



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/24/1871

Property : 4 Dunvegan Place, Polmont FK2 ONX (“Property”)

Parties:

Gillian Humphries, 26 Cromwell Road, Falkirk FK1 1SF (“Applicant”)

Belvoir Lettings Falkirk, 38 Vicar Street, Falkirk FK1 1JB (“Applicant’s Representative”)

Sarah Grace Stirling, Unknown Unknown (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £3,278.08 should be made.

Background

1. The Applicant sought an order for payment of £2,500 in respect of rent arrears. The Applicant had lodged Form F dated 24 April 2024. The documents produced were: a Private Tenancy Agreement between the Parties which commenced on 21 July 2023 (“Tenancy Agreement”) and indicated a monthly rent of £500 and a statement of rent arrears.
2. A Case Management discussion (“CMD”) was fixed for 23 August 2024. The CMD was postponed at the request of the Respondent. A fresh CMD was fixed for 17 February 2025. Notification of the date was sent to the Parties on 9 January 2025. The Respondent lodged emails with the Tribunal referring to repairs being required at the Property. The Applicant’s Representative also lodged emails indicating that the repairs had been attended to. On 11 February 2025 the Respondent sought a postponement of the CMD which was granted. The Respondent also advised the Tribunal that she was vacating the Property the following day. A fresh CMD was fixed to take place on 9 April 2025.

3. The Tribunal issued a Direction dated 17 February 2025 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 or their Representative and confirmation as to whether or not the repair remained outstanding when the Respondent vacated the Property.*
- 2. Any available photographs of the required repairs.*
- 3. Any available documentary evidence (such as copy emails) of the need for a repair being intimated to the Applicant or their Representative.*
- 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 4 March 2025.

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 details outstanding rent in respect of the Property at the date on which the Respondent's tenancy of the Property came to an end.*
- 2. A written submission setting out the Applicant's response to the Respondent's written submission referred to above regarding required repairs at the Property.*
- 3. Any available evidence of repairs having been carried out at the Property on the instruction of the Applicant or their Representative in response to a request from the Respondent for repairs to be carried out.*
- 4. Any available photographs of repairs having been carried out at the Property.*
- 5. Any available "check in" and "check out" report in respect of the Respondent's tenancy of the Property.*

The said documentation should be lodged with the Tribunal no later than close of business on 18 March 2025. All documentation being lodged should be listed in an inventory of productions and paginated.

- 4. On 3 March 2025 the Respondent lodged a response to the Direction which consisted of 32 copy emails. On 7 April 2025 the Applicant's Representative lodged a response to the Direction which included screenshots from the Respondent's social media as well as the "check in" and "check out" reports for the Property.*
- 5. On 8 April 2024 the Respondent emailed the Tribunal advising that she was seeking legal advice and would not attend the CMD fixed for 9 April 2025 at which the Applicant was represented by Angela O'Rourke of the Applicant's Representative. There was no appearance by the Respondent. The outcome was that the Tribunal noted that the issue in dispute was whether the*

Respondent was entitled to withhold rent due to the Applicant's failure to ensure appropriate repairs were carried out at the Property. An evidential hearing was fixed to take place on 23 September 2025. The Tribunal issued a direction dated 9 April 2025 in the following terms :

The Applicant is required to lodge with the Tribunal :

- 6. Any reports or invoices from contractors evidencing repairs having been carried out at the Property in the course of the Respondent's tenancy of the Property.*
- 7. Any documents on which the Applicant intends to rely at the evidential hearing to be fixed.*
- 8. A list of witnesses the Applicant intends to call at the evidential hearing to be fixed.*

The Respondent is required to lodge with the Tribunal :

- 6. Evidence of the outstanding rent having been placed in a separate bank account.*
- 7. Any documents on which the Respondent intends to rely at the evidential hearing to be fixed.*
- 8. A list of witnesses the Respondent intends to call at the evidential hearing to be fixed.*

The said documentation should be lodged with the Tribunal no later than close of business on 30 May 2025. All documentation being lodged should be listed in an inventory of productions and paginated.

6. The Applicant lodged a response to the direction on 5 June 2025. The Respondent responded by indicating that her evidence remained as previously submitted. Neither of the Parties lodged an inventory of the documents lodged. Neither of the Parties paginated the bundles of documents lodged.

