



Decision with reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 16 of the Housing (Scotland) Act 2014 and Rule 70 of the Rules

Ref: FTS/HPC/CV/23/4411

Re: Property at 2/10 Arneil Drive, Edinburgh, EH5 2GS (“the Property”)

Parties:

LAR Housing Trust, F3 Buchan House, Carnegie Campus, Enterprise-Way, Dunfermline, KY11 8PL (“the Applicant”)

Mr Thomas Smith, Flat 24, 9 Glenforth Court Ferrymuir, South Queensferry, Edinburgh, EH30 9BQ (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The Tribunal determined that an Order for Payment in the sum of TWO THOUSAND ONE HUNDRED AND EIGHTY ONE POUNDS and NINE PENCE (£2,181.09) Sterling be granted.

Procedural background

1. By application received between 7 December 2023 and 15 January 2024 (“the Application”) the Applicant applied to the Tribunal for an Order for Payment of rent due and owing by the Respondent amounting to £2,181.09 in respect of a former tenancy of the Property.

2. A Case Management Discussion ("CMD") was held on 30 May 2024 by telephone conference. The Applicant was neither present nor represented and so the Application was refused.
3. An Application to recall the decision to refuse was lodged and considered at a further CMD by telephone conference on 13 January 2025 at which decision to refuse the Application was recalled in the interests of justice.
4. At the CMD on 13 January 2025, the Tribunal heard the Parties in respect of the tenancy and the dispute between them. The Parties agreed that the Applicant had acquired the Property on 4 May 2021, that the rent account was not in arrears at that time and that the Respondent gave notice to leave on 8 June 2021 and removed from the Property on 16 September 2021. They agreed that rent had not been paid from May 2021 until the leaving date. The dispute between the Parties was the Respondent's claim of entitlement to withhold rent due to repair issues.
5. The Tribunal adjourned to a Hearing of evidence on the following matters:
 - (i) Was there an agreement made between the parties that rent would not be charged given the condition of the property?
 - (ii) Was the condition of the property such that it did not meet the repairing standard in terms of section 13 of the Housing (Scotland) Act 2006 and/or the tenancy agreement?
 - (iii) If so, was there a breach of repairing duties on the part of the Applicant and was the Applicant liable for any such breach on the part of the predecessor landlord at the point of purchasing the property?
 - (iv) In the event this was the case, was the Respondent entitled to an abatement of the rent outstanding and to what extent?
6. The following Direction was issued: "*The Respondent is required to provide:*

Representations as to the detailed repairing issues relied upon, the date each repairing issue began, how and when it was reported to the landlord and the response of the landlord including any inspection or repairs carried out;

Representations as to the exact nature of any loss suffered by the Respondent and how this has been quantified;

Copies of any correspondence between the Respondent and Applicant and/or their predecessors concerning repairing issues at the property; 4. A bundle of documents lodged in support of their position, including those lodged to date, with said documents numbered and individually paginated and lodged with an inventory or cover sheet. The said documentation should be lodged with the Chamber no later than close of business on 28 February 2025.

The Applicant is required to provide:

Any records or documents pertaining to an inspection of the property on or after 8 June 2021;

Any records or documents in the Applicant's possession obtained from their predecessor as landlord relating to the condition of the property.

A bundle of documents lodged in support of their position, including those lodged to date, with said documents numbered and individually paginated and lodged with an inventory or cover sheet. The said documentation should be lodged with the Chamber no later than close of business on 28 February 2024.

The Applicant and Respondent are required to provide:

Lists of any witnesses parties intend the Tribunal to hear from at the hearing to be assigned;

A note of any legal submissions as to the Respondent's entitlement to withhold rent in response to a failure to carry out repairs, the Respondent's entitlement to an abatement of any rental debt in the event of a breach of repairing duty and the liability of the Applicant for any breach of repairing duty by a predecessor landlord as at 4 May 2021."

7. The Applicant complied with the Direction and submitted a legal opinion by DD Anderson, Advocate, which sets out clearly and simply the law in respect of a tenant's right and entitlement to withhold rent in full or in part and to an

abatement of rent. The Respondent did not comply with the Direction to any extent.

8. A Hearing of evidence took place on 1 July 2025 by telephone conference call. The Applicant was represented by Mrs Nicole Maxwell, senior property manager. The Respondent was not present and was not represented. The Tribunal, having made enquiries with the chamber administration, was satisfied that the Respondent was aware of the proceedings and so proceeded in his absence. The outcome of the Hearing was that the Tribunal granted the payment order as sought.

