

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision 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/24/5546**

**Re: Property at 30 Orchard Court, Dundee, DD4 9DB (“the Property”)**

**Parties:**

**Mr Russell Bowen, 151 Main Street, Townhill, Dunfermline (“the Applicant”)**

**Mr Craig Adam, Mrs Antonia Adam, 16 St. Ninian Terrace, Dundee, DD3 9LX; 16 St. Ninian Terrace,, Dundee, DD3 9LX (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the amount of £3904.01 should be made.**

**Background**

1. On 19th November 2024 the Applicant lodged an application under Rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking payment of a sum of money.
2. Lodged with the Application were:
  - a. Copy Private Residential Tenancy dated 20th March 2020 and showing a rent of £650 per month
  - b. Rent Statement showing arrears of £3204.11 as at 12th July 2024
  - c. Breakdown of additional costs sought
  - d. Photographs of the interior and exterior of the property

3. The Application was served on the Respondents by Sheriff Officer on 30th April 2025.
4. On 16th May 2025 Dundee Law Centre sent an email to the Tribunal indicating that they are representing the Respondents.
5. On 2nd July 2025 Dundee Law Centre lodged a Written Submission in respect of the rent arrears and damages sought.
6. On 7th July 2025 the Applicant lodged a Written Submission in response.

### **Case Management Discussion**

7. The Case Management Discussion ("CMD") took place on 16th July 2025 by teleconference. The Applicant represented himself. The Respondents were on the call and were represented by Mr Marshall of Dundee Law Centre.
8. The Chairperson confirmed the purposes of a CMD in terms of Rule 17 of the Rules. She noted that it was clear that there were issues in dispute and that the case would need to proceed to an Evidential Hearing.
9. The parties were agreed that the tenancy came to an end on or around 16th April 2024, that the calculation of arrears was accurate (subject to the Respondents seeking an abatement) and that the deposit of £750 was returned by safe Deposits Scotland to the applicant to cover rent arrears, no adjudication was carried out in relation to repairs.
10. There were a number of matters in dispute, which are laid out in the parties' respective Written Submissions.
11. The claim breaks down in to two parts, with the issues in dispute, as follows:

#### Rent Arrears

Firstly, the Respondents seek an abatement of rent for the period between 1st June 2023 and 1st September 2023 in relation to a broken window, a broken cooker and non working fire alarms. The Applicant's position is that all repairs reported were attended to within a reasonable timescale.

Secondly, the Respondents seek an abatement of rent for the period between 1st November 2023 and 1st February 2024 in relation to a broken boiler. The Applicant's position is that all repairs reported were attended to within a reasonable timescale.

#### Post Tenancy Repairs/Damage

The Applicant is seeking a nominal sum to cover Sheriff officer fees for carrying out eviction, new carpets and fitting, gardening and exterior cleaning and taking items to the dump. The Respondents argue that the Applicant is not entitled to reclaim the Sheriff officer fee in this action, that the carpets should be subject to fair wear and tear, that the gardening charges are

excessive and that they had to leave in a hurry and therefore had to leave some things behind.

### **Procedure Subsequent to CMD**

12. The Tribunal issued a Direction. The Applicant was to lodge any documentation in respect of the issues regarding repairs and any invoices and photos which he sought to rely on, and these were to be inventoried so that they could be easily referred to, and also a list of witnesses. The Respondents were to lodge a list of witnesses.
13. On 12th September 2025 the Applicant lodged a Written Submission with the documentation he wished to refer to. The Respondents did not respond to the Direction as they did not intend to call any witnesses.

### **Hearing**

14. The Hearing took place by video conference on 19th January 2026. The Applicant represented himself. The Respondents were present, and were represented by Mr Marshall of Dundee Law Centre.
15. The Tribunal clarified with the Applicant that the sum which he sought was £3204.01 by way of rent arrears, together with an amount capped at £800 for works to the property. This included work to the garden, replacement floor coverings, and his own efforts in decorating and clearing the property, supported by invoices for works to the garden and replacement carpets, of £400 and £313 respectively. He also confirmed that all photographs that he had lodged were taken by him, and that they were taken on the day that he gained possession of the property after the Sheriff Officers carried out the eviction.

