



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/25/1171

Re: Property at 3J Victoria Road, Dundee, DD1 1EL (“the Property”)

Parties:

Ms Bharati Patel, 31 York Road, Northwood Hills, Middlesex, HA6 1JJ (“the Applicant”)

Mr Craig Buchan, 75 Dee Gardens, Dundee, DD2 4JE (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order of payment be made requiring the Respondent to pay the sum of FOUR THOUSAND NINE HUNDRED AND NINE POUNDS FIFTY SIX PENCE (£4909.56) to the Applicant.

Background and Procedural History

- 1. On 17 March 2025, the Applicant submitted an application to the First-tier Tribunal for Scotland seeking payment of the sum of £4909.56 in respect of rent arrears.**
- 2. A case management discussion was held by teleconference on 16 October 2025.**
- 3. A direction was issued requiring parties to submit written submissions.**
- 4. A hearing was set down for 6 March 2026 and was adjourned without evidence being heard.**

5. A hearing was held by teleconference on 17 June 2026. The Applicant was not present and was represented by Ms Hazel Young of Rockford Properties, her letting agent. The Respondent was present.

Preliminary Matters

6. Ms Young confirmed that the tenancy started on 15 March 2019 and was terminated on 5 February 2024. She referred to the rent statement which had been submitted and which showed a balance of rent arrears of £4909.56. She confirmed that the tenancy deposit had been recovered and had been applied to the rent arrears. She confirmed that the net sum due was £4909.56.
7. Mr Buchan confirmed that he agreed that the rent statement was accurate and that the rent arrears were £4909.56. He said that his position was that the rent for the property should be abated because of its condition, the failure of the Applicant to properly maintain it and her delay in carrying out repairs. He said that the landlord also failed to address the difficulties he had experienced in heating the Property.

Submissions

8. Ms Young submitted that an order for payment for £4909.56 should be made. She said that the Respondent accepted that this was the amount of rent arrears. She said that the Applicant was entitled to recover this sum. Ms Young said, that as the Applicant's letting agent, she and her colleagues responded positively to him whenever the Respondent made contact with regard to any issues with the Property.
9. Mr Buchan said that he was not looking for compensation from the Applicant, other than the writing off of the sum of £4909.56 in respect of rent arrears. He said that his inability to get the Property to a reasonable temperature and its condition was such that he was entitled to withhold rent and that he was not now due to pay the arrears. He said that the Property had been "uninhabitable."

Findings in Fact

10. The tribunal found the following facts to be admitted or proved:
 - 10.1 The parties entered into a tenancy agreement on 15 March 2019. The tenancy ended on 6 February 2024.
 - 10.2 As at the date of termination of the tenancy agreement, an amount in the sum of £4909.56 was outstanding in relation to rental payments due, after taking into account retention of the tenancy deposit by the Applicant.

- 10.3** An application for payment of that amount was presented to the Tribunal on 17 March 2025.
- 10.4** During the course of the tenancy, the Respondent reported to the Applicant's letting agent that he considered there to be repair and other issues with the Property.
- 10.5** During the course of the tenancy, the Applicant's letting agent responded to issues about the Property which were raised by the Respondent.
- 10.6** As at the date of application to the Tribunal, and as at the date of the hearing on 17 June 2026, the sum of £4909.56 was due to the Applicant by the Respondent.
- 10.7** During the course of the tenancy, the Respondent had not intimated that he was withholding rent for any reason.

Reasons for Decision

- 11.** The matter for determination was focused. The Respondent conceded that the level of rent arrears amounts to £4909.56. The Respondent's position was that he was not due to pay anything to the Applicant because of the condition of the Property.
- 12.** The Respondent said that, from the outset of the tenancy, there were issues with the Property. He said that there was no provision for heating and it was cold as a consequence of this, and also because of the existence of draughts. He said that the windows were rotten and that, in the first year of the tenancy he had used twenty tubes of sealant around the windows in an attempt to combat draughts.
- 13.** The Respondent referred to emails which he had sent the Applicant's letting agent where he had complained about the absence of heating and the costs of electricity in trying to keep the Property warm. One email referred to him spending £80 on electricity over one weekend.
- 14.** In answer to a question, the Respondent said that he had not noticed at the outset of the tenancy that there was an inadequate provision for heating. He said that he "thought all properties came with heating."
- 15.** The Respondent said that he negotiated with the letting agent that two infra-red heaters would be installed. He said that he selected the heaters and paid for them by agreement with the Applicant and that the cost was set against the rent. The Respondent said that the heaters cost more to run than he had anticipated and he said that this was because they had to run for so long each day. He conceded that, in his calculation of how much they would cost to run, he had got "his maths wrong."

