Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/CV/25/0968

Re: Property at 81 Oban Drive, Flat 0/2, Glasgow, G20 6AD ("the Property")

Parties:

Mr Blair Boyd, 20 Learmonth Street, Falkirk, FK1 5AG ("the Applicant")

Ms Kerry Scott, formerly residing at 81 Oban Drive, Flat 0/2, Glasgow, G20 6AD ("the Respondent")

Tribunal Members:

Sarah O'Neill (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 by the Respondent of the sum of £12,058.96 should be granted in favour of the Applicant.

Background

1. The Applicant originally submitted a civil proceedings application on 2 July 2024, alongside an eviction application (reference no: FTC/HPC/EV/24/3059) made under Rule 109 of the 2017 rules seeking recovery of the property under Ground 12 (rent arrears).

2. Unfortunately, the original civil proceedings application was not processed at that time due to an administrative error. The Applicant became aware of this at the case management discussion (CMD) concerning the conjoined eviction application on 5 March 2025.

3. On 11 March 2025, the Applicant submitted an updated civil proceedings application under rule 111 of Schedule 1 of the First-tier Tribunal for Scotland

Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 rules") for a payment order for the sum of £9050 relating to outstanding rent arrears.

4. The application was accepted on 14 March 2025.

The case management discussion

5. A case management discussion (CMD) took place at Glasgow Tribunals Centre on 22 July 2025. It was scheduled for the same date and time as the hearing on the conjoined eviction application.

6. The Applicant was present at the CMD and represented himself. The Respondent, who arrived after the start of the conjoined hearing/ CMD, was represented by Ms Karolina Dziedzic of Legal Services Agency Ltd.

7. The tribunal decided to adjourn the hearing on the eviction application to allow further evidence to be considered. As the Respondent wished to oppose the present application, the Tribunal decided to fix a conjoined hearing on both applications.

8. The Tribunal issued a direction to the parties on 27 July 2025, directing them to provide further information by 23 October 2025. Responses were received from the Applicant on 25 August 2025 and from the Respondent's representative on 23 October 2025.

The initial hearing

9. The Tribunal held a hearing at Glasgow Tribunals Centre on 6 November 2025 to consider both the present application and the conjoined eviction application. The Applicant was present at the hearing and represented himself. The Respondent was present at the hearing and was again represented by Ms Dziedzic. The Applicant's son, Mr Santiago Boyd (Mr Boyd Jr) also gave evidence as a witness on behalf of the Applicant.

10. The Applicant told the Tribunal that the outstanding arrears now totalled £15450 and that he was seeking a payment order for that sum. The Applicant said that the Respondent was in breach of contract because she had carried out unauthorised repairs to the property.

11. Ms Dziedzic told the tribunal that the Respondent had become aware shortly after moving into the property that there were ongoing issues with dampness and water ingress. She had first reported this to Mr Boyd Jr, who was named in the tenancy agreement as the Applicant's agent with regard to the property, on 17 January 2024. Mr Boyd Jr then contacted James Gibb, the property factor for the block,

regarding the issues raised by the Respondent. James Gibb instructed Columbus Facilities Maintenance ("Columbus") to inspect the property. On 10 February 2024, Columbus sent a note of its initial survey to James Gibb. This stated that the kitchen and bathroom walls showed signs of dampness and water damage.

12. In early February 2024, the Applicant's contractors, Parks Plumbing and Electrical ("Parks") had discovered that the kitchen and bathroom waste pipes in the property had not been connected properly and that there was a leak below the bath. This had resulted in water pouring into the solum of the tenement building below the property. The Applicant's contractors had told the Respondent that the floors in the kitchen and bathroom needed to be replaced. Repairs had then been carried out in the bathroom and kitchen by Parks. Further urgent repairs had been scheduled for 12 February 2024, but had then been cancelled.

13. Prior to this, the Respondent had been advised by Parks not to use the shower, as the bath could fall through the existing floor. She was unable to use the shower for about 6 weeks until the repairs were carried out. She was also unable to use the toilet for about a week as a Parks employee had stood on it and broken it. She paid to have it repaired as Mr Boyd Jr had said that he would not fix it.

14. Ms Dziedzic said that the Respondent had then complained that all of the required repairs had not been done. Two site surveys carried out by Columbus at the instruction of James Gibb (the second being dated 1 March 2024) had identified dampness issues which were the Applicant's sole responsibility. A further report from Alliance Timber Specialists ("Alliance") had been commissioned by James Gibb in August 2024. This also made clear that most of the works required to address the dampness were the Applicant's responsibility, because it was his contractor who did not fit the pipes properly. She believed that the Applicant had also instructed a separate survey but she had never seen any report about this.

15. Mr Thomas Banks from Glasgow City Council Environmental Health Department visited the property on 5 March 2024, following a complaint from the Respondent. He found evidence of dampness in several areas within the property and indicated that it was below the repairing standard. The Respondent informed Mr Boyd Jr about this assessment. He said that there were issues with the common buildings insurance and then with James Gibb. He said that the other owners in the block would not pay for the communal repairs which were needed. He kept blaming the property factor and his insurance for the failure to carry out the works.