### **Evidence**

16. The First Named Respondent, Craig Adam, gave evidence. He said that the couple moved into the house in 2020 and lived there until the 21st April 2024. They thought it was a great house. They lived there with their four young children, and sometimes Mr Adam's older daughter. One of the children has autism and ADHD. Another of the children has ADHD but is too young to have any treatment.
17. Mr Adam said that there was no rent arrears until May 2023. He said that the first period of non-payment of rent was due to the front living room window being cracked. He said that he reported it to the landlord's letting agent. He said that he withheld the rent until the window was repaired. He had phoned the letting agent and told them. He also spoke to council employee, Stewart Cuthill, who inspected the property and said that he should lodge a complaint with the Tribunal in respect of repairing standards obligations. Mr Adam said that he didn't notify the landlord direct, everything that he did was through the letting agent.

18. Mr Adam said that the window in the lounge broke of its own accord. He was sitting one evening and heard a big pop. He thought a stone had shattered it but then realised it was broken on the inside. He contacted the letting agent and they said that they couldn't get hold of the landlord but gave him details to phone the contractor himself regarding repair. The contractor came out and put some form of tape on it. Mr Adam said they then had to wait four or five months for the window to be repaired. The children couldn't play in that room and it affected them. It was cold, and that had an effect on everyone's health. The window was double-glazed, but the inside pane shattered. Mr Adam described the window as having the outer pane still in place and some cellophane over it to stop it from falling in.
19. In relation to his claim that fire alarms weren't working, Mr Adam said that he was furious that he'd been getting the blame of interfering with the fire alarm. He was changing the battery and found the alarms were not interlinked. He didn't intimate that to the landlord until Stewart Cuthill came out and did a report. Mr Adam thought it was the health visitor who referred the family to him.
20. Mr Adam was also asked about the oven door. He said that he reported it to the letting agent when it broke. It was repaired within a couple of days.
21. Mr Adam said that the washing machine also needed repair. There was a seal to stop the water coming out which was slightly torn. It was repaired fairly quickly.
22. Mr Adam was also asked about his contention that there was an electrical wire running through the gas box. He said he had seen that on a gas safety check report. It had been noted as a concern. Stewart Cuthill told him to raise it as an issue. He himself didn't know what the risk was and it had no impact on his enjoyment of the house.
23. Mr Adam said that in December 2023 the boiler broke on a Friday night. He phoned the emergency contact number he had been given and was told that nothing could be done on a Friday evening. No one came out to see it until the Monday. It was fixed in a few days. The heating broke again the next weekend and that turned out to have happened due to a mistake by the repair person. On both occasions they had to borrow oil heaters and halogen heaters from friends and family.
24. It was put to Mr Adam that central heating had broken down because he had been topping up the pressure often. He said that the gas safety engineer had shown him how to do that and he had topped up the boiler whenever the pressure dropped so that he didn't have to bother anyone. Given he had been told by the gas engineer how to do it he did not think it was an issue. He recalled that for the first repair the engineers came out on the Monday, ordered the parts, and fixed it within a few days. This would have been 7th December. It broke again on 16th December. The boiler was hissing, and steaming water came flying across the kitchen. It was fixed again by Tuesday or Wednesday. He accepted what the landlord said about the timescales for

repairing the heating. His loss involved using extra electricity to power the heaters as there was no gas at all. He could not put a figure on it.

