the windows and give it some time. *"Yes, I suppose we could have done that"* he said. He didn't then go on to say anything about why they didn't. He described how the rest of the flat was a mess. He described lifting the mattress protector and seeing a *"horrible looking thing"* and that *"It was so disappointing."*

[21] Beyond that Mr Michael Rose explained that he had little else to say. The Tribunal did not think that Mr Rose was being dishonest, but the Tribunal similarly had difficulty in accepting what was said as being entirely reliable. Again, there was no consistency about the date the supposed move into the Property happened. The fact that Mr Rose also readily accepted that in hindsight they could have opened the windows, seemed simply odd. The fact that nobody opened the windows and gave it some time, but instead just left not to return for two weeks was hard to explain.

Mr Stuart Carnie

[22] Mr Carnie is the head of lettings at Aberdeen Property Leasing Ltd. Mr Carnie was clearly very knowledgably about the details of the events relevant to the Application. His evidence was balanced and made sense. He was clearly well prepared. The Tribunal found his evidence to be credible and reliable and preferred it that of the Applicant and his father in those areas where their evidence conflicted.

[23] He explained that 21 June 2024 was the handover day. The lease was signed, a copy was emailed to the Applicant along with a welcome pack and a handwritten inventory which the Tribunal also had before it in the bundle.

[24] Mr Carnie had handled the Applicant's offer and the acceptance of the tenancy. The Property had been viewed by the Applicant on 6 June 2024. The Applicant had then offered to lease the Property for a premium above the rate the Property was marketed for. That was done to secure the tenancy. The advertised rent was £625.00 per month. The Applicant offered £640.00 per month. There were no conditions attached to the offer or concerns expressed about any aspect of the Property which required to be addressed

before the date of entry. The Property is a modern built studio apartment. It is 35 metres squared. It is on the ground floor in a block of seven. It has a lounge with an open plan kitchen.

[25] After the handover nothing further was heard on the date of entry. The letting agents' office was open on Friday afternoon and nothing further was heard from the Applicant during the Friday. Then when Mr Carnie returned to work on Monday morning, he noticed he had received a completely blank email from the Applicant's mother on Sunday 23 June 2024. Then later on Monday morning, Mr Carnie received an email from the Applicant's mother expressing her disappointment and asking to remedy certain concerns.

[26] It is appropriate to have regard to the terms of that email which is at page 228 of the bundle. The email does indeed list aspects of the Property which the Applicant's mother found disappointing. What is striking though is that in this lengthy and detailed email there is not one mention of the toxic smell which the Applicant himself appeared to focus on. That email also says that the move happened on Saturday 22 June 2024. It is a detailed critique of the cleanliness of the Property but the fact that it doesn't mention anything about a toxic smell seems significant. The apparent toxic smell was the focus of the Applicant's evidence.

[27] It is hard to read that email and reflect on the strange features of the Applicant's evidence and conclude that there was a toxic smell. If there had been such a smell, then more than likely the Applicant's mother would have also mentioned it in her email.

[28] On receipt of the email, Mr Carnie immediately organised a deep clean of the Property on Monday 24 June 2024. The Tribunal was impressed with this prompt action. Mr Carnie apologised and accepted that the fridge appeared to have been missed in the previous clean. The Applicant had said that he hadn't looked in the fridge (or the oven) when he viewed the Property. The carpet had been cleaned on the day of the viewing (6 June 24), and the Property hadn't been viewed by others or occupied since. Mr Carnie could also not then accept that there was then a toxic smell in the Property on 24 June 2024. Mr Carnie also pointed out that the inventory that had been emailed to the Applicant stated that there was a stain on the carpet.

[29] Mr Carnie had inspected the mattress with his own eyes. He described it as having light orange staining but that it was certainly "*a usable item*". It was also to be used in conjunction with the mattress protector. In addition to that most people would also of course put a bed sheet. The Tribunal accepted Mr Carnie's evidence. It made sense. By contrast the evidence presented by the Applicant was somewhat irrational and illogical.

[30] Having heard the evidence and having considered the documentation, the Tribunal made the following findings in facts.

Findings in Fact

1. *On 6 June 2024, the Applicant viewed the Property in the company of a letting agent to establish whether he wished to take up a lease of it.*
2. *The Applicant spent 15-20 minutes in the Property and decided that he wanted to sign a tenancy. He offered to pay a sum over and above the asking rate in a bid to secure the tenancy of the Property. The Property was marketed for rent for the sum of £625.00 per month. The Applicant offered £640.00 per month to secure the tenancy. This offer was accepted. The Applicant did not include any conditions attached to his offer or raise any issue of concern about the condition or the cleanliness of the Property.*
3. *No other party occupied the Property from the date of the viewing until the date of entry.*
4. *On 21 June 2024, the Applicant signed the relevant private residential tenancy and was shortly thereafter emailed a copy of the tenancy and an accompanying handwritten inventory. The inventory records that there was a stain on the carpet.*
5. *The Applicant either attempted to move into the Property on either Friday 21 June or Saturday 22 June 2024.*
6. *The Applicant attended at the Property with his parents. He had hired a removal van and the party of three arrived at the Property on either 21 or 22 June- the Applicant giving evidence that it was on 21 June but that this was a Saturday- the Applicant's father's position being that it was on 21 June and the Applicant's mother stating in an email that it was on Saturday 22 June 2024.*
7. *No contact was made by the Applicant to the Respondents' letting agent on Friday 21 June 2024 about the condition of the Property.*
8. *The Applicant arrived at the Property and claims that he was hit by an "overpowering smell from the carpet cleaning." The Applicant describes this as a toxic smell. The Applicant describes sections of the carpet being badly stained. The Applicant describes "the rest of the flat being a mess" and states that the oven and the fridge were dirty and that there was a stain on the mattress.*
9. *The Applicant remained in the Property for around ten minutes before deciding to abort the move. The Applicant then left the Property and abandoned the plan of moving in.*
10. *The Applicant left the Property and went back to the old tenancy he had just vacated at 42 Strawberry Bank. He stayed there for two nights. The Applicant then booked himself into a hotel for what the Applicant described as being for around 7-9 nights.*
11. *On Sunday 23 June 2024, the Applicant's mother emailed the relevant letting agents a blank email.*
12. *On Sunday 24 June 2024, the Applicant's mother emailed the letting agents again and listed certain cleaning issues identified by her in the Property which she took issue with. She did not mention any toxic smell or any smell of any kind.*
13. *The Respondent's letting agent, Mr Stuart Carnie immediately organised a deep clean of the Property which was carried out that same day on Monday 25 June 2025. The Respondents accept that the fridge and perhaps also the oven had been missed in the previous clean. These items were cleaned on 25 June 2025 meaning that they were in an unclean condition for 4 days from the date the tenancy started.*