16. Although the pipes were replaced and fixed, nothing was done to address the dampness under the floor. This resulted in the continued presence of mould and dampness in the property. The Respondent had to move her belongings into the living room due to the mould and dampness, and had to dispose of some items.

17. The Respondent informed Mr Boyd Jr in March 2024 that she was withholding her rent until the repairs were carried out. She had sent him an email notifying him of the repairs which required to be undertaken on 21 February 2024. She had sent Mr Boyd Jr a further notification of the necessary repairs using the template letter suggested by Shelter Scotland on 30 March 2024. He had refused to carry out the required repairs and continued to blame the property factor for the lack of progress. He had not carried out the repairs within a reasonable timescale.

18. She had not made a repairing standard application to the First-tier Tribunal at that time. She had taken advice and was aware of the possibility of making such an application. She had told Mr Boyd Jr on 5 March 2024 that she intended to apply to the Tribunal, but he had threatened her with eviction if she did so. Because she was worried that she would make herself homeless, she decided not to make such an application.

19. She felt unable to move out of the property, as she had spent all of her savings in making the initial move. She had also found it very difficult to get a private tenancy because she was in receipt of Universal Credit and Carer's Allowance. Both Shelter and the CAB had told her that a tenant can do repairs themselves if the property is below the tolerable standard, which the various surveys had said it was. She "felt stuck between a rock and a hard place" and therefore felt that she had to carry out the repairs herself. In some of his messages, Mr Boyd Jr had appeared to suggest that she should do the repairs herself.

20. Both Parks and Mr Banks had told her the windows were completely rotten. Columbus also mentioned them in its first report. She had included the windows in her notifications to the Applicant of 21 February and 25 March 2024. She had replaced the windows at a cost of £2500 because she felt that this was one thing that she was able to do without the property factor's involvement. She had realised also that the bedroom window did not lock and she did not feel safe as the flat was on the ground floor. She had the front windows repaired rather than replaced.

21. The Respondent had also spent £2200 on work to temporarily repair plasterwork in the kitchen, and around £3000 in total on various other works, including painting and decoration, lock repairs, toilet and boiler repairs, all as detailed in the 'schedule of loss' submitted by her representative. This also detailed a further sum of over £2000 which she had spent on other items such as dehumidifier bags, which were required due to the ongoing dampness issues, and over £1500 worth of her belongings which had been damaged.

22. Taken together with the sums included in the schedule of loss for inconvenience caused to her, these amounted to more than the rent which would have been due. She had spent a lot of her time trying to resolve matters. She had always paid her rent in the past, and had the outstanding repairs been carried out, she would have started paying the rent again immediately. Yet the property remained below the tolerable standard, as demonstrated by the independent architect's report of July 2025 which she had produced.

23. Moving from Stirling to Glasgow to live in the property had been a big step for her. She had moved there following a relationship breakdown and wished to be closer to her son who was at university there. She had decided to take a career break to care for her sick father and grandmother, who both live in Clackmannanshire. She had hoped that her grandmother, who has dementia, would be able to stay with her at the property at weekends, but she had been unable to do so due to the state of disrepair.

24. Ms Dziedzic said that the Respondent had been withholding rent since the initial hearing in July 2025 and on her advice had placed this in a separate bank account. She also made a repairing standard application to the Tribunal regarding the outstanding repairs on 27 October 2025.

25. The Respondent told the Tribunal that all of the rooms in the property were currently habitable, provided that she ran a dehumidifier in every room. There was still water ponding underneath the building, and she had been advised that the heating in the property draws some of this water up into the property from under the building. She was unable to use the washing machine or dry clothes in the property due to worries about damp and condensation. She could not use the kitchen beyond making toast and tea.

26. The Respondent had suffered various health issues since moving into the property. She was on medication for depression. She has also had recurrent urinary tract infections, an overactive bladder and throat and chest infections, which have been caused or exacerbated by living in damp conditions.

27. She was now caring for her 10 month old grandchild five nights per week on a temporary basis. However, she did not wish to expose her grandchild to the conditions in the property, so they were both living in her father's two bedroom flat, which is very cramped, five days a week. She was only staying at the property two nights a week. She said that she would live there full time, if she could have her grandchild living there and have her grandmother to visit.

28. While she did not seek to claim any compensation from the Applicant for inconvenience, it was her position that none of the rent for the period from March

2024 to date was lawfully due to the Applicant, due to the ongoing disrepair issues within the property and his failure to address these within a reasonable time. She was entitled to a full abatement of rent. It was her view that all of the sums detailed in the "schedule of loss" effectively cancelled out any rent which was otherwise due. It was for the Tribunal to decide how much rent, if any, was due to be paid.

29. The Tribunal noted that the figures set out in the "schedule of loss" which had been produced on behalf of the Respondent were not entirely clear.

30. The Tribunal noted that the rent statement submitted by the Applicant on 25 August 2025 did not comply with the Tribunal's direction of 27 July. It did not set out the date in each month on which the rent fell due, the amount of rent paid, and the running total of unpaid rent. The Tribunal had been made aware at the CMD that the Applicant was now receiving direct deductions of around £50 per month from the Respondent's Universal Credit (UC) towards her rent. These amounts were not shown on the rent statement. The statement also included rent payments which had not yet become due at the time when the statement was submitted.