25. Mr Adam was asked why nothing was paid to the rent account in January or February 2024. He said that they'd had to wait for Universal Credit to accept their claim for the housing element. Before that the rent had been paid from his wages. He'd had to drop hours due to the children having additional support needs and therefore had to claim housing costs. The amount was not backdated. He didn't pay the December rent due to the boiler being broken. He couldn't afford to pay the rent due to the electric costs incurred.
26. Mr Adam was asked about the circumstances of the eviction. He said that the Tribunal granted an order for eviction and they got the charge for removal, but they could not leave the property until they had been allocated a property to go to. He accepted that they did have a lot of time between receiving the Notice To Leave and actually moving out, but they couldn't move until they had a house to go to. Mr Adam accepted that they did have a dog and that they'd had it for a good few months before they were evicted. It was an American Akita. It was for his autistic daughter and had a calming effect for her. He accepted that the landlord had not given permission for the dog. He did not accept that the family had left dog mess behind. It had all been picked up, although they may have missed a few bits. He did not accept that any soiled nappies had been left in the wardrobe. He did accept that beds had been left and some toys, and he also accepted that there was a motorbike in the garage. He said it belonged to his brother and he did try to get it back but the letting agent said they could not have access after the eviction had taken place. He did not accept that the carpets were smelling of urine. If there was any it was likely to have been from potty training the children. He said that there was a rip in the living room carpet which happened a few days before they moved out. Either a nail or a tack caught on the carpet and ripped it. He accepted that the dog had chewed through the lino in the kitchen but he did not accept that the dog had chewed through the floor. He did not accept that the compost bin had been left full of dog excrement. He said that the compost bin was open to the public and he had seen other people using it. He did accept that the property needed some redecoration. His autistic daughter draws on the walls and also ripped the wallpaper. He accepted that some things were left in the rear garden. He also accepted that they had cut back trees at certain points over the year, that the grass was long and that they had removed some of the slabs to do up the garden and had put down artificial grass. He said that his wife always put her cigarette butts in the bin.
27. The Applicant then cross-examined Mr Adam. Mr Adam confirmed that he did not have any documents to say that he was withholding the rent. He had told the letting agent by phone. He did not agree that the boiler had broken because of him topping it up. He was asked why he had withheld rent for 3 months when the boiler was only broken in December. He said that they had been annoyed about the way they were spoken to and treated and had therefore withheld the rent. He conceded that they had been refused permission for the dog but had gone ahead and got one anyway.

28. The Second Named Respondent, Mrs Adam, gave evidence. She said that rent was withheld between June and September 2023 due to the broken window issue. She said it took around six months to fix. She was aware that her husband was making an application to the Tribunal regarding the repairing standard but she was not involved in it. She was focusing on trying to get the local authority to rehouse the family. She did remember them taking the decision to withhold the rent. She said that they were ready to repay the money when the work was done. She said they then got hit with the eviction notice.
29. Mrs Adam said that there were small issues with the washing machine and the oven door, but both were repaired quickly.
30. Mrs Adam said that rent was again withheld between November 2023 and February 2024 due to issues with the boiler. She said that it was really cold and they had to find somewhere else to go with the children. The children were away from the house for four days on each occasion that the boiler broke. There were extra costs in relation to electricity to power the heaters. She said that they did not pay rent in January or February 2024 because they were under stress and they did not like the way they had been spoken to over the boiler issue. There was no recognition of how serious the second breakdown was, and what could have happened.
31. In relation to the damage Mrs Adam said that the living room carpet ripped because the living room door was quite close to the floor and it caused wear and tear. She did not agree that any excrement had been left or that the carpets smelled of urine. She conceded that there was damage to the décor as her autistic daughter did draw on the walls and rip the wallpaper. She did recall that the kitchen lino was ripped.
32. Mrs Adam agreed that the landlord had refused permission for a dog, but they had got one anyway. She did not accept that the property was left in a mess but she did accept that items were left as they did not have time to remove them as they were only allocated a property the day before they were evicted.
33. The Applicant gave evidence. He said that his position was laid out in his written submissions. He made clear that he had never doubted the Respondents' explanation for the broken window, however the insurance company were dubious and he could not go ahead with the repair until the insurance company had accepted the claim. This took time. As soon as the claim paid out he instructed the window repair.
34. In relation to the boiler issues the Applicant said that the repairs had been carried out as quickly as possible.
35. The Applicant said that he had never been told by the Respondents that they were withholding rent due to repairs issues. There was no evidence that they had set the rent aside. He said that as soon as he received the letter from Stuart Cuthill he attended to the issues as soon as he could, with the exception of the wire in the gas meter, and he had been told it was not a risk.

