



**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/24/3121**

**Property : 47C McLelland Drive, Kilmarnock KA1 1SG (“Property”)**

**Parties:**

**Graeme Miller t/a McGregor MacLeod, 34 Alexandra Street, Kirkintilloch G66 1HE (“Applicant”)**

**Carol Gallacher, 7 Lamberton Road, Stewarton KA3 3HU (“First Respondent”)**

**Michael Freeburn, 39 Jane Darnbrough Gardens, Kilmarnock KA1 3US (“Second Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £7,923.37 should be made against the Second Respondent..**

**Background**

1. The Applicant sought an order for payment of £14,350 in respect of rent arrears. The Applicant had lodged Form F. The documents produced were: a Private Tenancy Agreement which commenced on 26 August 2019 (“Tenancy Agreement”) and a statement of rent arrears. A Case Management Discussion (“CMD”) was fixed for 3 December 2024 which was postponed to 17 February 2025. At the CMD on 17 February 2025 there was no appearance by either Respondent. The outcome was that the Tribunal granted an order for payment of £14,000. The First Respondent applied for recall of the decision which was granted by decision dated 12 March 2025.

**Case Management Discussion**

2. A CMD took place before the Tribunal on 17 September 2025. Reference is made to the note of the CMD. The outcome of the CMD was that the Tribunal

fixed an evidential hearing to take place on 22 January 2026. The Tribunal issued a direction in the following terms :

***The Second Respondent is required to lodge with the Tribunal :***

1. *A statement setting out the amounts paid by or on behalf of the Second Respondent to the Applicant in respect of rent for the Property in the period of the tenancy between the Parties. The statement should detail the amount of each payment made and the date of payment.*
2. *A copy of any available bank statements or other evidence showing payments made by or on behalf of the Second Respondent in respect of rent for the Property in the period of the tenancy between the Parties.*
3. *A written submission setting out the nature of repairs required to the Property during the period of the tenancy between the Parties and the date on which the need for the repair was notified by the Second Respondent to the Applicant or their Letting Agent.*
4. *Evidence of the need for repairs to the Property being notified by the Second Respondent to the Applicant or the Applicant's Letting Agent such as copy emails.*
5. *Any available documentary evidence of agreement being reached between the Second Respondent and the Applicant or their Letting Agent regarding a reduction in rent due in light of outstanding repairs at the Property.*
6. *A list of witnesses who will give evidence on behalf of the Second Respondent at the evidential hearing to be assigned.*

*The said documentation should be lodged with the Tribunal no later than close of business on 29 October 2025.*

***The First Respondent is required to lodge with the Tribunal :***

1. *Any documentation held by the First Respondent relevant to the issues set out above.*

*The said documentation should be lodged with the Tribunal no later than close of business on 29 October 2025.*

***The Applicant is required to lodge with the Tribunal :***

1. *A copy of any written communications between the Applicant or their Letting Agent and the First or Second Respondent regarding the First Respondent assuming responsibility as guarantor for the obligations of the Second Respondent to the Applicant in terms of the tenancy agreement between the Parties.*
2. *Any available documentary evidence of agreement being reached between the Second Respondent and the Applicant or their Letting Agent regarding a reduction in rent due in light of outstanding repairs at the Property.*
3. *A list of witnesses who will give evidence on behalf of the Applicant at the evidential hearing to be assigned.*

*The said documentation should be lodged with the Tribunal no later than close of business on 10 December 2025.*

None of the Parties lodged a response to the direction.

