

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 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("The Act")

Chamber Ref: FTS/HPC/CV/24/0356

Re: Property at 9 Earn Road, Kirkcaldy, KY1 3JU ("the Property")

Parties:

Mrs Carolyn Gourlay, 7 Redcroft Street, Danderhall, Midlothian, EH22 1RB ("the Applicant")

Miss Olympia Sikorski, 51B Alexandra Street, Kirkcaldy, Fife, KY1 1HG ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted the Application to the extent of making a Payment Order in favour of the Applicant in the sum of £303.77 against the Respondent.

Background

[2] The Applicant seeks a Payment Order against the Respondent for rent arrears during her occupation of the Property as a tenant. The Application is defended. The total sum claimed by the Applicant is £1,422.55.

[3] The Application had called for a Case Management Discussion which had attempted to regulate the production of evidence to be relied upon. The Application had called then for a Hearing in person. That Hearing was adjourned because despite the clear

terms of the Direction made, the Respondent appeared with a large file of papers, receipts and documents which she wished to submit and refer to in the Hearing. After hearing from parties, the Tribunal decided to adjourn the Hearing at the Respondent's request after it had been determined that the Hearing would not proceed as planned with these late papers being accepted and referred to. The Tribunal did however decide that it would be preferable for the continued Hearing to be conducted by video call. That was based on the atmosphere in the room which was less than business like and which is expanded on further below.

The Hearing

[4] The Application then called for a Hearing by video call at 10 am on 4 November 2025. The parties were both present and confirmed that they would be calling no other witnesses. Both parties also confirmed that they had no preliminary matters to raise.

[5] The Tribunal began by noting that in the vast array of papers before the Tribunal, there was an email from the Applicant to her local solicitor in Kirkcaldy, a Mr Nigel Ford. Mr Ford had informed the Applicant that he was unable to assist her with her legal matters and said that he would "*need to speak to his litigation colleague, Andrew McLaughlin*". That Mr McLaughlin is the Legal Member of this Tribunal. The Tribunal began by airing this before both parties and confirming that the Legal Member had no recollection of ever discussing the subject matter of this case with either the Applicant, Mr Ford or indeed anyone else beyond these Tribunal proceedings. The Applicant and her husband had certainly never been clients, received any advice or spoken to Mr McLaughlin or his colleagues. The Applicant agreed that this was factually correct. The Legal Member thereafter explained that there was nothing that suggested there was any conflict of interest and invited both parties to comment on this. Neither party raised any concern and both were happy to proceed.

[6] The Tribunal also pointed out the massive volume documents which had been submitted. The papers exceeded 600 pages of unindexed content. The Respondent in particular had submitted a huge volume of content. However, the Tribunal pointed out to parties that the issue in contention appeared relatively straightforward. Did the Respondent lawfully owe the Applicant the sum of £1,422.55 as arrears of rent? Much of the documentation submitted appeared of little relevance to this question.

[7] The Tribunal explained that it intended to work through a simple spreadsheet submitted by the Applicant which identified the monthly rental payments allegedly missed by the Respondent. The Tribunal explained that it would go through each month that was alleged to have been not fully paid and hear from the Applicant and then hear from the Respondent immediately thereafter. In that way, the Tribunal hoped to efficiently move through the relevant evidence hearing from both parties on each

component part of the claim in turn. By doing so, the Tribunal hoped to avoid the Hearing becoming bogged down in irrelevant matters.

[8] The Hearing however proved difficult because of the Respondent's behaviour. The Respondent posed a significant challenge to the smooth running of the Hearing. She constantly interrupted and displayed exasperation throughout. She did not listen to the instructions from the Tribunal to control her behaviour. She continued to interrupt constantly all through the Hearing. The Tribunal did not want to remove the Respondent from the Hearing and so took the view that it was better to continue with the Hearing with her not following instructions than removing her. The Respondent also used an aggressive, confrontational tone and was not measured in her language. She loudly and repeatedly accused the Applicant and her husband of being criminals and spoke at length about irrelevant matters.

[9] It is also of note that the Applicant acquired title to the Property in December 2023. Before that, the Property was owned by the Applicant's husband who was the Respondent's landlord. The Respondent was somewhat fixated with this and repeatedly accused the Applicant of fraud and having no right to bring these proceedings. While her wording was obviously inappropriate, it did appear relevant to question whether there was evidence of the Applicant's husband assigning his rights to recover arrears of rent from the Respondent. The Applicant had explained previously that her husband would not be giving evidence. That is considered further later.

[10] With these challenges, the Tribunal began working through the relevant allegedly unpaid sums. The Tribunal begins its decision by setting out certain facts that are clearly not in dispute given the documentary evidence submitted and the positions adopted in the Hearing.