11. By email dated 13 July 2025, the Respondent requested permission to appeal the Tribunal's Decision of 1 July 2025. The Tribunal took the view that, although the email mentioned "appeal" the email was, in fact, an application for recall in terms of Rule 30 and treated it as such. The Tribunal, having sought and considered the views of the Applicant, recalled the Decision and Order and fixed a Hearing.

12. The Tribunal issued the following further Direction dated 25 August 2025 in respect of information required for the Hearing: *"1. The Respondent is required to advise the Tribunal and the Applicant if he has appointed his partner, Ms. Parker, as his representative, and, if so, to provide the Tribunal and the Applicant with her contact details; 2. The Respondent is required to submit: a) With regard to the Legal Submission lodged by the Applicant on 5 June 2025, a copy of which accompanies this Direction, a written response to that Legal Submission. b) With regard to the repairing issues relied upon in respect of non-payment of rent, the date each repairing issue began, how and when it was reported to the Applicant and the response of the Applicant including any inspection or repairs carried out and copies of any correspondence between the Respondent and Applicant and/or their predecessors concerning repairing issues at the property; c) With regard to loss suffered, the exact nature of any loss suffered by the Respondent and how this has been quantified. The Respondent must comply with this Direction no later than Friday 31 October 2025. 3. If the Applicant wishes to*

respond to the Respondent's response to the Direction, they must do so no later than Friday 21 November 2025".

13. The Respondent submitted written representations setting out repairs issues during the tenancy, copy email exchanges between the Parties and photographs of the Property. The Applicant submitted representations stating that Respondent had not complied with the terms of the Direction and that his representations lacked specification and detail.

Second Hearing of Evidence

14. The second Hearing of evidence took place on 6 February 2026 by telephone conference call. The Applicant was represented by Mrs Nicole Maxwell, senior property manager. The Respondent, Mr. Smith, was present and, with the permission of the Tribunal, was represented by Ms. Parker.

15. Mrs. Maxwell confirmed to the Tribunal that the Applicant still sought an Order for payment of £2,181.09.

16. The Tribunal advised the Parties that, as it had been confirmed by the Respondent, Mr. Smith, this sum was unpaid by him, the issue for the Tribunal was whether or not he was entitled to withhold this sum, in full or in part. The Tribunal referred the Parties to the Opinion submitted by the Applicant and to the Direction issued on 25 August 2025. The Tribunal advised that the onus was on Mr. Smith to specify each repair complained of, the date of notification to the Applicant and the response of the Applicant.

17. Ms. Parker for Mr. Smith stated that the main complaint was mould in the Property which had adversely affected her health and had made the Property unlivable. She stated complaints of mould in the Property had been continually and constantly reported. However, following a brief adjournment to allow the respondent to check the written submission, she could not direct the Tribunal to evidence of these reports in the documents submitted, nor could the Tribunal locate evidence of these reports. The Tribunal noted that an email dated 31 May 2021 which listed several relatively minor repair issues

did not mention mould or health concerns and that the Applicant had responded to that email on the same day. Both Mr. Smith and Ms. Parker confirmed that they had not retained rent until after May 2021, when the Applicant had become the owner and landlord. Both spoke at length of the issue of mould in the Property and of its poor condition, but both appeared to accept that this was not evident from the documents submitted by them. Both expressed the view that had the Applicant carried out a survey of the Property and the other properties in the estate before acquiring it, the mould would have been evident. Both confirmed that rent had not been withheld prior to the Applicant becoming landlord and that no intimation that rent was being withheld had been made at any time.

18. For the Applicant, Mrs. Maxwell stated that no complaints of mould had been reported and the repairs that were reported had been attended to either before Mr. Smith and Ms Parker had removed from the Property or before the Property was relet. She further confirmed that no dampness was identified when the Property was inspected for reletting and that the only works required were limited to minor redecoration.

19. With regard to quantification of the loss suffered, Ms. Parker for Mr. Smith stated that her health had deteriorated considerably but accepted that no evidence had been submitted in support of this. Ms. Parker stated that Mr. Smith and she had had to throw away clothing and furnishings because of dampness but, again, accepted that there was no evidence of this other than a photograph of a jacket with markings to the collar.