### **Hearing on 22 January 2026**

3. A hearing took place at Glasgow Tribunals Centre on 22 January 2026. The Applicant and both Respondents were present. None of the Parties had a representative. Sam Lockhart, formerly of Lockhart Residential, attended as a witness for the Applicant.
4. The Parties agreed that the tenancy commenced on 26 August 2019 and that the monthly rent was £350. The Tribunal noted that the tenancy agreement lodged stated that rent was due on the 28<sup>th</sup> of each month. As regards the date on which the tenancy ended, Mr Miller said it ended on 9 May 2024. Mr Freeburn said it ended in the first week of April 2024 when he vacated the Property. Mrs Gallacher said that she handed the keys back to Slater Hogg on 5 April 2024. She said that no receipt was given to her. Mr Miller did not recall the keys being handed back but he recalled being told that the Property was empty in April 2024. Mr Miller produced a copy notice to leave addressed to Mr Freeburn dated 12 February 2024 which expired on 9 May 2024.
5. The Tribunal noted that the Applicant had lodged a copy email from the landlord register dated 26 September 2024 which stated that he had been a registered landlord until 25 September 2024, being a date after the tenancy ended. The Tribunal noted that in a previous written submission lodged on behalf of Mrs Gallacher she had said that the Applicant had not been registered and therefore was not entitled to recover rent. She said she had spoken with Shelter who had advised that if the Applicant was not registered then he could not “go through this process”. The Tribunal asked if a notice had been served by the local authority under section 94 of the Antisocial Behaviour etc (Scotland) Act 2004 and was told that no such notice had been served.

### **Rent Arrears**

6. The Tribunal noted the schedule of rent arrears lodged by the Applicant which showed arrears of £14,350. The Applicant confirmed that he had prepared the schedule. Mr Freeburn said that he had with him bank statements that showed numerous payments being made that were not shown on the arrears statement. He said that the following payments had been made that were not shown on the statement : £350 in January, February, March, May, June, August and September 2020; £160 and £1340 in April 2021, £400 in May 2021 and £350 in June, July and August 2021; £350 in March 2022. The Tribunal adjourned to allow the bank statements held by Mr Freeburn to be copied and shared with the Applicant.

7. The Tribunal resumed and noted that the bank statements lodged confirmed that the payments listed by Mr Freeburn had been made. The bank statements showed that payments were initially made to Lockhart Residential with the last payment being £350 on 10 August 2021. Thereafter payments were made direct to the Applicant. The Tribunal noted that the payments totalled £5,750. Mr Miller said that he had reviewed the bank statements and agreed that they evidenced the payments being made. He said he had not been aware of the payments having been made. He said that the rent was paid in full in the period August to December 2019, which was not shown on the arrears statement. Mr Freeburn noted that the statement of arrears showed no rent being paid in the period June 2023 to April 2024. He said he may have made some random payments during that period but he did not have any paperwork to evidence that. He said that he was in a very poor mental state during that period. The Tribunal asked Mr Miller whether he took steps to recover the rent arrears as they accumulated. He said that he did not as he was very busy managing his other properties and his full time job. Mr Miller told the Tribunal that he owned 14 rental properties in Kilmarnock.

### **Deposit**

8. The Tribunal noted that the tenancy agreement referred to a deposit of £350 being required. Mrs Gallacher produced a copy bank statement showing that she made a payment of £430.55 to Lockhart Residential on 22 August 2019. Mr Freeburn said that this was not a deposit but rent in advance.

### **Repairs**

9. As regards repairs at the Property, Mr Freeburn told the Tribunal that there were two major issues, the boiler and the skylight in the common entrance to the tenement. As regards the boiler Mr Freeburn said that it stopped working in September 2019. He said that remained the position for 3 months. He said that he called and emailed Lockhart Residential on numerous occasions. He said he lived in the Property with his daughter who was one year old at the time. He said they had no heating or hot water. He said a contractor did attend the Property but he didn't know what he was doing. He said that he started a course to understand gas boilers. He said that an engineer finally came out in December 2019 / January 2020 and replaced the boiler. He said that the flue was faulty and had not been fixed by the time he left the Property. He said this meant he could not have the kitchen window open when cooking. He said that there was no carbon monoxide monitor in the kitchen where the boiler was situated.

10. As regards the skylight in the common entrance, Mr Freeburn said that the skylight consisted of two panes of glass one of which was missing. He said he did not notice this when he viewed the Property as the weather was dry. He said that when it rained the water collected in the common entrance. He said that he complained to Sam Lockhart by text, email and phone call. He said that his grandmother visited the Property and slipped in the water. Mrs Gallacher said that she had also slipped in the entrance way and had fallen. She said that when she visited she would need assistance from Mr Freeburn to ensure she did not fall. Mr Freeburn said that he and his father carried out a temporary repair to the skylight in March 2020 and a neighbour had a permanent repair carried out at the end of 2021.