Agreed facts

1. The Respondent let the Property at 9 Earn Road, Kirkcaldy, KY1 3JU from a Mr Andrew Gourlay. The parties entered into a Private Residential Tenancy Agreement which commenced on 1 May 2020. The contractual monthly rent was £430.00 then rising to £450.00.
2. Andrew Gourlay transferred ownership of the Property to the Applicant in December 2023
3. The Respondent gave notice to the Applicant on 18 December 2023 of her intended departure and then vacated the Property on 12 January 2024.
4. The Applicant alleges that the Respondent vacated the Property with the sum of £1,422.55 due as arrears of rent.

[11] The Tribunal comments on the evidence thereafter presented as follows.

May 2021

Applicant's position

[12] The first month that there was an issue with the payment of the rent was May 2021. The Applicant said £450.00 was due as rent but that £0 was paid.

Respondent's position

[13] The Respondent explained that she had discussions with Andrew Gourlay who had agreed that the Respondent could buy and fit a new carpet in the Property and deduct it from her rent. Ms Gourlay accepted that there had been discussions about a carpet. Ms Gourlay explained that she understood that Mr Gourlay had actually paid for the carpet. The Tribunal asked her for details about this, but Ms Gourlay was unable to direct the Tribunal to where the evidence might be in the bundle. She made remarks like "*oh now you're asking*" when the Tribunal asked where the evidence might be in the massive bundle. Ms Gourlay did not in that regard appear particularly well prepared for a detailed discussion about the component parts of her claim.

[14] In contrast, the Respondent spoke in great detail about conversations she had with Mr Gourlay. The Applicant accepted that her husband had been "*lackadaisical*" about matters and had gone along with the Respondent on many things and "*let her get away with it*". The Tribunal noted that the Applicant appeared somewhat resentful at this.

Assessment of evidence

[15] The Tribunal preferred the evidence of the Respondent on this point. She spoke about her conversations with Mr Gourlay with great clarity. The Applicant's evidence was much more vague and she could not, when directly asked, refer the Tribunal to any contemporaneous communications between her husband and the Respondent which contradicted the Respondent's account.

[16] There was also an email from the Applicant to the Respondent sent when she first acquired title to the Property which corroborates the proposition that there was an agreement at some point about works being carried out and sums being deducted. It also gives a clear impression that the Applicant was ignorant of what may or may not have been agreed between Mr Gourlay and the Respondent and she was asking the Respondent for information.

[17] The Tribunal also notes that there was a debt recovery letter in the papers sent to the Respondent by the Applicant dated 3 January 2024 which can fairly be described as having been sent very promptly following on from the non-payment of the December 2023 rent. It was somewhat telling that there were no such letter or correspondence issued at all in respect of this other monthly payment for May 2021 now claimed.

Finding in fact

[18] In May 2021, Andrew Gourlay and the Respondent came to an arrangement whereby the Respondent would replace a carpet and deduct the cost from the monthly rent.

Disposal of Head of Claim

[19] The Applicant is not entitled to a Payment Order to account for unpaid rent from May 2021.

June 2021

[20] After the Tribunal and both parties considered this aspect of the claim, the Applicant appeared to accept that this sum actually had been paid by an additional payment made on 11 June 2021. The Tribunal therefore determined that the Applicant was not entitled to a Payment order to account for any unpaid rent for this month.

June 2022

Applicant's position

[21] The Applicant explained that £450.00 ought to have been paid as rent in June 2022 but that only £275 was paid.

Respondent's position

[22] The Respondent explained again that Andrew Gourlay had agreed that the Respondent could fix the bathroom ceiling at her own expense and deduct the sums claimed from the rent that month.

Assessment of evidence

[23] The Tribunal preferred the evidence of the Respondent on this point. She spoke about her conversations with Mr Gourlay with great clarity. The Applicant's evidence was much more vague and she could not, when directly asked, refer the Tribunal to any contemporaneous communications between her husband and the Respondent which contradicted the Respondent's account. The lack of any contemporaneous debt recovery email or letter also did not suggest that the Respondent's account was inaccurate.

[24] The Tribunal also notes that there was an email in the papers submitted by the Applicant. That email was dated 3 December 2023. That email was submitted by the Applicant to demonstrate her informing the Respondent that she was her new landlord.

However, the email also contained the following: *“I believe you agreed with Mr Gourlay that some of the deposit was used to pay for some works... can you confirm .. the mount of deposit that has been left.”*

[25] This email therefore corroborates the proposition that there was an agreement at some point about works being carried out and sums being deducted. It also gives a clear impression that the Applicant was ignorant of what may or may not have been agreed between Mr Gourlay and the Respondent.

[26] As referred to previously, there was a debt recovery letter in the papers sent to the Respondent by the Applicant dated 3 January 2024 about the missed payment in December 2023. It was somewhat telling that there were no such letters or correspondence issued in respect of the other monthly payments now claimed.