31. The Legal Member also advised the Applicant that at this stage, the Tribunal could only consider a payment order for the original sum claimed of £9050. As indicated in the Tribunal's direction, should the Applicant wish to amend the sum sought, he was required to notify both the Respondent and the Tribunal of the amended sum which he was seeking at least 14 days prior to the hearing, in terms of rule 14A of the 2017 rules. The Applicant had not sought such an amendment.

32. While he had initially argued that the repairs had all been completed, the Applicant later said that he accepted that there was rising damp within the property caused by the drainage in the void under the floorboards. He maintained that the repairs required were common repairs and were therefore the property factor's responsibility. He admitted that he had not been inside the property since before the Respondent's tenancy began. He expressed doubts as to the likely effectiveness of inserting a damp proof course in an old tenement property. He said that he would be happy for the Respondent to take the withheld rent and use it to pay for the required repairs.

33. Much of the evidence considered by the Tribunal at the hearing was focused primarily on the eviction application, although this was closely linked to the issues in the present application.

34. Given how long the hearing had been ongoing at this point, the Tribunal considered that while it had sufficient information to make a decision on the eviction application, it would be appropriate to continue the hearing on the present

application to a later date. Further information from both parties would also be helpful to the Tribunal in making a decision on the application.

Further procedure

35. On 17 November 2025, the Tribunal made a determination on the conjoined eviction application. It granted an order for eviction in favour of the Applicant against the Respondent. On 17 December 2025, the Respondent applied to the Tribunal for permission to appeal the decision on two grounds. The Tribunal considered that both grounds of appeal raised an arguable point of law, and granted permission to appeal on 8 January 2026.

36. On 17 November 2025, the Tribunal issued a further direction to the parties directing them to provide further information by 12 February 2026. A response was received from Ms Dziedzic on 12 February 2026. A response was received from the Applicant on 2 February 2026, but due to an administrative error, this was not sent to the Tribunal and the Respondent until 25 February 2026, the day before the continued hearing.

The continued hearing

37. The continued hearing was held by video conference on 26 February 2026. The Applicant was present at the hearing and represented himself. The Respondent was present at the hearing and was again represented by Ms Dziedzic.

Preliminary issues

38. The legal member of the Tribunal noted that unfortunately a submission received from the Applicant on 2 February 2026 had only been sent to the Tribunal members and Ms Dziedzic the day before the hearing. The legal member apologised for this. Ms Dziedzic confirmed that she had read the submission and had discussed it with the Respondent prior to the continued hearing.

39. The legal member also noted that the Applicant had not submitted the updated rent statement and rule 14A amendment request in the format required by the Tribunal's direction of 17 November 2025. The Applicant advised that a rent statement had been sent with his submission of 2 February. The Tribunal noted that the Tribunal's administration had been unable to open one of the files received but had not advised the Applicant of this. In the circumstances, the Applicant was invited to resend the rent statement and the Tribunal adjourned until this was received.

40. The updated rent statement showed the outstanding arrears as at the end of February (under deduction of the direct payments paid by UC) to be £17,450.56. The Applicant said that he wished to amend the application to increase the sum sought to this amount.

41. The Respondent said that she accepted that she had paid no rent since the initial hearing. Ms Dziedzic said that the Respondent did not wish to object to the amendment sought by the Applicant, as she would rather deal with the matter today than come back at a further date.

42. Given the Respondent's lack of objection and the fact that the Applicant was unrepresented, the Tribunal considered that it was in the interests of justice and in accordance with the overriding objective to allow the amendment to increase the sum sought to £17,450.56.

43. Ms Dziedzic informed the Tribunal that the Respondent had found a new place to live and would be moving out of the property shortly, on 3 March 2026. She therefore intended to withdraw the appeal which had been submitted to the Upper Tribunal against the eviction decision.

44. Ms Dziedzic also confirmed that the Respondent's repairing standard application submitted on 27 October 2025 had been rejected, as she had been asked to provide further information but had failed to do so. She had decided not to pursue it further following the Tribunal's decision to grant an eviction order against her.

Submissions by the Applicant

45. The Applicant asked the Tribunal to grant a payment order against the Respondent for £17,450.56. He reiterated that he believed that all of the required repairs had been completed in early 2024. The Respondent had stopped communicating with him, and he had not been aware of any outstanding repairs after that time as a result. Had she paid the rent, any repairs which were required might have been done. It was not viable to do repairs, however, when no rent was being paid. He had reduced the rent to £350 per month from March to May 2024 as a goodwill gesture in recognition of the inconvenience caused while repairs were ongoing.

46. He and Mr Boyd Jr had tried their best to resolve the problem with the factor. It now appeared that his own contractor had not done a good job when carrying out works in the kitchen and bathroom prior to the Respondent's tenancy.

47. The issue with alleged rising damp had come to light at a later date, but its existence had not definitely been confirmed. Some contractors said that there

was rising damp, but no-one knew where it was coming from. There was a problem with a leak from an external downpipe. This was for the property factor to resolve, as it was external to the flat itself. The first Columbus report had found no active leak. The report from Mr Banks had found excessive dampness readings only under the lounge windows and in the bedroom.