14. *The Applicant took issue with the cleanliness of the mattress in the Property. The mattress had some orange staining. It was however still a usable item. It was to be used in conjunction with a mattress protector and would typically also be used under a bed sheet.*
15. *The Applicant stated that it was the smell that he considered rendered the Property uninhabitable. He stated that the carpet which was stained on its own did not result in the Property being uninhabitable.*
16. *The Applicant moved back into the Property on 5 July 2024 where he continues to live.*
17. *The Property received an additional deep clean on Monday 24 June 2024, being the Monday straight after the Applicant's mother emailed the letting agents which was the first time the Applicant brought the fact that there was any problem to the Respondent's attention.*
18. *A new carpet was bought on 29 June 2024 and fitted on 3 July 2024.*
19. *A new mattress was also bought on 29 June 2024.*
20. *The Applicant did not open the windows on arrival. When the Applicant arrived in the Property he did not act reasonably. There is no explanation as to why the Applicant could not have at the very last moved back into the Property after it was deep cleaned on Monday 24 June 2025.*
21. *There was no legitimate reason for the Applicant not to reside in the Property for two weeks. The Property was at no time uninhabitable.*
22. *The costs claimed by the Applicant from the Respondents were not necessarily nor reasonably incurred by the Applicant.*
23. *The Applicant ought to have queried the electricity bill he claims with the relevant utilities provider but the Respondents are not liable for this cost.*

Decision

[31] Having made the above findings in fact, the Tribunal could not accept that the sums claimed by the Applicant were due by the Respondents. There was little evidence that the Applicant even ought to have paid the electricity bill and perhaps he should contact the relevant energy provider and see if that can be clarified or rectified. There is however no legitimate basis for suggesting that it ought to be repaid to the Applicant by the Respondents.

[32] The Tribunal notes that ultimately there was a stain on a carpet in the Property when the Applicant moved in. That stain was documented in the inventory and was quickly remedied by the lettings agents who also acted swiftly in arranging a deep clean of the Property on the next working day after the commencement of the tenancy. The Applicant was left with a dirty fridge and oven for two days. The Tribunal does not accept that there was a toxic smell in the Property and certainly not a toxic smell that may not have been significantly improved by simple common-sense action such as opening the windows. The Tribunal notes that a dirty fridge and oven on arrival are merit a small degree of low-level irritation.

[33] The Tribunal notes the decision of the Upper Tribunal in the case *Zhao vs Dunbar* [2022 UT 25] in which Appeal Sheriff Jamieson considered the law regarding compensation for inconvenience in the context of private tenancies. The learned Sheriff wrote:

“The Upper Tribunal does not think the description so severe that the subjects were rendered completely uninhabitable by the Appellant, but this breach of contract does entitle the Appellant to an award of compensation for inconvenience. A comparator case which may assist in assessing such an award of compensation is McArdle v Glasgow District Council (1989), in which the tenant suffered inconvenience for living in damp conditions for a period of approximately five years. She was awarded compensation for inconvenience in the sum of £750 by the sheriff in her action for damages in Glasgow Sheriff Court...Awards of compensation for inconvenience in housing cases have tended historically to be quite low. Amongst the most generous awards noted in Robson and Combe’s Residential Tenancies (4th edition, 2019) is that in the case of Christian v Aberdeen City Council (2005), another dampness case, in which the pursuer was awarded £2,750 on 12 August 2005 for inconvenience lasting for nearly four years. That represents no more than £60 a month, or approximately £100 a month adjusted for inflation at a multiplier of 1.68... Awarding compensation for inconvenience in housing cases is not an exact science and each case must turn on its own facts and circumstances.”

[34] Having applied its minds to the facts and circumstances of the situation and having considered the jurisprudence regarding monetary awards in *Zhao (supra)*, the Tribunal does not think that the Applicant is entitled to any damages for the inconvenience of not having a clean fridge and oven for two days. There was no actual evidence of what specific inconvenience that actually caused the Applicant. There was no evidence of how long it might have taken the Applicant to clean the fridge and oven himself. The Tribunal considered that it would be inappropriate therefore to award any compensation. The Tribunal concluded that the Applicant did not have just cause to leave the Property and seek recompense from the Respondents for his expenses.

[35] Accordingly, the Tribunal refused the Application and makes no Payment Order.

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.

A. McLaughlin

Legal Member/Chair

29 August 2025

Date