11. Mr Miller agreed that there had been an issue with the boiler but he thought it was in October 2021. He said that he sent a contractor out to repressurise the boiler. The contractor reported back that a new boiler was required. He said that he delivered temporary heaters to the Property in October 2021 and offered a £100 rent reduction. He said that the boiler was replaced about 3 weeks later. The Tribunal asked Mr Miller if he had an invoice from the contractor or any other documentation to evidence his position. He said that he did not. He said he offered to reduce the rent by £100 per month for two months. As regards the skylight, Mr Miller said that he had not been aware of this issue.

12. Mr Freeburn disputed that the boiler issue arose in October 2021. He checked his mobile phone and read to the Tribunal email exchanges between him and Sam Lockhart dated 13 November 2019 regarding the need for the boiler to be repaired and telling Mr Lockhart that Mr Freeburn's grandmother had slipped and fallen in the common entrance due to the water ingress. He read to the Tribunal the response from Mr Lockhart which was that the Applicant would waive rent of £103 but would expect the rest of the rent to be paid and that common repairs were not his remit. He said that the only heaters supplied were two small oil filled heaters which were delivered shortly before the boiler was replaced. Mr Miller said that he had not seen the email exchanges but what had been read to him suggested the boiler was functioning at that time. He said that Mr Lockhart would manage issues such as repairs and not inform Mr Miller.

### **Gas Bills**

13. Mr Freeburn told the Tribunal that when he moved into the Property there was an issue with the gas supply in that he was receiving bills for gas used in the flat below the Property. He said the arrears on the pre-payment meter were £861 and that had to be cleared before the utility company would supply gas. He said that he did get to the point where he resolved the issue with Scottish Gas. Mr Miller said that he had pre-payment meters in all of his flats. He said

the tenant had to tell the gas supplier the date of entry. They would then be given a code and could attend a shop where a credit would be given. He said that he had not been made aware of any issue with the gas supply at the Property. He said he did not own the flat below the Property.

### **Guarantor**

14. Mrs Gallacher told the Tribunal that before taking up the tenancy of the Property Mr Freeburn had lived with his partner in a council house. After the relationship ended he needed to find somewhere to live and as he had not rented a property before he did not have references. She said that a lot of the letting agencies asked for a guarantor. She said that the advert for the Property did not refer to a guarantor being required. She said that Mr Freeburn looked at two properties at this time, one was a one bedroom and the Property had two bedrooms but the rent was similar. She said that she viewed the Property with Mr Freeburn. Mr Lockhart was at the viewing. She said she commented to him that a lot of agencies looked for a guarantor and he agreed that was the case. She said that she paid the deposit of £430.55.
15. Mrs Gallacher told the Tribunal that after Mr Freeburn took entry to the Property Mr Lockhart called her and said "*I just realised this property does need a guarantor. I should have explained that. I propose to use the electronic signature used for the deposit.*" She said that the "signature" at page 31 of the tenancy agreement is not her usual signature. She said that she told Mr Lockhart that Mr Freeburn had looked at the Property as no guarantor was required. She said she told Mr Lockhart that she "*did not want to do this as my son is an adult.*" She said that Mr Lockhart then started to read to her a document which he said was her agreement to be guarantor. She said she told him "*I am not taking this in and do not want to proceed.*" Mrs Gallacher told the Tribunal that at that time she was off work after an operation to her foot in June 2019. She said that she retired due to ill health in December 2019. She said that before Mr Freeburn took up the tenancy she had suffered two heart attacks and had been diagnosed with high blood pressure. Mrs Gallacher said that Mr Lockhart's response to her saying that she did not want to proceed was to say that he would evict her son. She said she told him she needed time to think and the call ended.
16. Mrs Gallacher told the Tribunal that she had given her email address to Mr Lockhart and had provided her signature for the deposit. She said she did not receive any documents about being guarantor. She said she did not receive a copy of the tenancy agreement.

