



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/24/3395

Re: Property at 1/2 4 Kenmure Avenue, Bishopbriggs, G64 2RE (“the Property”)

**Parties:**

Sheilmar Limited, 22 Milnpark Street, Glasgow, G41 1BB (“the Applicant”)

Miss Jacqueline Garden, Tracey Quinn, 23 Woodhill Road, Bishopbriggs, G64 1JL; 12 Viewpoint Road, Springburn, G21 3TU (“the Respondent”)

**Tribunal Members:**

Mr A. McLaughlin (Legal Member) and Mr T. Cain (Ordinary Member)

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the Application and did not make a Payment Order.**

[2] The Applicant seeks a Payment Order against the Respondents in the sum of £1,785.76. The Second Respondent is convened as a Guarantor of the First Respondent’s obligations as tenant under the tenancy.

[3] The Applicant claimed that Ms Garden exited the tenancy with rent arrears in the sum of £1,785.76. Ms Garden explained that she was withholding full payment of the rent because during the tenancy, the Property was badly affected by water leaking from upstairs. Ms Garden explained that she moved into the Property in May 2022 and significant water leaks started into the Property in September 2022 and continued until she moved out in November 2023. Ms Garden did not accept that any rent was lawfully due. Ms Alston also suggested that there were defects in the common areas of the building and these were out with the control of the Applicant.

## **The Hearing**

[4] The Application called for a Hearing in Glasgow Tribunals Centre at 10 am on 19 December 2025. The Applicant was represented by their own Ms Lynsey Alston. Ms Jacqueline Garden was present together with Mr Darren Quinn who was representing the guarantor, Tracey Quinn who is his mother.

[5] Neither party had any preliminary matters to raise, and each party was content to start the Hearing. The Tribunal began by ensuring that all parties understood the purpose of the Hearing and how it would be conducted. The Tribunal made sure that everyone was familiar with the documentation submitted, had nothing further to add and were content to start the Hearing. The Tribunal therefore proceeded to hear evidence from each party in turn. After each party gave evidence, the other had the right to cross-examine. At the conclusion of evidence each party also had the opportunity to make closing submissions.

[6] The Tribunal heard first from Ms Alston.

### **Applicant's evidence.**

[7] Ms Garden's tenancy ran from 20 May 2022 until 13 November 2023. Ms Tracey Quinn was Ms Garden's guarantor for her performance of her obligations under the tenancy. Ms Quinn is Ms Garden's ex partner's mother. Her son, who was representing her, Darren Quinn, is Ms Garden's ex partner.

[8] Ms Alston was candid in accepting that the building in which the Property is situated has had issues and there have been particular issues with water ingress into the Property. The Applicant owns three properties in that building and so is familiar with those difficulties. Ms Alston ultimately accepted that the reasons provided for the non-payment of rent were not without substance. In the course of her evidence, Ms Alston even went so far as to say that the Applicant would accept an abatement of 50 per cent of the sums claimed as rent arrears. The Applicant therefore accepted that there ought to be an abatement of rent which led the Tribunal to consider that the only remaining practical issue in dispute thereafter was the amount.

[9] Ms Alston acknowledged that after the Respondent moved out, substantial repairs were then carried out to the Property before it was then re-let. The Tribunal considered that this was rather telling evidence that the Property was not deemed fit to be marketed for a tenancy in its previous condition. It is also of note that Ms Alston explained that the Applicant had previously credited the Respondent's rent account with £500.00 as a goodwill gesture. That had been done on account of the ongoing water ingress issues. It therefore seemed very clear that the Applicant themselves had recognised previously

that the full payment of rent by the Respondent was not warranted and that for the purpose of this Application there ought to be at least a 50 per cent abatement of rent.

**Respondent's evidence.**

[10] The Tribunal heard from Ms Garden. She discussed how the Property was frequently affected by water gushing in through the roof from the flat above. Ms Garden lived alone in the Property with her one-year-old child and she was also pregnant at the later stages of her time in the Property. It was her first home that she had lived in since leaving her own childhood family home.

[11] Ms Garden had moved into the Property on 20 May 2022. On 30 September 2022, she first reported water coming into the Property. The water ingress destroyed her TV and caused damage to baby items, curtains and a sofa. From September 2022 to November 2023 there was then persistent water ingress and associated dampness in the Property. In January 2023, the Respondent informed the Applicant that she was withholding rent due to the conditions in the Property. The Respondent ultimately vacated the Property on 13 November 2023 due to the issues going unresolved. The sum claimed by the Applicant is the sum withheld. Ms Garden explained she had retained the sum abated in a separate account.

