

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 ("The Act")

Chamber Ref: FTS/HPC/CV/25/1290

Re: Property at 8 Donmouth Crescent, Bridge of Don, Aberdeen, AB23 8DQ ("the Property")

Parties:

Ms Sarah Jack, Barker House, Neddy Hill, Burton-in-Kendal, Nr Carnforth, LA6 1JE ("the Applicant")

Ms Julie Cowie, Flat 5 Strabathie Cottages, Hareburn Terrace, Blackdog, Aberdeen, AB23 8DQ ("the Respondent")

Tribunal Member:

Mr. A McLaughlin (Legal Member)

Mr A. Anderson (Ordinary Member)

Background

[1] The Application seeks a Payment Order of £11,687.50 against the Respondent in respect of rent arrears and restoration costs under a tenancy agreement between the parties. The Application is accompanied by documentary evidence which includes photographs invoices, rent statements and check-in and check-out reports. The Respondent has submitted representations disputing the claim. In the run up to the Hearing, both parties appear to have submitted documentation indicating a willingness to make concessions and settle their dispute. No final agreement however was made.

Procedural history

[2] The Application called for a Case Management Discussion (“CMD”) by conference call previously. The Applicant was represented by Ms Condron of DJ Alexander Lettings Limited. The Respondent was personally present. The Respondent spoke to the representations she had submitted. She denied that the Property was returned in a worse condition than it had been in at the start. The Respondent indicated she had withheld rent because of damp in the Property going unaddressed by the Applicant. She had stopped paying rent in July 2023 and paid nothing else until she vacated the Property in April 2024.

[3] The Respondent explained that she had submitted a repairing standards case about the Property in January 2024, but she knew nothing about the status of that Application. The Respondent sought a counterclaim in her representations. The Tribunal explained that was not competent and any separate claim that the Respondent wished to make against the Applicant would have to be made by separate Application. The Respondent also expressed some doubt about whether she was right to withhold the rent in the manner she did. The Tribunal encouraged the Respondent to take legal advice and explained to her that establishing a defence of rent abatement was not straightforward and would require detailed evidence and legal submissions. The Respondent was also told that to counter the check-in and check-out report the Respondent would have to think very carefully about what factual evidence she could submit to support her position.

[4] Ms Condron explained that she had revised the sums sought in the Application to adjust the rent arrears figure to the correct date and to remove curtain costs which were no longer claimed. She was now seeking the sum of £11,354.47.

[5] The Tribunal continued the Hearing to an evidential Hearing to take place in person. The Tribunal explained that Directions would be made regarding the submission of any further evidence and witness lists.

The Hearing

[6] The Application thereafter called for a Hearing in person in Aberdeen Civil Justice Centre at 10 am on 20 April 2026. The Applicant was personally present together with Mr Adrain Sangster of DJ Alexander. The Respondent was personally present. Neither party had any preliminary matters to raise, and all were content to start the Hearing. The Tribunal began hearing evidence. After each witness gave evidence, the other party had to right to cross-examine. After evidence had been heard, parties had the opportunity to make closing submissions. The Tribunal thereafter adjourned to consider its decision. The Tribunal comments on the evidence heard as follows.

Mr Adrian Sangster

[7] Mr Sangster is head of letting at DJ Alexander who are the Applicant's letting agent. Mr Sangster was asked at the outset of his evidence to provide a breakdown of the various heads of claim. There were cleaning costs of £417.60, a handy man invoice for £210.00 and rent arrears claimed of £6,358.30. There was also a claim for a professional report into the presence of mould in the Property in the sum of £114.00 and then repairs resulting from the mould in the sum of £3,390.00. There was also a further sum of £1,197.60 in respect of a membrane repair. The Tribunal attempted to clarify with Mr Sangster how all this fitted in with what appeared to be his revised position that the Applicant only now wished to recover the sum of £5,731.97. Other than a general desire to settle the matter prior to the Hearing, Mr Sangster's position here was somewhat unclear, and the Tribunal did not feel enlightened about the logic of the precise sums claimed and importantly which heads of claim were no longer being insisted upon.

[8] Similarly, Mr Sangster admitted that he had taken up his role in 2024, after the tenancy had ended and was candid that his knowledge of the case was somewhat limited and that he would need time to check the position should the Tribunal have specific questions. The Tribunal prompted Mr Sangster to take the Tribunal through the check-in and check-out reports that were supplied in the bundle. The Tribunal put to Mr Sangster that the check-in report recorded signs of mould in the Property from the outset. It also appeared that there was no extractor fan in the bathroom and the window in that room could not be opened. The Tribunal asked Mr Sangster how it could be fairly said therefore that the spread of mould throughout the Property arose from the negligence of the tenant. Mr Sangster was not in a position to offer a meaningful response.

[9] The tenancy between the parties started on 19 August 2022 and ended on 3 April 2024. The Tribunal also asked Mr Sangster to comment on the fact that the check-out report and check-in report did not present an obvious basis to conclude that the Respondent was liable for cleaning costs. Mr Sangster was unable to direct the Tribunal's attention to anything that might support the claims made in the Application. Mr Sangster also explained that there were allegations that the Respondent had been difficult in terms of allowing tradespeople to access the property to carry out the necessary repairs, although again he was unable to provide any concrete evidence of this being the case.