17. Mrs Gallacher told the Tribunal that towards the end of the tenancy she received a bill for outstanding rent of £3,400. She said she called Mr Miller's office in Kirkintilloch and spoke to a woman. She said the lady asked her if she was going to pay the sum demanded. Mrs Gallacher said she replied that she would not and she wanted to speak to Mr Miller. She said that she called several times asking to speak to Mr Miller but "got nowhere". Mrs Gallacher said that she then got caught up with her parents suffering ill health. She explained to the Tribunal that she worked in social services and was subject to detailed disclosure. She said that if she was in debt that would be disclosed and she may have been unable to return to her employment if she had wanted to. She said that for that reason she did not want to be a guarantor although she said that she would of course help her son if required. The Tribunal referred Mrs Gallacher to the letter addressed to her from Mr Miller dated 27 February 2023. She said she did not receive the letter which she noted was not on headed notepaper. Mrs Gallacher said that when the boiler was not working, she tried to speak with the letting agent but they told her they did not have to speak to her as she was not the tenant or guarantor.

18. Mr Freeburn told the Tribunal that the Property was his first rental. He said he did not know what a guarantor was. He said letting agencies would ask if he had a guarantor and he would say he did not. He said that he had no recollection of receiving a copy of the tenancy agreement. He said that he did have to complete a form online providing his email address etc. He said a credit check was carried out which "flagged an issue". He said that Mr Lockhart called him and he told him he would have to speak to his Mother, Mrs Gallacher. He said it was after that his Mother had the call with Mr Lockhart which she had described. Mr Freeburn said he thought that a guarantor was just a way to get the Property. He did not realise it was a big commitment. He said he thought his Mother just paid the initial rent.

19. Mr Miller told the Tribunal that he does not accept tenants without a guarantor. He said that he owns 14 residential properties in Kilmarnock and 25/30 in total across Scotland. He said that he only advertises on Rightmove which is online. He said that when Mr Lockhart identifies a tenant he obtains their details and a credit report is carried out. He said the guarantor's details are also collected and Mr Miller checks that they hold title to a property. He said he checked the title to the property address provided for Mrs Gallacher and she owned that property. He said there was no mortgage on the property which attracted him.

20. As regards the procedure to sign a tenancy agreement Mr Miller said that Mr Lockhart carried out a "round robin" procedure. He said that the tenancy agreement is emailed to the tenant who reads the contract and signs. Once that has happened Mr Lockhart receives a notification to that effect and the tenancy

agreement is automatically sent to the guarantor to read and sign. Mr Lockhart then receives a further notification and the tenancy agreement is automatically sent to him. He then signs it and all three individuals will receive an email saying the contract is complete. Mr Miller said that he is not copied into any of these emails. The Tribunal asked Mr Miller if he had copies of any of the emails or notifications referred to. He said that he did not. The Tribunal noted that there was no additional pages attached to the tenancy agreement to evidence that an electronic signing process had taken place. Mr Miller said that the system used in this case was "ecosign".