48. He said that the Respondent had provided no photographic evidence of mould within the property. There was no mention of mould in the reports from Columbus or Mr Banks. He said that mould was usually due to condensation.

49. He said that he accepted that it was his responsibility as landlord to ensure that the property met the repairing standard even if the repairing issues affecting it were communal to the close.

50. He queried the amount set out in the Respondent's "schedule of loss" for electricity costs, which he believed were excessive for running a dehumidifier.

Submissions on behalf of the Respondent

51. Ms Dziedzic reiterated that the Respondent denied that the full sum claimed by the Applicant was due to be paid, because he had failed to comply with his duty to ensure that the property met the repairing standard within a reasonable time.

52. The Respondent had been unable to enjoy full use of every part of the property throughout the tenancy. The windows in the bedroom and living room were faulty, resulting in leaks and draughts from the beginning of the tenancy.

53. In early February 2024, Parks had said that the bathroom was unusable. The Applicant was aware of the issue and promised the Respondent that the repairs would be completed the next week. The Respondent was unable to use either the bath or the shower for around 62 days after the Applicant cancelled the bathroom repairs, however, until 7 April 2024. Some repairs to the bathroom were finally addressed, although not to a satisfactory extent.

54. There were also ongoing problems with the toilet which remained unresolved despite being reported to the Applicant. The Respondent was not able to use the toilet on various occasions, including for a period of around 57 days from 22 March to 18 May 2024. The Applicant had admitted at the initial hearing that the toilet was known to be a problem. The Respondent still could not take a bath, and limited herself to short showers to avoid exacerbation of the humidity and mould problems.

55. Due to poor ventilation, mould, and peeling paint in the kitchen, the Respondent's ability to use that room was significantly impaired. She was unable to use the

kitchen from 6 February 2024 until 15 January 2025. While she was then able to use the kitchen from mid-January onwards, her use of the kitchen was severely limited. Due to ongoing problems with humidity levels and a lack of ventilation, her ability to cook proper meals was severely limited. She only made toast and used the kettle, always opening a window when doing so, to avoid exacerbating the mould and dampness. Due to the lack of ventilation in the kitchen, the dampness and mould reappeared even after the kitchen was plastered, as the solum beneath the flooring was not dried.

56. From the start of the tenancy there was mould and dampness in the Respondent's bedroom. Around 1 February 2024, the Respondent had to relocate all of her belongings from the bedroom to the living room to avoid damage from mould and dampness. The Respondent was unable to sleep in the bedroom. Her mattress and clothing were affected by the disrepair, and her furniture was rendered unusable. In March 2024, Mr Banks visited the property, witnessing the Respondent's possessions displaced and stacked throughout the living room and corridor. He confirmed the presence of dampness and mould throughout the property.

57. The Respondent was forced to use dehumidifying bags throughout the property from very early on in the tenancy. As time went on, she had to limit her overnight stays at the property and had to use a dehumidifier continuously to prevent further damage to her furniture from dampness and mould. Despite these efforts, the air quality remained compromised.

58. The Respondent had been directed by the Tribunal to provide a clear summary of the amounts she considered should be abated from the outstanding rent arrears from March 2024 to the present date, on a month-by-month basis. Ms Dziedzic had made detailed written submissions to the Tribunal regarding this, and had submitted an updated "schedule of loss", as follows:

Loss- repairs instructed by the Respondent	£7,753.00
Loss- items purchased	£ 2,182.92 Additional cost: £219.29 (a total of £2,402.21)
Damaged items	£ 1,549.28
Electricity cost	£ 349.65
UC deductions since April 2025 to date	£399.44
Inconvenience	£6,461.77

TOTAL	£18,915.35

59. While the Respondent did not seek compensation for the losses and damage incurred, living in the property had cost her more in total than the rent which was sought by the Applicant. She had carried out necessary repairs and had incurred expenses on various items which were required due to the repairs issues. She had to keep the dehumidifier running constantly, which resulted in increased electricity costs. She had to dispose of items of furniture and bedding belonging to her due to damage caused by the dampness within the property.

60. The Applicant had taken account of the £399.44 paid via universal credit deductions in his updated rent statement. There was accordingly no need to consider this further.

61. The Respondent had been withholding rent since around August, following the CMD. She had submitted a screenshot showing that she had a sum of £4901.76 in a bank account. This was the rent money from August 2025- February 2026 of £5600 (i.e.£800x7) less the cost of further dehumidifier bags, laundry costs (because she was unable to use the washing machine due to drainage issues) and further repairs carried out in November 2025 to stop the mould returning.

Repairs carried out by the Respondent

62. The Respondent had spent a total of £7,753 on repairs between May 2024 and January 2025, as itemised in her original inventory of productions. She had instructed and paid for these repairs because the Applicant refused to do them within a reasonable time. Mr Boyd Jr said that the repairs had been done. He said that if she thought further repairs needed to be done, she should do them herself. She had used the last of her savings to pay for the repairs that needed to be done.