36. The Applicant said that after the Respondent left he had to carry out major redecoration. He did not fully cost it but it would have been substantially more than the nominal amount that he was claiming. The carpets and lino had to be replaced. He had to pay a carpet fitter, in addition to the cost of the carpets, but he was not seeking repayment of that. He said that he had refused permission for the Respondents to have a dog. He said that clearing up the dog mess had been quite disturbing. He confirmed that he would have been amenable to a small discount on the rent due to the boiler breaking down twice but he reflected that in the fact that he was only claiming £800 for damage.
37. The concept of wear and tear was put to the Applicant. He agreed that the property was let as a family home and he would expect a degree of wear and tear. However, he said that he considered that the damage to the walls and carpets went beyond what was reasonable.
38. The Applicant said that he was not aware of the Respondents having contacted the letting agents to ask if they could go back to retrieve the items they had left behind.
39. The Applicant said that trees had been removed from the garden and not replaced and that paving slabs had also been removed. He said that the pallets that a hot tub sat on had to be dug out of the garden as they had collapsed under the weight of the hot tub. The artificial turf put down by the Respondents had to be removed. It took 19 days in total to prepare the property for sale.

#### Submissions

40. The Applicant said that he was happy that he had said all he needed to.
41. Mr Marshall summed up the evidence and said that he considered a month's abatement of rent would be fair in relation to the window repair and a month in relation to the boiler repairs. He said that the boiler issue took less time to resolve, but was more inconvenient.
42. Mr Marshall said that a landlord could expect that having rented a property to a family of that size that he would expect to redecorate when they vacated. He said that the cost of the gardening services, £400, was probably reasonable, and the Respondents had offered £100 in relation to the rest.

#### Findings In Fact

- i. The parties entered in to a Private Residential Tenancy commencing 20th March 2020;
- ii. The tenancy came to an end on 21<sup>st</sup> April 2024 when the Respondents were evicted;

- iii. At the end of the tenancy the Respondents had rent arrears of £3204.11 after deduction of the deposit which was returned to the Applicant;
- iv. The Respondents occupied the property with their four children, one who has autism and ADHD and one who has ADHD;
- v. Rent was paid in full from the commencement of the tenancy until 1<sup>st</sup> June 2023;
- vi. No payments of rent were received between 1<sup>st</sup> June 2023 and 30<sup>th</sup> September 2023;
- vii. No payments of rent were made between 1<sup>st</sup> November 2023 and 29<sup>th</sup> February 2024;
- viii. The inside pane of the living room shattered without fault on the part of the Respondents;
- ix. The property remained wind and watertight;
- x. The Applicant's insurers took several months to settle the claim;
- xi. The window was repaired as soon as the claim was settled;
- xii. The Respondents experienced a degree of inconvenience due to the broken window;
- xiii. Repairs to the oven door and the washing machine were carried out soon after being reported;
- xiv. The wire running through the gas box did not create a danger;
- xv. The boiler broke on 3<sup>rd</sup> December 2023 and was repaired on 7<sup>th</sup> December 2023, a total of five days
- xvi. The boiler broke again on 18<sup>th</sup> December and was repaired the same day.
- xvii. The boiler issues led to unquantified expense and inconvenience for the Respondents;
- xviii. The Respondents were allocated a property the day before the eviction was due to be carried out;
- xix. The Respondents left a number of items behind in the house which the Applicant had to dispose of;
- xx. There was substantial damage to the decoration due to wallpaper being ripped and children drawing on the walls requiring full redecoration;
- xxi. There was damage to the living room carpet and the lino in the kitchen;
- xxii. The Applicant spent £313 on new floor coverings;
- xxiii. The Respondents removed trees and paving stones from the garden and did not replace them;
- xxiv. The Respondents left a number of items behind in the garden which the Applicant had to dispose of;
- xxv. The Applicant spent £400 on clearing the garden.