21. Mr Miller told the Tribunal that he did speak to Mrs Gallacher after he issued the letter dated 27 February 2023. He said that Mrs Gallacher knew that she was guarantor and that there were rent arrears. He said that she offered to pay the arrears. He said he asked Mrs Gallacher if they could "bring this to a close". He said she replied "*I have no control over him.*" Mr Miller told the Tribunal that he said to Mrs Gallacher "*you are the guarantor and you are liable.*" He said that she then offered to pay the arrears and he asked her if the tenancy could be brought to a close. He said that Mrs Gallacher disagreed with the sum claimed and said that it was too high. The Tribunal asked Mr Miller if Mrs Gallacher stated that she accepted she was guarantor. Mr Miller replied "*she didn't deny it.*" Mr Miller said that a statement of arrears was attached to the letter of 27 February 2023 and at that time the arrears were £3,400. The Tribunal asked if the pre-action protocol had been complied with. Mr Miller said that would have been handled by Guthries, Solicitors.
22. Mrs Gallacher said that the conversation described by Mr Miller did not take place. Mr Miller noted that in her evidence Mrs Gallacher had referred to her signature for the deposit being transposed but there is no electronic signature required for a deposit and no deposit was paid in this case.
23. Sam Lockhart then joined the Tribunal to give evidence. He told the Tribunal that he had owned and managed Lockhart Residential for 7 years. He said he had worked as a letting agent for 12 years. He said that Lockhart Residential was now dissolved. He confirmed that he set up Mr Freeburn's tenancy for the Property. He said that the Property would have been advertised on Citylets. He said that Mr Miller's criteria were that the tenant must be employed and a guarantor had to be provided who was a homeowner. Mr Lockhart said that he recognised the tenancy agreement lodged in this case.
24. Mr Lockhart said that the process followed to set up a tenancy was that the application form was sent out digitally and completed digitally. He said that the system used was Securesign API. He said that the process followed was that the tenancy agreement was sent to the tenant first. It was then automatically

sent to the guarantor and then to Mr Lockhart. He said that all parties would receive a copy of the completed document.

25. Mr Lockhart told the Tribunal that parties were identified through "Vouch" which he said was similar to a credit agency specifically for setting up tenancies. He said that Vouch had a portal where parties could upload their details such as employment data. He said that Vouch was the equivalent of an application form. He said that the tenancy agreement was always signed before the tenant took entry. Mr Lockhart said he could not recall whether he had ever met Mrs Gallacher. He said that he was satisfied that the tenancy agreement in this case was signed by all parties.
26. Mr Lockhart told the Tribunal that he managed "hundreds" of properties and had no staff. He said he "did everything himself". He said he did not have copies of the emails relevant to this case as he closed the business 5 years ago. He said that as far as he could recall, in this case the tenant provided the guarantor and no deposit was paid. He said that if a deposit had been paid, the first payment would have been £700. He said that a deposit would be lodged with Safedeposits Scotland. He said that no particular paperwork was signed when a deposit was taken.
27. The Tribunal explained to Mr Lockhart the evidence given by Mrs Gallacher regarding a conversation that took place between her and Mr Lockhart shortly after the tenancy began. Mr Lockhart told the Tribunal that he did not recall the conversation described as having taken place. He said it made no sense. He said that the guarantor fills in their own information on Vouch. He said that the proposed tenant can provide the guarantor's details on the application form or they can be provided separately by the guarantor. He said he did not know what happened in this case. He said that the signature on the tenancy agreement is generated by the system.
28. Mrs Gallacher suggested to Mr Lockhart that the system had not worked as described in this case. Mr Lockhart said he would not ask Mrs Gallacher to be guarantor after the tenancy agreement had been signed. He said that if the system had not worked, the tenancy agreement would have had a "wet signature."
29. Mr Miller said that the software was designed specifically for letting properties. He said the keys would never be handed over without a signed tenancy agreement. He said that guarantor details would not be inserted retrospectively.

30. Mr Freeburn asked Mr Lockhart what had happened to the rental payments made by him which were not shown on the statement of rent arrears. Mr Lockhart said he would look into that.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Second Respondent entered into a Tenancy Agreement which commenced on 26 August 2019.
2. In terms of the Tenancy Agreement the rent was £350 per month.
3. A notice to leave dated 12 February 2024 was served on the Second Respondent. The notice to leave stated that an application would not be made to the Tribunal before 9 May 2024.
4. The Second Respondent had vacated the Property by 5 April 2024 when the keys for the Property were delivered to the Applicant's agent by the First Respondent.
5. The Applicant prepared a statement of rent arrears for the period January 2020 to April 2024 showing a balance due of £14,350.
6. The Second Respondent paid to the Applicant £350 in January, February, March, May, June, August and September 2020; £160 and £1340 in April 2021, £400 in May 2021 and £350 in June, July and August 2021; £350 in March 2022. The payments are not reflected in the statement of rent arrears lodged. The payments total £5,750.
7. Section 11 of the tenancy agreement states that a deposit of £350 was to be paid at the start of the tenancy.
8. At the start of the tenancy the First Respondent paid to the Applicant £430.55 in respect of rent for the period from 19 August 2019 to 28 September 2019.
9. No deposit was paid to the Applicant by or on behalf of the Second Respondent in respect of the tenancy of the Property.
10. The Second Respondent failed to pay the rent in full for the period April 2020 to April 2024.
11. The Second Respondent intimated to the Applicant's Representative that there was a repair required to the boiler in the Property in September 2019.