63. The single biggest item was the replacement of some windows in the property in June 2024 at a cost of £2500. While she knew repairs were the landlord's responsibility, he was not addressing them and she needed to feel safe in her bedroom. Every contractor who came to the property had said that there were issues with ventilation, as there were no trickle vents on the windows.

64. She had also spent £2290 on temporary repairs to plasterwork in the kitchen in May 2024. She had spent the remaining balance on various other works, including painting and decoration, lock repairs, toilet and boiler repairs. Invoices for these works had been submitted to the Tribunal.

65. When asked by the Tribunal, the Respondent admitted that she had not specifically asked for permission for any of these works. She had not sent quotes to the Applicant or to Mr Boyd Jr before instructing the works, as he had asked her

to do. She said that he had made clear he would not do the repairs. She was overwhelmed with everything, and thought that he would not accept her quotes. She had believed he was authorising her to do the works.

Loss- items purchased

66. The Respondent had spent a total of £2402.21 on various items which were required due to the Applicant's failure to address the repairs. This included the costs of a new dehumidifier, numerous dehumidifier bags from March 2024 to date, disposal of furniture damaged by mould and dampness, mattress protectors and garment covers, weekly laundry costs from February 2024 onwards, paint and various other items, as itemised in the detailed schedule of loss previously submitted by the Respondent.

Damaged items

67. The Respondent had itemised various items belonging to her which were damaged due to the dampness and mould in the bedroom and had to be disposed of. The sums quoted were based on their cost when new. They included a bed base, mattress, headboard, other bedroom furniture, pillows and various items of bedding, at a total value of £1549.28.

Electricity costs

68. The Respondent also had to pay increased electricity costs, despite the fact that she had not been living in the property much of the time. She had to keep the dehumidifier running constantly. She had produced energy bills and submitted a calculation claiming that the costs of using the dehumidifier from February 2024 to February 2026 were £349.65.

Inconvenience

69. Due to the Applicant's failure to comply with his repairing obligations, the Respondent had suffered loss and damage. She had suffered the distress of living in a property that was affected by dampness, mould and other disrepair issues, and of worrying about the impact of this upon her health. From the start of the tenancy, she was unable to spend weekends at the property. She had sought a safe environment for her grandmother to visit and stay overnight, and the continuing disrepair issues prevented her from doing so. The Respondent then became responsible for caring for her grandchild and had been advised by her GP to limit the time she spent in the property due to the severity of her living conditions. Consequently, she started to limit her overnight stays to one night per week. She had to stay with her father in his house, which was small and caused him inconvenience.

70. The Respondent had also suffered the inconvenience of repeatedly reporting the disrepair issues to the Applicant throughout her tenancy. It was clear from statements made by the Applicant during the initial hearing that he did not intend to undertake any repairs, and was happy for the Respondent to organise some outstanding repairs herself. These defects adversely affected the Respondent's comfort and enjoyment of her home. The lengthy period it took for the Applicant to address and repair the issues since they were first reported caused significant distress to the Respondent. The Respondent had to be present for repairs, and she had to make herself available for contractor visits, often arranging these herself, as it became evident that the Applicant expected her to organise this.

71. Throughout the tenancy, the Respondent had to use dehumidifiers constantly. She suffered the inconvenience of having to undertake some repairs personally, covering the costs herself.

72. The Respondent was entitled to an abatement of the rental debt accrued on an equitable basis (in accordance with *Renfrew District Council v Gray* 1987 S.L.T. (Sch. Ct.) 70). The sum of any abatement ought to equate to the value of compensation which would otherwise be awarded to the Respondent for distress and inconvenience suffered as a result of the Applicant's breach of his repairing obligations.

73. The Respondent considered that she was entitled to an abatement for distress and inconvenience in the sum of £6461.77. This was calculated on the basis of the case of *Rendlesham Estates Plc and others v Barr Ltd* [2015] 1 W.L.R. 3663. While this is an English case, it was submitted that it was highly persuasive. In that case, solatium was awarded to tenants at the rate of £2,250 per annum. When adjusted for inflation using the Bank of England's inflation calculator at the time that the claim was intimated to the Respondent on 15 July 2025, this equated to £3,126.48 per annum. On the basis that the Respondent first reported the disrepair on 17 January 2024, the valuation of total inconvenience over the period to February 2026, adjusted for inflation, totalled £6,461.77.

74. If, however, the Tribunal preferred to follow the approach taken in Scottish legal authorities such as *Quinn v Monklands District Council* 1996 Hous. L.R. 86, a case involving inconvenience resulting from dampness and mould, the amount due for the period would be around £2756, when adjusted for inflation.

Compensation

75. The legal member asked why the Respondent had not submitted a separate application for compensation with respect to the repairs, damaged items and losses outlined under the other headings in the "schedule of loss". Ms Dziedzic said that the Respondent's position was that these costs should be "set off" against the outstanding rent claimed.

76. The Tribunal asked Ms Dziedzic what legal authority she was relying on to support this. The Tribunal adjourned for a time to allow her to find the appropriate reference. Following the adjournment, Ms Dziedzic said that she had been unable to find the relevant passage. She submitted that it was for the tribunal to decide the level of any abatement to be applied to the rent arrears based on the information provided. The Respondent would accept the Tribunal's reasonable judgement on this.