### **Reason for Decision**

- 43. The Applicant gave evidence in a straightforward manner and the Tribunal thought that he understated his position. The Respondents were candid in some parts of their evidence, particularly in relation to the repairs issues, and not quite so candid in relation to the state of the property when they left.
- 44. The Tribunal considered all the documents lodged and the evidence heard.



45. Parties agreed at the outset that the rent arrears stood at £3204.11 subject to any abatement of rent in relation to the repairs issues.
46. The first issue in dispute is the non payment of rent due to repairs issues. The Tribunal does not accept that the Respondents properly withheld rent. It was not kept in a separate account and it was not paid to the Applicant when the repairs were carried out. This does not mean however that the Tribunal cannot consider whether abatement is appropriate.
47. The first period in which abatement is sought is from 1st June 2023 to 1<sup>st</sup> September 2023, and is in relation to the window repair, cooker repair, washing machine repair and fire alarms. The Respondents said that the cooker and washing machine were repaired quickly. There was no clear evidence about an issue with the fire alarms. No abatement can be considered therefore in relation to these items.
48. The inner pane of the living room window shattered. This was not the fault of the Respondents. However, there is no evidence that the property was not wind and watertight. There was no evidence of the Respondents having sustained financial loss due to the damage. There was no conclusive evidence that the delay in fixing the window was in any part caused by the Respondents, or indeed by the Applicant. The Respondents did suffer some minor inconvenience. The Tribunal considers an abatement of £20 per month for each of the six months that the window was broken, a total of £120, to be appropriate in the circumstances.
49. The second period in which abatement is sought is from 1<sup>st</sup> November 2023 to 1<sup>st</sup> February 2024. The Respondents both candidly said that they had not paid rent in January and February 2024 due to a combination of being annoyed at the way they had been treated and not being able to afford it due to Mr Adam taking a drop in hours at work and waiting for Universal Credit to come through. The question is then whether December's rent should be abated. The Respondents did accept that the issues with the boiler had been resolved within a short timescale. They did have to decant their children to live with relatives while repairs were carried out and they gave evidence that they would have incurred additional electricity cost in running electric and halogen heaters. They did not provide any evidence of the amount. The Applicant said that he would have been amenable to a discount. The Tribunal considers that to cover the costs of electricity and additional expenses arising from having no heating, £15 per day for six days, a total of £90, would be an appropriate abatement.
50. The remaining issue is the cost of post tenancy repairs. The photographs lodged by the Applicant show the state of the house and garden immediately after the eviction took place.
51. The Respondent's solicitor conceded that £400 is a reasonable amount in relation to dealing with the garden, and the Tribunal agrees.

52. The Applicant seeks £313 in relation to replacement of the living room carpet and kitchen lino. It is clear from the photographs that these did need to be replaced. The Respondents and their children tenanted the property for four years, and a degree of wear and tear is to be expected, but the damage caused by the dog and/or the children goes beyond this. The Tribunal considers 20% to be a reasonable deduction for wear and tear, giving a sum of £250.40.
53. The remainder of the Applicant's nominal claim for £800 amounts to £149.60. The photographs show extensive damage to the interior décor. Both Respondents said that it was as a result of their autistic daughter drawing on the walls and ripping the wallpaper. The Tribunal does have regard to the disability, but that disability does not negate the responsibility of the Respondents to return the property in a clean and tidy state. The Tribunal is satisfied that the costs of redecoration would be far in excess of £149.60, and prepared to award that sum to the Applicant.
54. The calculation is:
- |  |          |
|--|----------|
| Rent Arrears due:                                | £3204.11 |
| Less:  |          |
| Abatement for window                             | £ 120.00 |
| Abatement for boiler                             | £ 90.00  |
| Subtotal   | £2994.11 |
| Add:   |          |
| Amount due to Applicant for Post tenancy repairs | £800     |
| Total due by Respondents                         | £3794.11 |

## **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland**

**(Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

Alison Kelly

**19.01.26**

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**Legal Member/Chair**

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**Date**