12. The boiler in the Property was replaced approximately three months after the need for a repair was intimated to the Applicant's Representative.
13. The failure to repair the boiler in the Property caused the Second Respondent discomfort and inconvenience.
14. The Second Respondent intimated to the Applicant's Representative that there was a repair required to the skylight in the common entrance to the Property in November 2019.
15. The second Respondent carried out a temporary repair to the skylight in March 2020.
16. The failure to repair the skylight in the common entrance to the Property caused the Second Respondent and his relatives discomfort and inconvenience.
17. 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 boiler at the Property and the skylight in the common entrance since the need for such repairs were notified to the Applicant's Representative.
18. The First Respondent did not agree to guarantee the obligations of the Second Respondent to the Applicant.
19. The First Respondent did not apply an electronic signature to the tenancy agreement lodged with the application.

### **Findings in Fact and Law**

1. The tenancy ended on 9 May 2024.
2. The sum of £221.63 should be deducted from the sum claimed as the tenancy came to an end on 9 May 2024.
3. The sum of £5,750 should be deducted from the sum claimed to reflect payments made that were not included in the statement of arrears provided.
4. The Applicant failed to comply with his obligations under the Housing (Scotland) Act 2006 to ensure that the Property met the repairing standard at all times during the tenancy.
5. The Second 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 £455.

6. A balance of £7,923.37 is due by the Second Respondent to the Applicant in respect of outstanding rent being the sum claimed of £14,230 less the deductions referred to at finding in fact and law 2,3 and 5.
7. The First Respondent has no liability for sums due by the Second Respondent to the Applicant.

### **Reasons for the Decision**

31. Since 1 December 2017 the only competent way to constitute a private residential tenancy is in terms of the Private Housing (Tenancies)(Scotland) Act 2016 (“2016 Act”). Section 3 of the 2016 Act provides that such contracts do not require to be in writing. In this case, leaving aside the dispute as to whether or not the tenancy agreement was signed by electronic means, the Parties did agree on the fundamentals of a tenancy being the identity of the landlord and tenant, the identity of the property and the monthly rent payable. Parties agreed that the date of entry was 26 August 2019. The Parties did not agree on the termination date. They did agree that a notice to leave dated 12 February 2024 was issued which stated that an application would not be made to the Tribunal before 7 May 2024. Mr Freeburn’s evidence was that he vacated the Property in early April. Mrs Gallacher’s evidence was that she handed the keys back on 5 April 2024. This evidence was not disputed. In terms of section 50 of the 2016 Act a private residential tenancy comes to an end if the tenant has received a notice to leave from the landlord and the tenant has ceased to occupy the property. In terms of section 50(2) the tenancy comes to an end on the later of (a) the day specified in the notice to leave in accordance with section 62(1)(b) of the 2016 Act or (b) the day on which the tenant ceases to occupy. Applying section 50 to this case results in a termination date for the tenancy of 7 May 2024.
32. Mrs Gallacher’s position was that Mr Miller was not the registered landlord for the Property and therefore he could not “go through this process”. In written submissions previously lodged her position had been that lack of registration meant that M Miller was not entitled to recover rent. Mr Miller had lodged an email from the Landlord Register which indicated he was the registered landlord for the Property during the period of Mr Freeburn’s tenancy. In any event, lack of registration does not prevent a landlord from recovering rent unless a notice has been served by the local authority in terms of section 94 of the Antisocial Behaviour etc (Scotland) Act 2004. No such notice had been served in this case. The question of landlord registration was therefore not relevant to the matters in dispute.