Hearing on 23 September 2025

7. A Hearing took place at Wallace House, Stirling on 23 September 2025. The Applicant was not in attendance and was represented by Becky Stewart and Angie Colbecki of the Applicant's Representative. The Respondent was also in attendance and was joined by her mother, Colette Stirling who attended as a supporter and witness.
8. The Tribunal noted that the documents lodged indicated that the tenancy commenced on 21 July 2023 and ended on 12 February 2025. Ms Stirling and Ms Stewart confirmed that was correct. The Tribunal noted that an updated statement of arrears had been lodged which indicated arrears of £6878.08 at the end of the tenancy. Ms Stirling and Ms Stewart explained that the deposit of £850 had been received from SafeDeposits Scotland and had been applied to the arrears. The balance was reduced to £6,028.08. Ms Stirling confirmed that amount was agreed.

9. Ms Stirling told the Tribunal that the Property had two bedrooms, one bathroom, a living room and kitchen. She said that she lived in the Property with her younger brother who is now 16. She said she used to live in the flat above the Property and knew the previous tenant. She said she was interested in living in the Property on the ground floor as it had a garden. The Tribunal noted that Ms Stirling had identified 5 repairs that she said had not been attended to being – a problem with the toilet flushing, a problem with the boiler, damp, mice and the lawnmower not working. Ms Stirling said there had been other repairs but they had been addressed. The Tribunal indicated that each item would be dealt with in turn.

Toilet

10. The Tribunal noted that the documents lodged indicated that Ms Stirling had first reported an issue with the toilet in November 2023 and that there had been a number of other notifications of the problem between then and 27 November 2024. Ms Stirling said that the toilet did not flush properly. She said the previous tenant had told her it had been an issue during her tenancy. She said the toilet working only intermittently was a problem throughout her tenancy of the Property.
11. Mrs Stewart said that a plumber attended the Property and reported that the cistern was an issue. She said the first person to attend was a handyman (Kenny) in November 2023. She said she then asked a plumber (James) to attend. She said it was James who reported the cistern being an issue. She said a new cistern had to be ordered from Germany and by the time it arrived there had been a confrontation between Ms Stirling and James which meant he would not return to the Property. She said a company called Quinergy were then asked to attend but they were refused access. She referred to an email from Quinergy dated 27 May 2024. She said she did not know what happened about the need to repair the toilet after that. The Tribunal noted that Ms Stirling sent further emails to Belvoir about the toilet on 2 and 17 October 2024. Mrs Stewart checked her papers and noted an email from Angela O'Rourke of the Applicant's Representative dated 29 November 2024 in which she said she was trying to identify a contractor. Mrs Stewart said the Applicant had told her that the previous tenant had not raised any issue about the toilet. She said that the Applicant has now sold the Property.
12. Ms Stirling told the Tribunal that her contact with Quinergy was by text message. She said she was working full time and studying and did not want to take a day off work unless the contractor was going to fix the toilet. She said that her mother was present when the alleged confrontation with the plumber took place. She said he referred to two potential parts that could fix the toilet

but he had only brought one with him. Ms Stirling said her mother asked why he had only brought one part and at that point the plumber stormed out of the Property. She said it was not a confrontation but a disagreement. Mrs Stirling provided her explanation of what had happened which accorded with what Ms Stirling had said. Mrs Stirling said that the impact of the situation on Ms Stirling was that she was having panic attacks and would come to stay with her mother. Mrs Stirling said she had used the toilet and agreed with Ms Stirling that it did not work properly.

Boiler

13. The Tribunal noted that the documents lodged indicated that Ms Stirling had first reported an issue with the boiler on 4 January 2024 and that there had been a number of other notifications of the problem between then and 27 November 2024. Ms Stirling said initially the issue was that the hot water only worked intermittently. She said she first reported an issue in November 2023. She then realised that she only had hot water when the heating was on. She said she contacted Belvoir and they told her to contact Scottish Gas who provided cover. She said that if she contacted Scottish Gas they needed all of the Applicant's details which Ms Stirling did not have. She said she reported that to Belvoir and they said they would ask the Applicant for the information. She said that an engineer was then booked to attend the Property. She said she took a day off work and was in the Property all day but the engineer did not attend. She said the doorbell sometimes did not work so it was possible he did attend and she didn't hear him.
14. Ms Stirling told the Tribunal that an engineer did fix a valve on the boiler but shortly after that she had no hot water and no heating. She said she could not recall when the valve was fixed but she thought it was before the summer of 2024. She said that after the valve was fixed the heating and hot water worked sporadically. She said the shower in the Property was electric but there were issues with it as well after the summer of 2024. She said that she asked Belvoir for storage heaters. She was given only one, as Angela O'Rourke told her that the rest were all with other families and told her that she could use candles to heat one room.
15. Ms Stirling said she was told by Belvoir that an engineer would come to the Property in November 2024 and that Becky Stewart would also attend. She told the Tribunal she then realised that the Applicant and her husband were in their car outside the Property. She said this was very upsetting. She said the engineer told the Applicant that the boiler could not be repaired.