The Respondent- Ms Julie Cowie

[10] Ms Cowie accepted that when she moved into the Property, she didn't pay much attention to the check-in report. After she moved in, she reported a wet- mouldy patch in her bedroom to the lettings agents. She also reported the fact that the bathroom window would not open. She reported regularly contacting the letting agent to get things fixed. The Tribunal was referred to emails sent by the Respondent to the letting agent directly raising a complaint about a small black patch behind the corner of the living room and water running down the small bedroom wall. The Respondent regularly emailed the letting about this throughout her tenancy. It seemed very much to the Tribunal that the Respondent was flagging up the very issues that the Respondent now wished to attribute

to the actions of the Respondent. The Respondent explained that she would frequently phone a staff member called Aileen, who no longer worked at the letting agency, about these matters. The Respondent accepted that she asked the letting agents whether she could redecorate and she did paint some skirting boards and windowsills in the Property but with the permission of the letting agents.

[11] The Respondent felt sufficiently strongly about the matters raised that she should withhold rent. She explained in her evidence that she accepted that this probably wasn't the right thing to do and that on balance, taking a common-sense approach, an abatement of 50 per cent of the rent claimed would probably be fair. The sum of £6,358.30 was unpaid as rent and accordingly the Respondent proposed that the sum of £3,179.15 was lawfully due. She explained that the mould was so bad in the Property that she had to dispose of items that were damaged by the mould including photos, shoes, furniture, teddys and sentimental items.

[12] The Respondent also pointed out that the Applicant did carry out the necessary repairs after she left the Property, which added legitimacy to her complaints. These repairs appear to have been ultimately completed in July 2024. The Respondent also explained that she gave the Property a thorough clean at the end of the tenancy and that she left it in a better state than when she moved out. The Respondent also explained that there was never any issue of her blocking access to the Property for repairs, if anything she was the one who was trying to generate activity to get the repairs done.

Comment on evidence heard

[13] The Applicant's evidence was not well presented or expressed. Mr Sangster freely admitted that he was not overly familiar with the papers and could not counter the concerns put to him by both the Tribunal and the Respondent. In contrast, the Respondent's evidence was credible and reliable. She was well informed and balanced in her evidence and could refer to reliable objective written communications to support her position. The Tribunal preferred the evidence of the Respondent where there appeared to be conflicting evidence. The Respondent's evidence regarding the presence of mould at the start of the tenancy was corroborated by the check-in report. There was also no reason not to believe her account that the mould was an unwelcome feature during her tenancy and that she frequently tried to contact the letting agency to act. Her evidence regarding the lack of ventilation in the bathroom was also not disputed. It made it very hard to accept that somehow the Respondent was the cause of the mould and that she should be found liable for the associated restoration costs. The Applicant also appeared willing to settle certain parts of their claim which again appeared to represent an acknowledgement that the Respondent's position was not devoid of merit.

[14] Having heard evidence and considered the relevant documentation, the Tribunal made the following findings in fact.

1. *The Applicant let the Property to the Respondent by virtue of a Private Residential Tenancy Agreement which commenced on 19 August 2022 and ended on 3 April 2024.*
2. *Mould was present in the Property from the outset and worsened during the Respondent's occupation of the Property.*
3. *The Respondent frequently reported mould and the presence of wet patches and water ingress in the Property to her letting agent.*
4. *Repairs relating to damp ingress (Landlord's responsibility) were undertaken on behalf of the Applicant to remedy damp ingress, including the installation of a membrane in the lounge and unspecified repairs to the bedroom. Damp ingress increases humidity and the likelihood of condensation and mould.*
5. *The Property did not have an extractor fan in the bathroom, and the window in that room could not be opened. This would have caused the mould in the Property to worsen.*
6. *The Respondent had to dispose of personal items including photos, shoes, furniture, teddys and sentimental items which were damaged by mould.*
7. *The Respondent eventually began withholding rent because of the repairing issues in the Property and then ended the tenancy and vacated the Property in April 2024.*
8. *During the tenancy, the Respondent lost her ability to peacefully enjoy the Property because of continued water ingress and mould.*
9. *The sum of £6,358.30 was left unpaid as rent at the end of the tenancy.*
10. *The Respondent vacated the Property in a similar condition to when the tenancy commenced, subject to fair wear and tear and allowing for the spread of the mould which was not the Respondent's fault.*

[15] Having made the above findings in fact, the Tribunal did not consider that the Respondent ought to be liable for the sums claimed in respect of cleaning costs, handyman costs, damp specialist reports or repairs or the costs associated with the mould. The Tribunal agreed with the Respondent's position that the rent claimed ought to be made subject to an abatement of 50 per cent. That figure appeared a common sense figure taking account of all the circumstances of the situation.

[16] Accordingly the Tribunal granted a Payment Order in favour of the Applicant against the Respondent in the sum of £3,179.15.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

A McLaughlin

Legal Member

5 June 2026
Date