33. Mr Miller had prepared and lodged a statement of rent arrears showing a balance due of £14,350. Mr Freeburn produced bank statements which clearly showed numerous payments being made initially to Lockhart Residential and then direct to Mr Miller. The payments evidenced totalled £5,750. Mr Miller did not dispute that these sums should be deducted from the amount claimed. It is a matter of concern to the Tribunal that a statement of arrears had been lodged that was materially inaccurate.

34. The tenancy agreement provided that the rent was payable in advance and was due on the 28<sup>th</sup> of each month. The statement of arrears showed the sum of £350 falling due in April 2024. The tenancy ended on 9 May 2024. The sum due in April should therefore not be a full month's rent but a pro-rated amount for the period 28 April to 9 May 2024 which is a period of 11 days. The daily rate for the period 28 April to 9 May is £11.67. Multiplying that figure by 11 produces a pro-rated sum due of £128.37. The amount claimed to be due in April 2024 should be reduced by the difference of £221.63.

35. The tenancy agreement stated that a deposit of £350 was to be paid. The evidence indicated that what was paid at the start of the tenancy was the first month's rent in advance. No deposit was paid. The tenancy agreement lodged was therefore inaccurate.

36. The Parties gave evidence regarding the need for repairs at the Property. In terms of the Tenancy Agreement the Applicant was responsible for ensuring the Property met the repairing standard.

37. 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. Section 15 states that the obligation regarding repairs extends to common parts.

38. Mr Freeburn's evidence was that he had notified the need for repairs to the boiler and the skylight by telephone, text and email after the boiler stopped working in September 2019. Mr Miller's evidence was that the issue with the boiler arose in October 2021. He was not aware of an issue with the skylight. Mr Freeburn read to the Tribunal an email exchange between himself and Mr Lockhart in November 2019 when both repairs were discussed. Mr Freeburn's evidence was supported by the evidence of Mrs Gallacher and the email exchange with Mr Lockhart. Mr Miller had no documentation to support his evidence that the issue with the boiler arose in October 2021 as opposed to in 2019. The Tribunal preferred the evidence of Mr Freeburn and Mrs Gallacher. The Tribunal was satisfied that the need to repair the boiler was notified on a number of occasions from September 2019. The boiler was replaced some 3 months later. The Tribunal was satisfied that the need to repair the skylight was notified at least in November 2019 and the skylight was repaired temporarily by Mr Freeburn in March 2020.

39. 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 Mr Freeburn has done in this case.

40. 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.

41. When abatement is being claimed, consideration needs to be given to the extent and the duration over which the Second 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 Mr Freeburn had to suffer.

42. As regards the boiler, Mr Freeburn's evidence was that he and his young daughter had to endure no heating or hot water for a period of 3 months. As regards the skylight, the evidence from Mr Freeburn and Mrs Gallacher was that the water ingress was a hazard and that both Mrs Gallacher and Mr Freeburn's Grandmother had slipped in the water and fallen. The skylight remained in a state of disrepair from November 2019 to March 2020 being some 4 months.

43. The Tribunal considered that an abatement equivalent to 30% of the rent for a period of three months was appropriate in respect of the failure to repair the boiler. The rent for a three month period was £1050. 30% of that is £315. The Tribunal considered that an abatement equivalent to 10% of the rent for the period November 2019 to March 2020 was appropriate in respect of the failure to repair the skylight. The rent for that four month period was £1400. 10% of that is £140.

44. Mr Freeburn and Mrs Gallacher gave evidence regarding gas bills for the Property. An issue which Mr Freeburn said was ultimately resolved. The Tribunal considered that the amount due for gas in the Property was not relevant to the matters in dispute.