16. Mrs Colbecki said that she started to ask Ms Stirling about the gas safety check for the Property in August 2024. She said that Ms Stirling responded saying she would not allow access for the gas safety check as she was being evicted. The Tribunal asked Ms Colbecki if the gas safety check carried out in 2023 flagged any issues with the boiler. She said it did not.

Damp

17. Ms Stirling told the Tribunal that Becky Stewart of Belvoir carried out an inspection of the Property in November 2023. She said that she showed Mrs Stewart the damp on the wall of the smaller bedroom. She said that Angela O'Rourke of Belvoir then emailed her with advice about dealing with damp such as moving the bed to the middle of the room. Ms Stirling said she cleaned down the wall and moved the furniture away from the wall. She said that the damp was not an issue in the summer when the windows were open a lot but it returned in the winter of 2024. She said that the heating not working may have been a factor. She said that the Applicant wanted to inspect the damp but she knew she was moving by that point and wanted as little contact as possible with the Applicant.
18. Mrs Stewart told the Tribunal that DM Hall carried out a survey of the Property for the purpose of selling after Ms Stirling had vacated. She said that they did not find any damp. She said she recalled attending the inspection in November 2023 and seeing the damp on the bedroom wall and noting it on the inspection report. She said she thought Angela O'Rourke had given the advice about dealing with the damp in November 2024.
19. Ms Stirling said that she managed the damp in the bedroom in the winter of 2023 and 2024. She said that it was only in the one bedroom and it did not cause her brother (who used the bedroom) any health issues.

Mice

20. Ms Stirling said that there was a gap in the kitchen between the washing machine and the end of the kickplates. She said that it was when the gas engineer was looking in the cupboard below the sink that he saw mouse droppings and reported that to Ms Stirling. She said there was a hole in the cupboard that the mice were getting through. She said that at this stage she knew she was moving out of the Property. She said she raised the issue with Belvoir and Angela O'Rourke sent general advice about blocking the hole and not leaving food out which Ms Stirling followed. Mrs Stewart said that she agreed with Ms Stirling's account of events regarding mice in the Property.

Lawnmower

21. Ms Stirling told the Tribunal that an electric lawnmower was provided with the Property. She said it did not work. She said that did not bother her but Angela O'Rourke contacted her noting that the grass was not being cut. Ms Stirling then told Angela O'Rourke that she was happy to cut the grass but the lawnmower did not work. She said that no steps were taken to repair the lawnmower, so she bought her own manual lawnmower from B&Q, which cost around £30. Mrs Stewart said the Applicant was told the lawnmower did not work but she had no money to replace it.
22. The Tribunal asked Ms Stirling about the impact on her of the repairs not being attended to. She said that her biggest worry was the possibility of social work removing her brother from her care because of damp in the Property. She said that her brother had a "non-disclosure" on his home address and school. She said that she felt very insecure in the Property. She said that she did not know for how long the Applicant had been watching her from outside the Property. She said that in order to ensure she and her brother could shower she took him swimming a lot. She said that her brother also showered at his father's house. She said she also used the gym to shower. Ms Stirling said that having a toilet that did not work properly was embarrassing. She said she did not have visitors to the Property. She said that there were instances when she had to empty the contents of the toilet by hand. She said she had been excited when she first moved into the Property but that all changed.
23. The Tribunal asked Ms Stirling if she had put the rent withheld aside in a separate account. She said that she had lived in private rented properties since she was 17 and had always paid her rent. She said that she had put £500 aside each month but had to use the money when she had to leave the Property. She said that around that time her job also changed to a zero hours contract.
24. The Tribunal asked Ms Stirling if she could provide an address. She said she did not wish the Applicant to know her address. The Tribunal noted the "non-disclosure" order on her brother's home address, which was also Ms Stirling's address. Ms Stirling said that her brother had recently turned 16 so the non-disclosure no longer applied. The Tribunal noted that he was not present to comment on whether he was happy for his address to be disclosed. Mrs Stewart said she did not need to have Ms Stirling's address.