- 16.** The tribunal noted that, in an email sent by the Respondent to the Applicant on 26 July 2021, the Respondent refers to the heaters: "These have been a blessing, they reduced the heating bill to well under £10 a day at peak usage times." The email went on to state that one of the heaters was broken and outwith its warranty, and the Respondent asking if it could be replaced.
- 17.** In answer to questioning, the Respondent said that he had not intimated to his landlord or her letting agent that he was withholding rent because of issues he was experiencing with the Property. He also said that he did not set aside the rental funds for payment to the Applicant if any issues he had were resolved. The Respondent said that he was faced with a choice of heating the Property or paying rent.
- 18.** It was pointed out to the Respondent that the significant arrears of rent had started to accumulate in November 2022, and that his evidence was that the issues which he described he had with the Property had been in existence during the whole of the tenancy. The tribunal noted the emails between the Applicant's letting agent and the Respondent in which the Respondent had raised issues with the property, including flooring, the microwave, the washing machine and draughts. The tribunal also noted the contractors' invoices submitted by the Applicant which indicated that repairs and maintenance had been carried out to the Property.
- 19.** It was noted that the emails submitted by the Respondent with regard to repair and maintenance issues were only to the end of November 2021. The Respondent candidly disclosed the particular personal problems which he had which had affected all aspects of his life and led to what he described as a "mental health crisis" and being in a "spiral of helplessness." He also said that this was also the reason why he did not seek an alternative property.
- 20.** The Respondent conceded that he had, at no time, intimated to the Applicant or the letting agent that he was withholding rent because of the condition of the Property.
- 21.** The Respondent's evidence was that he had not sought advice from any agency and had not submitted an application to the Tribunal in respect of any alleged failure of the Applicant to maintain the Property to the repairing standard, as she was required to do in terms of the Housing (Scotland) Act 2006.
- 22.** Ms Young said that the Applicant's letting agent had dealt with any repair issues raised by the Respondent and. She said that, when rent arrears started to accumulate, the Respondent had not given any explanation as to why rent was not being paid.

Discussion

- 23.** The tribunal had no difficulty in establishing that the Respondent had a contractual liability for payment or rent in respect of the Property. The lease supported this and the Respondent accepted that there were rent arrears amounting to £4909.56.
- 24.** The issue for the tribunal was to determine whether the Respondent had a defence to the action and, if so, what effect that might have on the principal sum being sought.
- 25.** It is an established principle in law that, during a residential tenancy, a landlord requires to maintain a house in a tenantable condition. The cases of *Stobbs and Hislop* 1948 SC 216 and *Renfrew District v Gray* 1987 S.L.T.(Sh.Ct) 70 are relevant. It has also been established that, if a landlord did not maintain a house in a tenantable condition, a tenant may be entitled to retain rent until issues with the house had been resolved when any retained rent fell to be paid over.
- 26.** It is also possible that abatement of rent may possibly be a defence to an action for payment of rent, and form the basis for a counterclaim for damages by a tenant.
- 27.** In the particular case before it, the tribunal considered that there were three matters which it had to consider.
- 27.1** Was the condition of the Property such that the Respondent was entitled to withhold payment of rent?
- 27.2** If the Respondent was entitled to withhold rent, was there evidence that he acted in good faith and made the appropriate intimation to the Applicant or her agents?
- 27.3** Given that the tenancy has now been terminated, has the Respondent a valid defence to the action for payment?
- 28.** The evidence of the Respondent was that the Property was cold, draughty and was difficult to heat. It had no fixed heating system. Prior to 2022, the Respondent had reported other repair issues with the Property, including flooring, windows, the microwave and the washing machine.
- 29.** The Applicant, in her written representations, did not dispute that the property was cold. The Applicant had paid for infra-red heaters.
- 30.** The tribunal noted the emails between the Respondent and the Applicant's letting agent. These demonstrate that the Respondent had

raised repair issues and that the letting agent had responded to the matters raised. The Applicant had submitted copies of contractors' invoices for repairs which had been carried out.

31. The tribunal did not consider that the Respondent was entitled to withhold rent because the Property was cold, or because of any other repair issues that there were with the Property. The Respondent said that he did not notice that there was no fixed heating system when he took on the tenancy. It is a reasonable assumption that any tenant, before entering into a tenancy agreement, should consider the suitability or otherwise of a property. The Respondent did not look for alternative accommodation because of his significant personal issues. The tribunal noted that the Applicant had responded to issues raised by the Respondent. It also noted from emails submitted by the Applicant that the Respondent had been asked if he might be eligible for a grant aided scheme to improve properties' heating and insulation, and that he had not responded to these.
32. Given that the tribunal determined that the Respondent was not entitled to withhold rent, it did not require to consider if he had acted in good faith. Nevertheless, it considered it helpful to examine this matter. Adrian Stalker in his work, *Evictions in Scotland, Second Edition*, considers this and the relevant authorities at pages 129 and 130: *"It is suggested that, in order to demonstrate good faith, it would be advisable for the tenant to warn the landlord that he is about to cease paying rent, unless the necessary repairs are effected."* The Respondent fell into significant arrears of rent in November 2022, more than two years after he had first raised the issue of poor heating and draughts in the Property. The Respondent did not advise the Applicant or her letting agent that he was suspending payment of rent. He had not made payment of the rent arrears at the termination of the tenancy.
33. From the evidence of the Respondent, the tribunal was satisfied that non-payment of rent was primarily due to the Respondent's particular life crisis which did not give rise to any legal right to withhold rent. It was also significant that, in an email sent to the letting agent on 15 February 2023, the Respondent stated: "I am very conscious of arrears and want to put a proposal forward to assist on clearing everything." The email went on to suggest setting the tenancy deposit against rent arrears and stated that the Respondent then stated that "the remainder of the bill will get paid on leaving- want to be as helpful as possible given the circumstances and feel this is at least immediately viable as a proposal." That email would have been an opportunity for the Respondent to explain his reasons for not having paid the rent contractually due. He did not do so, and instead made proposals with regard to payment of the arrears.
34. Given that the tribunal determined that the Respondent was not entitled to withhold rent, it did not consider that he had a valid defence to the action for payment.

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.

**Martin J. McAllister
Legal Member
17 June 2026**