45. This application was raised against Mrs Gallacher on the basis she had guaranteed the obligations of Mr Freeburn in terms of the tenancy agreement. The tenancy agreement lodged bore an electronic signature for Mr Freeburn and Mrs Gallacher. Mr Freeburn's evidence was that he did not understand what a guarantor was. He did not realise the level of commitment involved in being a guarantor. His evidence was that he had not seen the tenancy agreement. Mrs Gallacher's evidence was that she did not agree to be guarantor of Mr Freeburn's obligations. She did pay the initial rent due and therefore did interact with the letting agent, Mr Lockhart. Mr Miller had no involvement in setting up the tenancy agreement. It was however his evidence that he did not accept tenants without a guarantor. His evidence was that he checked the title to the property given as Mrs Gallacher's address and was satisfied with her as a guarantor as she held the title. Mr Lockhart's evidence was that Mrs Gallacher did agree to be guarantor. He said that the phone call described by her regarding her being guarantor did not take place. Mr Lockhart described the process followed by him when setting up a tenancy which involved the tenancy agreement being sent to each party in turn and them adding their signature electronically. He was satisfied that the tenancy agreement lodged was properly set up and signed by both Respondents. This was Mr Lockhart's evidence despite the tenancy agreement stating that a deposit of £350 was to be paid despite all parties agreeing that no deposit was paid. It was also Mr Lockhart's evidence that he was the only member of staff at Lockhart Residential, that he "did everything" and that he managed "hundreds" of properties.

46. The Tribunal considered all of the evidence before it regarding whether or not Mrs Gallacher had a liability to the Applicant as guarantor. Mr Miller had no involvement in setting up the tenancy. Mr Freeburn did not understand what a guarantor was. The evidence of Mr Miller and Mr Freeburn was therefore of little assistance. Mrs Gallacher's evidence was that she did not agree to act as

guarantor. She recounted in detail the terms of a conversation with Mr Lockhart when the question of her acting as guarantor was discussed. Mr Lockhart's evidence was that the conversation did not take place. The Tribunal preferred the evidence of Mrs Gallacher. She had a detailed recollection of the conversation. She explained that she would not wish to act as a guarantor as incurring debt could impact her ability to return to her employment. The Tribunal considered that Mrs Gallacher's recollection was more reliable than that of Mr Lockhart as Mrs Gallacher was assisting her son to move into his first rental property along with his young daughter whereas Mr Lockhart set up numerous tenancies. When documents are signed electronically an electronic audit trail is generated. None of the audit trail was made available to the Tribunal. The lack of any audit trail lent credibility to the evidence given by Mrs Gallacher. The only evidence before the Tribunal which could indicate that Mrs Gallacher did agree to act as guarantor was Mr Miller's evidence that he only took on tenants if they had a guarantor and Mr Lockhart's evidence where he described the process followed to set up a tenancy agreement with electronic signatures. However, Mr Miller had no direct involvement in setting up the tenancy in this case and Mr Lockhart's evidence set out a process which he followed in numerous cases and was not specific to the establishment of the tenancy in this case. The Tribunal determined that the First Respondent did not agree to act as guarantor of the obligations owed by the Second Respondent to the Applicant.

47. The Tribunal determined to make an Order for payment against the Second Respondent. and to make no order against the First Respondent. In terms of the Tenancy Agreement rent was due at the rate of £350 per month. The Second Respondent failed to pay the rent in full for the period April 2020 to April 2024. The sum claimed is £14,350. The sum of £5750 requires to be deducted to reflect payments made and not shown on the statement of arrears. The sum of £455 requires to be deducted from the sum due as an abatement following the Applicant's failure to comply with his obligation to repair the Property. The sum of £221.63 also requires to be deducted as a full month's rent did not fall due on 28 April 2024 as the tenancy ended on 9 May 2024. The balance due is £7,923.37.

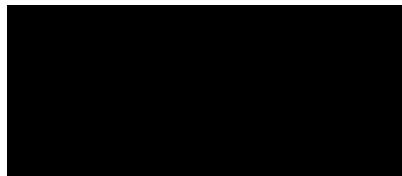
## **Decision**

The Tribunal grants an order for payment of £7,923.37

### **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.**



**Joan Devine  
Legal Member**

**Date: 2nd February 2026**