20. With regard to an amount in compensation, Mr. Smith suggested an abatement of one-half of the sum sought by the Applicant. For the Applicant, Mrs. Maxwell strenuously opposed that any abatement was due.

Findings in Fact

21. The Tribunal made the following findings in fact: -

- i. The Applicant acquired a rental portfolio of which the Property forms part on 4 May 2021 and became the Respondent's landlord at that date ;
- ii. The Respondent's tenancy ended on 16 September 2021;

- iii. Arrears began with the rent due in June 2021 and continued to accrue until the tenancy ended on 16 September.
- iv. The Respondent gave written notice to terminate the tenancy on 8 June 2021
- v. At the close of the tenancy, the balance of rent due and owing by the Respondent to the Applicant amounted to £3,011.09;
- vi. The Applicant applied a tenancy deposit of £830.00 to the rent due and owing, reducing the sum to £2,181.09;
- vii. The Respondent accepts that rent amounting to £2,181.09 is unpaid;
- viii. The Respondent alleged that the Property was affected by dampness and that he is entitled to a rent reduction or abatement in this respect;
- ix. The Respondent did not give the Applicant proper notification of the alleged dampness in the Property and did not give the Applicant a reasonable opportunity to remedy the alleged dampness in the Property;
- x. The Respondent did not give the Applicant any notification that he was withholding or retaining rent due to the alleged dampness or any other defect in the Property, nor did he intimate any intention to withhold rent at any time during the tenancy
- xi. The Respondent has not evidenced dampness or disrepair in the Property and
- xii. Rent amounting to £2,181.09 remains unpaid and is due and owing by the Respondent to the Applicant;

Decision and Reasons for Decision

22. The position which the Respondent attempted to argue and put forward is that he is entitled to an abatement of rent due to the Property being in disrepair to the extent that the Applicant, as landlord, breached their contractual, common law and/or statutory duties. In the Tribunal's view, the written representations, documentary evidence and oral evidence at the Hearing do not support this position. At the CMD on 13 January 2025, the Parties were advised of the legal tests which applied and the standard of proof which was required. The Directions issued guide the Parties and the Respondent, in particular, to the

range of evidence which should be produced. However, the Respondent did not produce evidence to show that the Property was in disrepair to the extent that he is entitled to an abatement of rent. Further, the Respondent did not produce evidence to show or quantify any loss suffered.

23. The Respondent's oral evidence was that the principal issue relied upon in justification for non-payment of rent was the presence of mould within the Property, which was said to have affected Ms Parker's health and to have caused damage to items of clothing and furniture. However, the Respondent accepted that the email sent to the landlord on 31 May 2021, which identified a number of repair issues in some detail, made no reference to mould or dampness. The Respondent further accepted that no evidence was produced of any complaint regarding mould or dampness having been made to the predecessor landlord, and that no medical evidence or documentary proof of loss, such as receipts, inventories or valuations, had been lodged in support of the alleged health impacts or damage to belongings. In evidence, Mr Smith also stated that by the end of May 2021 he and Ms Parker had already decided to leave the Property and were therefore less inclined to pursue matters further, with notice being given shortly thereafter. The Tribunal notes that the email of 31 May 2021 was both detailed and comprehensive in its specification of defects, yet omitted any reference to mould or dampness, and the Applicant responded to that email on the same day seeking clarification and photographs. The Tribunal further notes that no intimation was given to the Applicant at any time that rent was being withheld on account of any alleged dampness or disrepair, and that no rent payments were made thereafter. The photographs produced by the Respondent show limited mould spotting on two items of clothing and what appears to be minor discolouration on a ceiling. The Tribunal is not satisfied that this material evidences dampness or disrepair within the Property to the extent alleged, nor that it establishes that the Applicant was given proper notification of such issues during the tenancy or afforded a reasonable opportunity to remedy them. The remaining photographs disclose relatively minor matters which are consistent with the issues raised in the email of 31 May 2021. Any further references to mould post-date the Respondent's removal from the Property and do not

assist the Tribunal in determining the condition of the Property during the period when rent was withheld.

24. As the Respondent acknowledges that rent amounting to £2,181.09 is unpaid by him, and, as he has failed to show any right or entitlement to any abatement of rent in full or in part, the Tribunal grants the payment order as sought.

25. This decision is unanimous.

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.

Karen Moore

6 February 2026

Legal Member/Chair Date