[12] Ms Garden explained that she had to run dehumidifiers at her own expense, suffered damage to her Property and was living in a home that was not safe for her child. Ms Garden wanted to show the Tribunal a video of the water coming into her Property. The Tribunal asked Ms Alston if she had any objection to the Tribunal viewing this video. Ms Alston was content with the video being seen and admitted into evidence. Ms Garden then showed the Tribunal a video she had taken on her phone. Ms Alston was also given the chance to view the video and she did not dispute that it was a genuine and authentic video of the Property.

[13] The video showed the living room of a domestic flat with loud, fast flowing streams of water gushing in through various areas of the ceiling into buckets below. The video was taken at night. The Respondent's evidence was that this video was a fair representation of the situation in the flat.

[14] The Tribunal was struck by how significant these issues would have been. The Tribunal was not impressed by the argument that the Property would have remained habitable and that only one room was affected. The buckets would have required constant attention and if left un-tended to, would have flooded the Property. The noise would have been heard throughout the Property and would have caused considerable anxiety. It would also not have been safe to leave a young child unsupervised even in the safety of their own living area. The buckets of water were clearly a hazard in that regard.

## **Comment on evidence.**

[15] The Tribunal was impressed by the evidence of Ms Garden. Her evidence was entirely credible and reliable. Nothing was said or written that contradicted her own account of matters. If anything, the helpful video she played the Tribunal actually made things look even worse than she had described. The Tribunal was grateful for the evidence of Ms Alston. But ultimately it was Ms Garden who was living in the Property and the Tribunal preferred the evidence of Ms Garden when assessing the living conditions in the Property during the tenancy.

[16] Having heard from parties, the Tribunal made the following findings in fact.

## **Findings in Fact**

1. *The parties entered into a tenancy agreement by which the Applicant let the property known as 1/2 4 Kenmure Avenue, Bishopbriggs, G64 2RE ("the Property") to the Respondent.*
2. *The Respondent commenced occupation of the Property on 20 May 2022.*
3. *From 30 September 2022 onwards, the Property was badly affected by water gushing in through the ceiling in the living room.*
4. *The water continued to ingress until the Respondent ultimately vacated the Property on 13 November 2023.*
5. *The leaks caused the Respondent significant disruption and deprived her of the open and peaceful enjoyment of the Property.*
6. *In January 2023, the Respondent informed the Applicant that she was withholding rent and she then kept the rent abated in a separate account.*
7. *The Respondent had to position, monitor and regularly empty buckets of rain water. The noise of the water could be heard throughout the Property.*
8. *The rain water caused the Respondent difficulties in caring for her young child as the buckets of water presented an obvious hazard.*
9. *The Respondent would be unable to leave the Property without worrying about and making arrangements to manage the buckets.*
10. *The water destroyed the Respondent's television and damaged other personal items and furnishings.*
11. *The Applicant had previously credited the Respondent's rent account with £500.00 as a goodwill gesture on account of these issues.*
12. *After the Respondent vacated the Property, the Applicant undertook significant repairs to the Property before it was relet.*
13. *The Applicant acknowledges that an abatement of rent is appropriate and offers 50 per cent.*

## **Decision**

[17] Having made the above findings in fact, the Tribunal considered what the correct level of rent abatement ought to be. The total sum claimed by the Applicant was £1,785.76. They now proposed an abatement of 50 per cent. The Tribunal had the benefit of watching a video showing the conditions in the Property. There was no dispute that this video was authentic.

[18] The Tribunal decided that the Property was not fit for human habitation and that there should be a 100 per cent abatement of rent. Quite simply, there should not have been anyone living in the Property until the problem was sorted. That appears to have been recognised by the Applicant who undertook remedial works before re-letting the Property after the Respondent left. The previous £500.00 rent credit was also telling evidence that the Applicant must have known that the Property had serious problems.

[19] Whilst it was of course a matter for the Applicant as to why they brought this Application despite then during the Hearing accepting that there ought to be a 50 per cent abatement, the Tribunal did not consider that this concession went far enough. There should be an abatement of 100 per cent. The Property was uninhabitable for substantial periods of time. Perhaps even longer than the two-month period claimed as rent arrears and abated in this decision.

[20] The Application for a Payment Order is therefore refused.

### **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.**

Mr A. McLaughlin

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Legal Member/Chair

8 February 2026  
Date