Further submissions by the Applicant

77. The Applicant suggested that the dampness was not as bad as the Respondent claimed, and again queried why she had stayed there so long if things were so bad. If she was concerned about a lack of ventilation when cooking, he asked why she did not just open the window.

78. He said that he accepted there were issues with the toilet, and would agree a deduction from the sum due for toilet repairs, which totalled £220. With regard to the windows, it remained his position that they were broadly functioning and that they were draughty because the property was an old tenement. The Respondent had carried out an unauthorised repair, which was a breach of her tenancy agreement. He said that none of the reports produced had mentioned the windows, but admitted that the locking mechanism may not have been entirely secure. He said however, that he was agreeable to deducting the £2500 paid for the installation of the windows from the rent due.

79. Regarding any abatement to be made, he suggested that an appropriate starting point was the case of *Christian v Aberdeen City Council* 2005 Hous. L. R. 26, a dampness case where the tenant was awarded the equivalent of £100 compensation (when adjusted for inflation) for inconvenience for each month of the tenancy. If this were applied, the total abatement would be around £2400 from the period from February 2024 to date. He indicated that he thought this was reasonable, in addition to the £2720 he had conceded in respect of the windows and toilet repairs.

80. The Applicant also indicated that he would likely apply to the tenancy deposit scheme seeking payment of the £800 tenancy deposit towards the outstanding rent arrears.

Findings in fact

81. The Tribunal made the following findings in fact:

i. The Applicant is the owner and registered landlord of the property.

ii. There was a private residential tenancy in place between the parties, which commenced on 1 December 2023.
iii. The rent payable under the tenancy agreement was £800 per calendar month, payable in advance on the first day of each month.
iv. Mr Boyd Jr was named in the tenancy agreement as the Applicant's agent.
v. The property is a ground floor flat within a four storey sandstone tenement.
vi. The Respondent first contacted Mr Boyd Jr on 17 January 2024 to report concerns about mould and dampness issues at the property.
vii. The Respondent and Mr Boyd Jr exchanged numerous WhatsApp messages regarding these issues during February and March 2024.
viii. During February/March 2024, Parks carried out various works in the property. These included repairs in the bathroom and kitchen, and repairs to the heating system.
ix. Mr Boyd Jr contacted James Gibb regarding the issues raised by the Respondent.
x. James Gibb instructed Columbus to inspect the property. On 10 February 2024, Columbus sent a note of its initial survey to James Gibb. This stated that the kitchen and bathroom walls showed signs of dampness and water damage.
xi. Columbus attended the property on 1 March 2024 to investigate the requirement for external drainage at the front and rear of the tenement. It inspected the solum of the building and found that there was an issue with the drainage from the property below the floor. Its survey report recommended that action be taken to address issues with the plumbing, shower screen and windows.
xii. Mr Thomas Banks of Glasgow City Council Environmental Health Department attended the property on 5 March 2024 at the request of the Applicant, following a complaint about dampness by the Respondent. He found evidence of dampness in several areas within the property.
xiii. The Respondent sent emails to Mr Boyd Jr notifying him of the required repairs on 5 and 30 March 2024. The repairs were not carried out. The Respondent did not make a repairing standard application at that time.
xiv. The Applicant took over management of the tenancy from Mr Boyd Jr sometime between March and May 2025. He did not notify the Respondent of this.
xv. The Respondent instructed and paid for various repairs to the property between May 2024 and January 2025, at a total cost of £7753. She did not seek permission from the Applicant before doing so..
xvi. A further survey report by Alliance was commissioned by James Gibb. In its report of 29 August 2024, Alliance found evidence of rising dampness within the property. It recommended the insertion of a new chemical damp proof course to certain walls within the property. It quoted costs for common repairs required at £1520 + VAT and for repairs within the property at £5970+ VAT.
xvii. The Respondent commissioned an independent architect's report from Dr Stirling Howieson regarding the property. His report of 1 July 2025 found that the property was suffering from extensive rising dampness on all external and internal walls,

and was below the tolerable standard. It made a number of recommendations regarding remedial measure which should be carried out.

xviii. The Respondent made a repairing standard application to the First-Tier Tribunal on 27 October 2025. The application was rejected by the Tribunal on 10 February 2026.

xix. At the time of the initial hearing, the Respondent was living in the property only two days per week. She was living with her father for the other five days, as she was caring for her infant grandchild.

xx. At the date of the continued hearing, the updated rent statement showed that the Respondent owed £17,450.56 in rent arrears.

xxi. The Respondent has been in continual arrears since March 2024, withholding rent since around August 2025 and at the time of the continued hearing had £4901.76 in a bank account.

Reasons for the decision

82. In making its decision, the Tribunal carefully considered all of the written and oral evidence before it as at the date of the continued hearing. The Tribunal applied the civil burden of proof, which is the balance of probabilities.