Finding in fact

[27] In June 2022, Andrew Gourlay agreed with the Respondent that she should fix the bathroom ceiling in the Property and deduct the cost from the monthly rent.

Disposal of Head of Claim

[28] The Applicant is not entitled to a Payment Order to account for unpaid rent for June 2022.

July 2023

Applicant's position

[29] The Applicant explained that again rent of £450.00 ought to have been paid but that only the sum of £70.00 was paid.

Respondent's position

[30] The Respondent explained that she had agreed with Andrew Gourlay that she would replace a bathroom shower for the cost of £390.00 and that the sums could be deducted from the rent.

[31] The Applicant explained that indeed the shower had been replaced and had not caused any issues since its installation. The Applicant made reference to not being satisfied with the receipts provided but again when directly asked, could not refer the Tribunal to any contemporaneous communications between her husband and the Respondent which contradicted the Respondent's account. The lack of any contemporaneous debt recovery email or letter also suggested that the Respondent's

account was not inaccurate. The Applicant appeared to state that her objection to the works were based on the fact that receipts were only produced after this Tribunal application had been lodged.

Assessment of Evidence

[32] This Applicant's position was not persuasive since the Respondent could not reasonably have foreseen that this was to become an issue before the application was made. The works were clearly carried out as agreed and at a modest cost. There also does not appear to be any pre-litigation correspondence sent to her asking her to provide this information. In fact, the correspondence exchanged between the parties which the Tribunal considered in detail, conveys the general theme of the Applicant asking the Respondent to bring her up to speed about what had happened in the past about repairs in the Property.

Finding in fact

[33] In July 2023, Andrew Gourlay agreed with the Respondent that she should fix the bathroom shower in the Property and deduct the cost from the monthly rent.

Disposal of Head of Claim

[34] The Applicant is not entitled to a Payment Order to account for unpaid rent for July 2023.

December 23/January 24

Applicant's position

[35] The Applicant explained that on 18 December 2023, the Respondent gave notice that she was leaving the Property and she vacated on 12 January 2024. The Applicant explains that the Respondent didn't pay rent in December 2023 or January 2024 and that she therefore owes £430.00 for December and £177.53 for January.

Respondent's position

[36] The Respondent stated that she left the Property because it was not habitable and that she shouldn't have to pay any rent. She did not at any point dispute the calculations behind how the sum claimed was arrived at.

Assessment of Evidence

[37] The Respondent's evidence was highly emotionally charged and much like her other evidence, was delivered in a disruptive and confrontational manner. However, it was clear that the Respondent had made a complaint to Fife Council around the time of her departure from the Property. There was therefore some useful evidence that allowed the Tribunal to take an informed view of the condition of the Property at the relevant time. There were two official letters in the bundle which reported on the condition of the Property. They were both authored by a "*Michele Gavin, Technical Officer*" for Fife Council. The first was dated 21 December 2023 and was based on a report on 30 November 2023. There was also helpfully a follow up report dated 15 January 2024.

[38] The earlier report noted that there was condensation and mould throughout the Property; there was no hot water in the bathroom sink and the Respondent reported that the oven and hob didn't work. Vents were also described as having been sealed shut in the Property. The report also confirmed that the Respondent had informed the author that the heating system was inadequate.

[39] The follow up report dated 15 January 2024 concluded that the issues identified in the earlier report had now all be remedied.

[40] In the bundle of documents were reams of emails of the Respondent making contemporaneous complaints about the issues identified in the earlier report. There was also a receipt for the purchase of an air fryer which the Respondent said was made necessary by the fact that the oven and hob weren't working.

[41] The Tribunal accepted that there were defects in the Property which impeded the Respondent's fair use of the Property. The Tribunal noted that the total sum claimed for the months of December and January came to the total of £430.00 for December 2023 and £177.53 for January 2024 totalling £607.53. The Tribunal did not accept that there was a credible case to suggest that no rent was due for this period. The Tribunal however considered that it would equally be unfair to conclude that all the rent should be found due.

[42] The Tribunal considered authorities in relation to rent abatement. In *Renfrew District Council v. Gray* 1987 S.L.T. (Sh.Ct.)70, the Sheriff Principal determined that a tenant had no obligation to pay rent where a house was uninhabitable. The Sheriff Principal states that there are three remedies open to a tenant "*who does not get full or effective possession of the subjects leased.*" The first remedy is to retain rent to secure performance. The second remedy is to claim damages if loss is incurred due to the landlord's breach of contract and the third remedy is that the tenant can claim abatement of rent and damages for loss due to breach of the lease. Sheriff Principal Caplan stated that the principle must be that the tenant must not be expected to pay for the benefits of occupancy which he did not enjoy. In that case the Sheriff at first instance had found that the house was completely uninhabitable.