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 21 July 2023.
2. In terms of the Tenancy agreement the rent was £500 per month.
3. A notice to leave was served on the Respondent by the Applicant on 12 January 2024.
4. The Respondent vacated the Property on 12 February 2025.
5. At the date on which the tenancy terminated the outstanding rent due, after deduction of the deposit of £850, was £6,028.08.
6. By emails dated 21 November 2023; 22 November 2023; 4 January 2024; 15 February 2024; 2 October 2024; 17 October 2024 and 27 November 2024 the Respondent intimated to the Applicant's Representative that there was a repair required to the toilet in the Property.
7. By emails dated 4 January 2024; 8 February 2024; 15 February 2024; 9 September 2024; 2 October 2024; 17 October 2024; 23 November 2024; 25 November 2024 and 27 November 2024 the Respondent intimated to the Applicant's Representative that there was a repair required to the boiler in the Property.
8. By emails dated 2 October and 27 November 2024 the Respondent intimated to the Applicant's Representative that there was damp in the Property.
9. By email dated 27 November 2024 the Respondent intimated to the Applicant's Representative that there was an issue with mice in the Property.
10. By emails dated 12 May and 2 October 2024 the Respondent intimated to the Applicant's Representative that the lawnmower at the Property required a repair.
11. Contractors attended the Property on two occasions regarding the repair required to the toilet but the fault was not rectified.
12. The failure to repair the toilet in the Property caused the Respondent inconvenience.
13. The failure to repair the boiler in the Property caused the Respondent stress, discomfort and inconvenience.

14. Gas engineers attended the Property on two occasions regarding the repair required to the boiler but the fault was not rectified.
15. There was damp present in one of the bedrooms in the Property which the Respondent managed by moving furniture away from the wall and cleaning.
16. There was evidence of mice being present in the kitchen of the Property which the Respondent managed by blocking a hole in the cupboard below the sink.
17. The lawnmower at the Property did not work throughout the Respondent's tenancy of the Property.
18. The Respondent's use and enjoyment of the Property was negatively impacted as a result of the failure by the Applicant to instruct necessary repairs to the toilet and the boiler at the Property since the need for such repairs was notified to the Applicant's Representative.

Findings in Fact and Law

The Tribunal made the following findings in fact and law:

1. The Applicant failed to comply with her obligations under the Housing (Scotland) Act 2006 to ensure that the Property met the repairing standard at all times during the tenancy.
2. The Respondent is entitled to an abatement of rent in respect of the failure by the Applicant to ensure that the Property met the repairing standard at all times during the Respondent's tenancy in the sum of £2,750.
3. A balance of £3,278.08 is due by the Respondent to the Applicant in respect of outstanding rent.

Reasons for the Decision

25. In terms of the Tenancy Agreement the Applicant was responsible for ensuring the Property met the repairing standard. In terms of the Tenancy Agreement the Respondent undertook to take reasonable care of the Property. There was nothing in the Tenancy Agreement which prohibited the retention of rent.
26. The legislation which governs a landlord's obligation to repair is the Housing (Scotland) Act 2006 ("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 and to ensure that the installations for the supply of water, gas and electricity and for sanitation, space heating and water heating

are in a reasonable state of repair and in proper working order. 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.

27. The Respondent had lodged copy emails which evidenced her having notified the Applicant's Representative of the need for repairs to the toilet and boiler on multiple occasions. The emails also showed she had notified the Applicant's Representative that there was damp in the Property as well as mice and that the lawnmower did not work.
28. As regards the toilet, the Respondent's evidence was that there was a need for the toilet to be repaired since November 2023. The Respondent's evidence was supported by the Respondent's Mother who gave evidence that the toilet needed repaired and never was repaired during the tenancy. The Applicant did not put forward any evidence to suggest that there was no need for a repair to be carried out to the toilet. The evidence lodged on behalf of the Applicant indicated that contractors were instructed to carry out a repair. It was suggested that there had been an altercation between the Respondent and / or her Mother with one of the contractors. The evidence from the Respondent was that the situation was more a breakdown in communication. Neither the contractor or the individual he spoke with at the Applicant's Representative after the alleged altercation gave evidence. The Tribunal found the evidence given by the Respondent and her Mother to be credible and reliable. In any event, after that visit from a contractor the Applicant's Representative identified another contractor called Quinergy. The suggestion made on behalf of the Applicant was that the Respondent refused to allow Quinergy access to the Property. The Tribunal had sight of an email from Quinergy dated 27 May 2024 to the Applicant's Representative. The email indicated they had not yet had access to the Property but they were asking to be put in touch with a previous contractor to discuss the nature of the repair. The Tribunal also had sight of an email from Angela O'Rourke of the Applicant's Representative to the Respondent dated 29 November 2024 in which Ms O'Rourke stated she was trying to identify a contractor to deal with the toilet repair. Taking all of the evidence together, it was apparent that the need for the toilet to be repaired was notified to the Applicant's Representative on 21 November 2023 and on numerous occasions thereafter but the repair was not carried out.