83. The Tribunal considers that it is unfortunate that the issues which first arose with the property over two years ago have never been fully resolved. This appears to have been due to a number of factors. These include poor communication between the parties (followed by a complete breakdown in communication) and the approach taken by Mr Boyd Jr, who was clearly inexperienced in managing properties, in addressing the repairs issues raised by the Respondent, including his failure to respond to her notification letters. The Applicant himself then failed to address the issues when he took over management of the property.

84. Whilst the Tribunal found the Respondent to be generally credible in her evidence, it considers that certain aspects of her response to the issues within the property were disproportionate. The Respondent's actions in failing to make a repairing standard application to the Tribunal much earlier, and in deciding to instruct various repairs herself rather than withholding rent, together with the way in which she appears to have interpreted advice given to her by others, all contributed to the current situation.

85. The Tribunal's view remains, as set out in its decision on the conjoined eviction application, that the appropriate course of action for the Respondent would have been to make a repairing standard application. That would have resulted in a decision by another Tribunal on that application, following an inspection of the property, which may have addressed the issues some time ago. Such a decision, and/or a Repairing Standard Enforcement Order, would also have been very

helpful to the present Tribunal in ascertaining the state of repair within the property.

86. While the WhatsApp messages sent by Mr Boyd Jr may have implied that the Respondent should carry out the repairs herself, this was not explicitly stated. He also asked her in a message of 5 March 2024, if she were to carry out works herself, to send him quotes. The Respondent admitted that she had not specifically asked for permission or sent quotes to the Applicant or to Mr Boyd Jr before instructing the repairs.

87. Regarding the alleged dampness, it was clear from both the Columbus reports and Mr Banks' survey that as far back as February/March 2024, there were issues relating to dampness and to an escape of water into the sub floor under the property. The Respondent sent two notification letters to the Applicant about the repairs issues she was experiencing in March 2024. Yet these issues were not addressed by the Applicant at that time. He still did not address them after he was made aware by the Respondent at the first eviction CMD in March 2025 that they were still ongoing.

88. In terms of section 14 of the Housing (Scotland) Act 2006, a landlord must ensure that a house meets the statutory repairing standard at the start of a tenancy and at all times during the tenancy. Section 13(2) provides that this duty applies only where a) the tenant notifies the landlord or b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with the duty. In terms of section 13 (4), the landlord complies with the repairing standard duty where the work required to be carried out is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required. The Applicant failed to do this.

89. In the absence of a repairing standard application and/or decision, the Tribunal had regard to the various reports which had been produced by the Respondent. The Applicant had not produced any contrary reports regarding the repairs issues. It is not for the present Tribunal to make a decision on whether the property meets the repairing standard, but the available reports suggest that it has not met the standard since early 2024.

90. The independent report from Dr Stirling Howieson commissioned by the Respondent found that in June 2025 the property was suffering from extensive rising dampness on all external and internal walls, and was below the tolerable standard. It made a number of recommendations regarding remedial measures which should be carried out, again including the injection of a damp proof course. None of these works have been carried out.

91. It is difficult to understand why the Applicant has still not taken action to address the issues which are affecting his property. While he appeared to be under the

impression that the works were the responsibility of the factor, the Alliance report of 29 August 2024 suggested that the majority of the work required, including the injection of a damp proof course related to his property only. The Applicant expressed doubts as to the efficacy of a damp proof course and suggested that the dampness was due to condensation. He admitted at the initial hearing, however, that there was dampness in the property and that it was his responsibility as landlord to ensure that the property meets the repairing standard.

92. While the main issue was dampness within the property, the Respondent had also notified the applicant about a variety of other repairs issues, including problems with the toilet, the windows and the lock on the front door.

Withholding and abatement of rent

93. The Tribunal notes that withholding (or retention) of rent in order to compel a landlord to carry out repairs is a recognised, equitable common law remedy. It is generally expected that the rent becomes payable when the defect has been addressed. Withholding rent does not in itself affect the tenant's ongoing liability to pay rent. While the Respondent told the Tribunal at the CMD that she was withholding rent, she was in fact spending the rent money on repairs. She only began to withhold rent and place it into a bank account following the CMD in July 2025

94. The Respondent is in fact seeking an abatement of the rent which is claimed by the Applicant. As explained in Renfrew District Council v Gray 1987 S.L.T. (Sh. Ct.) 70, *"if the tenant does not get what he bargained to pay rent for it is inequitable that he should be contractually bound to pay such rent."* In that case, and the authorities discussed in that decision (including Muir v McIntyres (1887) 14 R. 479), abatement of rent is seen as distinct from compensation by way of damages. Damages require proof of loss and would ordinarily require to be pursued by separate action. Abatement, by contrast, reflects that the tenant has not received the full benefit of the subjects for which rent was stipulated. It is concerned with loss of use or enjoyment, rather than proof of financial loss.

95. The Tribunal is accordingly unable to consider the items claimed by the Respondent in respect of the cost of items purchased, damaged items, and electricity costs in considering an abatement. The Tribunal also considered the Respondent's expenditure on repairs. It does not accept that the cost of the window installation, other major repairs or decoration should be taken into account. These works were not authorised, and the Respondent accepted that she had not sought permission or provided quotes prior to instructing them.