[43] The Tribunal did not consider that there was a legitimate case to make out that the Property was completely uninhabitable, albeit the lack of an ability to heat food by means of an oven or a hob and inadequate heating led to the conclusion that it was not reasonably fit for human habitation.

[44] In *William Campbell Muir v John McIntyre and Others* (1887) 14R. 470, it was held that a tenant is not bound to pay the full rent if, during possession, through no fault of his own, he loses the beneficial enjoyment of part of the tenanted property. It states that a tenant's right to abatement may be stated by way of defence to an action for payment of the full rent. In *Fingland v Mitchell and Howie* 1926 S.C.319 (1926), it was held that a landlord's claim for rent was liquid only if he had fulfilled his obligations under the mutual contract of lease and the law which was applied was that there must be mutuality of contractual obligation and that one party to a contract can only insist on the contract being fulfilled if that party has fulfilled his/her contractual obligations. It further states that a tenant, if it is established that the lessor has not performed his contractual obligations, has a good answer to the claim. Lord Anderson in that case states that a tenant cannot retain the rent indefinitely: "*The retention of rent seems to me to be warranted for one of two purposes-(1) to act as a compulsitor on the lessor in obtaining performance by him of his contractual obligation, such as to make the house habitable; or (2) to satisfy pro tanto any counter-claim which the tenant is maintaining.*"

[45] The Renfrew District Council case refers to the earlier case of *Euman Trs.v. Smith* (1930) 46 Sh. Ct. Rep 165 where the sheriff stated "*While the house is not reasonably fit for human habitation the tenant is not getting his quid pro quo for the rent.*" The Muir case sets out the principle of the possibility of abatement of rent and the Fingland case the possibility of retention of rent in the event of non- performance. The Tribunal considers that the *Euman* case is relevant as the Property was not reasonably fit for human habitation.

[46] There was no basis for concluding that the Property was completely uninhabitable. However, the Tribunal took the view that the Respondent had lost the beneficial enjoyment of part of the tenanted property by virtue of the oven and hob not working, the heating being inadequate, there being mould and condensation throughout the Property. The Tribunal also concluded that the Property was not reasonably fit for human habitation. Heating (especially in winter) and the ability to cook hot food are necessary for reasonable human habitation. The Tribunal found that a case for the abatement of some rent was made out.

[47] The Tribunal took the view that a degree of pragmatism was required in the assessment of how much rent ought to be abated given the limited time period and the modest sums involved. The Tribunal took the view that a 50 per cent abatement was reasonable for this period. The Respondent therefore ought to pay the sum of £303.77 which is lawfully due by the Respondent to the Applicant as arrears of rent.

[48] However, there is also the issue of the Applicant's interest to bring these proceedings. It is of note that Andrew Gourlay had appeared at the earlier Hearing in person which had been adjourned. He had been there to support his wife, who is the Applicant in this case. It therefore seemed somewhat artificial for the Tribunal to have to consider whether Mr Gourlay had formally assigned his interest as landlord to claim any outstanding rent arrears to the Applicant upon the conveyance of the Property. The Applicant herself seemed unable to grasp the argument and simply said repeatedly that her solicitors "*had done everything properly.*" There was also the email referred to above when the Applicant emailed the Respondent and introduced herself as her new landlord. She also referred to an attempted meeting between the Applicant, Andrew Gourlay and the Respondent at the commencement of the Applicant's period of ownership. The email described this meeting as not having gone well and referred to the Respondent's aggression.

[49] The Tribunal considers that there is an evidential basis to conclude that Andrew Gourlay, by his words, conduct and actions in attending a joint meeting with the Applicant and the Respondent and attending at the earlier Tribunal Hearing, has consented to the assignation of his rights as landlord to raise these proceedings against the Respondent for rent arrears. The Respondent being present for that meeting was sufficient intimation of the assignation. The whole point of the meeting was to discuss the Applicant now being the landlord.

[50] In respect of the claim for rent arrears for December 2023 and January 2024 the Tribunal makes the following findings in fact.

Findings in Fact.

1. The Property was not reasonably fit for human habitation between December 2023 and January 2024.
2. The Respondent had lost the beneficial enjoyment of part of the tenanted property by virtue of the oven and hob not working, the heating being inadequate and there being mould and condensation throughout the Property.
3. The rent due for the said period should be abated in the sum of 50 per cent.
4. Andrew Gourlay assigned his interest as landlord to the Applicant to raise these proceedings and to seek recovery of the sums due as rent for December 2023 and January 2024 which were due in part (subject to rent abatement) but remain unpaid.

Decision

[51] The Tribunal therefore granted the Application to the extent of making a Payment Order in the sum of £303.77 against the Respondent.

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

17 November 2025

Date