



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/24/4488

Re: Property at Flat 0/2, 191 Auchentoshan Terrace, Glasgow, G21 4UA (“the Property”)

Parties:

Mrs Cindy Mathie, 17 Victoria Park Drive North, Glasgow, G14 9NH (“the Applicant”)

Ms Emma McGarrell, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Robert MacDonald (Legal Member) and Ann Moore (Ordinary Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order be granted against the Respondent and in favour of the Applicant in the sum of Four Thousand Eight Hundred and Seventy Pounds Two Pence Only (£4870.02).

Background

1. The Applicant lodged an application on 26 September 2024 under Rule 70 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“The Rules”) seeking payment of a sum of rent arrears arising from the Respondents’ tenancy of Flat 0/2 191 Auchentoshan Terrace Glasgow G21 4UE (“the property”). The Applicant authorised her husband Mr Douglas Mathie (“Mr Mathie”) to act on her behalf.
2. Lodged with the application were documents including :-
 - a. Copy short assured tenancy agreement;
 - b. Rent statement;

- c. Copy decision in an eviction application between the parties dealt with by the Tribunal case reference EV.23.4373 (“the related proceedings”);
 - d. Report from Allied Surveyors dated June 2024;
 - e. Emails between the parties and Glasgow City Council.
3. The application was accepted by the Tribunal on 13th January 2025.

Summary of First Case Management Discussion

- 4. An initial Case Management Discussion was assigned for 8th July 2025. In error Mr Mathie was advised by the Tribunal that the Case Management Discussion had been cancelled as the Tribunal were unable to serve the notification paperwork on the Respondent at the address provided.
- 5. Service of the application had in fact been carried out on the Respondent by advertisement following a negative trace report. The Tribunal had also intimated the application to the Respondent by email.
- 6. On 26 June 2025 the Respondent sent an email to the Tribunal advising that she was not available on the date scheduled for the Case Management Discussion.
- 7. On 8 July 2025 the Case Management Discussion took place by teleconference. Mr. Mathie was not present as he understood the Case Management Discussion had been cancelled. The Respondent did not attend. The Tribunal considered that the Case Management Discussion should be continued to another date to give both parties the opportunity to put forward their position.

Summary of Second Case Management Discussion

- 8. A further Case Management Discussion was assigned for 8th August 2025.
- 9. Intimation of the Case Management Discussion including the joining details was made on both parties by email on 23rd July 2025
- 10. On 3 August 2025, Mr Mathie lodged a submission with the Tribunal which consisted of a detailed timeline of communications between the Applicant, the Respondent, and Govan Law Centre.
- 11. No correspondence was received by the Tribunal from the Respondent prior to the Case Management Discussion.
- 12. The Case Management Discussion took place on 8 August 2025 by teleconference. Mr Mathie appeared on behalf of the Applicant. There was no appearance on or behalf of the Respondent. The Tribunal, being satisfied that the Respondent had been notified of the Case Management Discussion, proceeded in her absence in terms of Rule 29 of the Rules.
- 13. Mr. Mathie explained that the Applicant was insisting on her application. He asked the Tribunal to allow an amendment to the sum claimed. The Tribunal allowed the application to be amended to seek the sum of £5403, which Mr Mathie said represented the alleged arrears of rent to 22 October 2024, being the date that the

Applicant recovered possession of the property following an order being granted in the related proceedings.

14. The Tribunal noted from the decision in the related proceedings that the Respondent was autistic, had mental health issues, had ADHD, and previously had a supporter in the related proceedings. It was also noted that she had previously been represented by the Govan Law Centre.
15. At the Case Management Discussion, the Tribunal noted that the following matters required to be resolved
 - a. Whether the Respondent accepts that she owes the amended sum claimed or wished to state a defence to the application.
 - b. Whether the Respondent accepted that the end date of the tenancy was 22nd October 2024.
 - c. Whether there should be any rent abatement and whether or not any rent was lawfully withheld by the Respondent during the tenancy due to the condition of the property.
16. Mr. Mathie confirmed that information had been received by the Applicant from Govan Law Centre that rent was withheld by the Respondent and was being held in a separate pot in the Respondents account with Monzo bank.
17. The Applicant did not accept that the Respondent was justified in withholding rent.
18. The Tribunal decided at the Case Management Discussion that it was appropriate to order the Respondent to confirm whether she wished to defend the application and to fix a hearing to allow both parties the opportunity to lead evidence and make legal submissions.

Notice of Direction

19. Following the Case Management Discussion the Tribunal issued a Notice of Direction to the parties on 11 August 2025.
20. In terms of the said notice the Tribunal directed the Respondent to confirm whether she accepted that she owed the Applicant the sum of 5403 for rent arrears for her tenancy of the property or whether she wished to state any defence to the application
21. In terms of the said notice the Tribunal further directed the Respondent that if the application was opposed the Respondent was required :-
 - a) to lodge a written summary of her defence, including a reference to the legal basis relied upon;
 - b) to provide written confirmation as to whether the end date of the tenancy was agreed at 22nd October 2024; or if that was disputed the date that she contested the tenancy ended, together with any evidence in support of that contention.
 - c) if the Respondent argued that rent was lawfully withheld, evidence about where and how that rent was held by the Respondent.