96. The Tribunal does, however, accept that the cost of the toilet repairs (£220) should be deducted. This was conceded by the Applicant. The Tribunal also considers that it would be reasonable to deduct the cost of lock repairs paid for by the Respondent in May 2024 when she was locked inside the property (£393). Both of these were minor essential repairs, and in light of the communications with Mr Boyd Jnr, it was reasonable for the Respondent to proceed.

97. Ms Dziedzic was unable to identify any appropriate authority for the proposed approach that the other items claimed for should be 'set off"' against the rent due. The Tribunal therefore rejects the Respondent's submission that the cost of the other works or damage should be set off against the rent. The Tribunal observes that it would be open to the Respondent to make a civil proceedings application to the Tribunal against the Applicant in respect of these matters.

98. The Tribunal accepts that the Respondent suffered a loss of enjoyment of the property, distress and inconvenience as a result of the Applicant's failure to carry out necessary repairs. However, it does not accept that the property was at any stage completely uninhabitable in the sense described in *Gray*. The reports do not support that conclusion, and the Respondent remained in occupation throughout, albeit mainly on a reduced basis. Accordingly, a 100% abatement is not justified.

99. In calculating the amount of the abatement to be made, the Tribunal was not persuaded that it should follow the approach taken by the court in the case of *Rendlesham Estates Plc and others v Barr Ltd*, as suggested by Ms Dziedzic. This concerned a claim under the Defective Premises Act 1975 (which applies only in England and Wales) by the owners of apartments within two modern blocks against the construction company which built them, alleging that they were not fit for habitation when they were built. Not only is this an English decision, but it concerns an entirely different situation from the present one.

100. The Tribunal therefore considered some relevant Scottish authorities, including those referred to by the parties. As Sheriff Jamieson noted in the Upper Tribunal decision of Zhao v Dunbar [2022] UT 25, awarding compensation for inconvenience in housing cases is not an exact science and each case must turn on its own facts and circumstances. He also noted, however, that such awards have tended historically to be quite low, referring to the examples set out in paragraph 7.69 of *Robson and Combe, Residential Tenancies (*4th ed. 2019). These awards averaged, before inflation, between £30 and £70 a month for the more severe cases of inconvenience.

101. While these decisions provide useful general guidance, the Tribunal considers that the correct approach to calculating the level of abatement is to establish, so far as

is possible, the extent to which the property, and the rooms within it, were affected by the dampness issues during the Respondent's tenancy.

102. The Tribunal noted that the Respondent first notified the Applicant of the repairs issues on 17 January 2024. The Applicant had already reduced the rent by more than 50% from £800 to £350 per month for the three months from March to May 2024 in respect of inconvenience. It also noted that the main period during which the Respondent said that she had been unable to use the toilet i.e. the 57 days from 22 March to 18 May 2024, and the 62 days during which she was unable to use either the bath or the shower until 7 April 2024 both fell largely within these months. The Tribunal did not, therefore consider that any further abatement should be applied for those months.

103. Regarding the period from 17 January to 29 February 2024 (being a period of 44 days), the Tribunal accepts that during this period the kitchen, bathroom and bedroom were all affected by disrepair. It therefore considers an abatement of 50% is appropriate for this period. This amounts to £578.60, calculated as follows:

Daily rent: (£800 × 12) ÷ 365 = £9,600 ÷ 365 = £26.30 per day
Daily abatement at 50%: £26.30 × 0.5 = £13.15 per day
Total abatement: 44 × £13.15 = £578.60

104. For the remaining period, i.e. from June 2024 to February 2026, the Tribunal found the evidence as to the impact of the disrepair to be unclear and, at times, inconsistent. The Respondent stated that she had been unable to live in the property full time from December 2024 onwards, but also indicated in evidence that she had effectively been living elsewhere since February 2024, returning only one or two days per week. She also confirmed at the hearing on 6 November 2025 that all rooms were capable of being used, provided a dehumidifier was in constant use.

105. The Tribunal notes the Respondent's position that she was unable to use the kitchen for an extended period, and that from mid-January 2025 onwards, her use of it was severely limited. She also said her use of the property generally was restricted by concerns about humidity. She said that she was unable to cook, use the washing machine, dry clothes, or take regular baths or showers, because this would increase the already high humidity levels within the property and exacerbate the dampness issues. However, these restrictions were not supported by the expert reports. On the evidence as a whole, the Tribunal was not able to determine with any precision which rooms were unusable, or for what periods.

106. In these circumstances, the Tribunal considered that a broad assessment was appropriate. For the period from June 2024 to February 2026 (21 months), the Tribunal is satisfied that the Respondent experienced a reduction in the beneficial enjoyment of the property, but not a complete loss of use. The Tribunal therefore

applies an abatement of 25% for this period. On a monthly rent of £800, this equates to £200 per month, giving a total of £4,200.

107. The total abatement is therefore £4778.60, plus the deductions for essential toilet and lock repairs, which total £613.

108. The Tribunal therefore determined that an order for payment by the Respondent of the sum of £12,058.96 should be granted in favour of the Applicant.

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.

[redacted]

Legal Member/Chair

28 March 2026

Date