29. As regards the lack of heating and hot water, the Respondent's evidence was that there was a need for the boiler to be repaired since November 2023. The Applicant did not put forward any evidence to suggest that there was no need for a repair to be carried out to the boiler. There were emails lodged on behalf of the Applicant which indicated the Applicant's Representative attempted to put the Respondent in touch with Scottish Gas about the boiler. There was nothing lodged which indicated that a successful repair to the boiler was carried out.
30. As regards the damp in one of the bedrooms in the Property, Becky Stewart of the Applicant's Representative attended the Hearing and confirmed she had attended an inspection of the Property in November 2023 and had seen the evidence of damp. The Parties agreed that Angela O'Rourke provided advice to help manage the damp. The Respondent said she followed the advice and managed the damp in the winters of 2023 and 2034.
31. As regards mice in the Property, it was not disputed that there were mice in the Property. As with the damp, the Parties agreed that Angela O'Rourke provided general advice to help manage the situation which the Respondent followed.
32. As regards the broken lawnmower, it was not disputed that it did not work and that no attempt was made to fix the lawnmower.
33. 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.
34. 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.
35. 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.

36. As regards the damp and mice, the Respondent's evidence was that she was given general advice to manage the situation which she proceeded to do. As regards the broken lawnmower, the Respondent's evidence was that "it didn't bother her." In those circumstances the Tribunal considered that an abatement of rent was not appropriate in respect of those matters.
37. As regards the toilet, it was clear that the need for a repair was first notified to the Applicant's Representative on 21 November 2023 and that the toilet was not repaired during the Respondent's tenancy which ended on 12 February 2025. This was a period of some 15 months.
38. As regards the boiler, it was clear from the emails lodged that the need for a repair was first notified to the Applicant's Representative on 4 January 2024 and that the boiler was not repaired during the Respondent's tenancy which ended on 12 February 2025. This was a period of some 13 months.
39. The Respondent began to withhold rent in December 2023, shortly after the need to repair the toilet was notified to the Applicant's Representative. The failure on the part of a tenant to pay rent does not excuse a landlord from their obligations under the Act to ensure a let property meets the repairing standard.
40. The Respondent's evidence was that the failure to carry out required repairs caused the Respondent stress and anxiety. The admitted damp in the Property was probably exacerbated by the lack of heating. The lack of a fully functioning toilet caused the Respondent inconvenience and meant she was embarrassed to have visitors to the Property. The lack of heating and hot water also caused inconvenience. The shower in the Property was electric but the Respondent's evidence was that it did not always function properly.
41. The Tribunal considered that an abatement equivalent to 15% of the rent for the period November 2023 to February 2025 was appropriate in respect of the failure to repair the toilet. The rent for that 15-month period was £7,500. 15% of that is £1,125. The Tribunal considered that an abatement equivalent to 25% of the rent for the period January 2024 to February 2025 was appropriate in respect of the failure to repair the boiler. The rent for that 13-month period was £6,500. 25% of that is £1,625. The Tribunal determined that the Respondent is entitled to an abatement of rent totalling £2,750.
42. The Tribunal determined to make an Order for payment. In terms of the tenancy agreement, rent was due at the rate of £500 per month. The Respondent failed to pay the rent in full for the period 21 December 2023 to 21 January 2025. The unpaid amount, after deduction of the deposit, was £6,028.08. After deduction of the abatement of rent, a balance of £3,278.08 remains due.

Decision

43. The Tribunal grants an order for payment of £3,278.08

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.

J.Devine

Legal Member

Date : 26 September 2025