22. Further, the parties were required to lodge with the Tribunal no later than 30th of September 2025 a list of documents and bundle of documents, a list of witnesses and a list of authorities and bundle of authorities.
23. The notice of direction was sent by the Tribunal to the parties by email on 15 August 2025.
24. On 8th September 2025, the Respondent sent an email to the Tribunal asking for assistance in uploading documents.
25. On 18 September 2025 the Tribunal responded to the Respondent asking whether she required further time to deal with the direction.
26. On 22 September 2025 the Respondent emailed the Tribunal advising that she did not accept that she owed the sum of money claimed. She advised that she had left the property before October 21st. She advised that rent was lawfully held and that the Applicant had seen evidence of that.
27. On 13 October 2025 having considered the information provided by the Respondent the Tribunal decided to fix a further Case Management Discussion in place of the evidential hearing. A further (third) Case Management Discussion was fixed for 26 January 2026.
28. Intimation of the third Case Management Discussion was made to the parties by email on 28th November 2025.
29. On 12 January 2026 the Applicant lodged with a Tribunal an index of documents together with the documents referred to.
30. On 19 January 2026 the Respondent lodged documentation with the Tribunal including text messages between the Applicant and Respondent, photographs of the property and a letter by her GP to the local authority in support of her application for rehousing.

Summary of Third Case Management Discussion

31. On 26 January 2026 the third Case Management Discussion took place. The Applicant was again represented by Mr Mathie. Again, there was no appearance on or behalf of the Respondent. The Tribunal was satisfied that the Respondent had been notified of the date and joining details for the Case Management Discussion.
32. The Tribunal also however noted that the Respondent had by email to the Tribunal on 22 September 2025 stated that the application was opposed. She had lodged an evidence bundle consisting of 186 pages and had attempted to submit video files.
33. The Tribunal further noted that the Respondent had not complied with the orders in the Tribunal's direction of 11 August 2025. In particular she had failed to provide:-
 - a. A written summary of her defence;
 - b. The date that she contended that the tenancy had ended and any documentary or other evidence relied upon in support of that;
 - c. Evidence that the rent had been lawfully withheld and how that rent was held by the Respondent;
 - d. A list of, and bundle of, documents;

- e. A list of witnesses;
 - f. A list of, and bundle of, authorities.
34. Mr. Mathie advised the Tribunal that he wanted to have the case decided given the length time it had been before the Tribunal.
35. Having regard to the overriding objective to deal with proceedings justly and fairly the Tribunal decided that it was appropriate to fix an evidential hearing by video conference to allow both parties the opportunities to lead evidence and make submissions in law.
36. The Tribunal assigned a hearing to take place by video conference on 23 June 2026.

Further Notice of Direction

37. Following the Case Management Discussion, the Tribunal issued a further notice to the parties on 26 January 2026 by email.
38. In terms of said notice the Tribunal directed the Respondent to lodge with the Tribunal no later than the 9th of February 2026 :-
- a) A written summary of any defence to the application, including the legal basis relied upon;
 - b) Written confirmation whether it was agreed that the end date of the tenancy was 22 October 2024;
 - c) If the end date was disputed, the date on which the Respondent says the tenancy ended, and any documentary or other evidence relied upon in relation to that date;
 - d) If the Respondent argued that rent was lawfully withheld, evidence about where and how that rent was held by her.
 - e) A list of documents to accompany the bundle documents sent by the Respondent on 16 January 2026;
 - f) A list of witnesses;
 - g) A list of authorities and bundle of authorities.
 - h) Confirmation by the Respondent of whether she would have any difficulty dealing with a video conference;
 - i) The full name and contact details of any representative who would be attending on her behalf;
 - j) If appropriate, the full name and contact details of any supporter who would attend the hearing with her.
39. No response was received by the Tribunal from the Respondent in respect of this direction.

Hearing by Video Conference 23rd June 2026.

40. The hearing assigned by video conference for the 23rd of June 2026 was subsequently discharged at the request of the Applicant as the Applicant was abroad on holiday on that date.

41. A further hearing was assigned to take place again by video conference on 28 August 2026.
42. Intimation of the hearing was made on the parties by email, and by service by advertisement on the Respondent on the tribunal website.

Hearing by Videoconference 28th August 2026

43. At the hearing on 28th August at 10 am Mr Mathie was again present to represent the Applicant. There was no appearance by or on behalf of the Respondent. The tribunal decided to give the Respondent until 10:15 to logon to the video conference.
44. There was still no appearance by or on behalf of the Respondent when the case called again at 10:15.
45. Mr. Mathies position was that he considered that the Respondent had been given every opportunity to respond to the Tribunal, and he invited the Tribunal to hear the application in her absence.
46. The Tribunal considered matters and was satisfied that the Tribunal had taken all necessary steps to intimate the hearing on the Respondent. It took into account her failure to attend at the previous Case Management Discussions, and her failure to comply with the Tribunals two previous directions in relation to lodging documents setting out the nature of her defence. The Tribunal considered that having regard to the overriding principles it was appropriate for the hearing to continue in the absence of the Respondent.
47. The Tribunal invited the Applicant to address the Tribunal on his application.
48. Mr Mathie confirmed that he was asking the Tribunal to make an order against the Respondent for a payment of the sum claimed (£5403) in rent arrears together with interest as provided for in the agreement. He spoke to the rent account which had been lodged with the tribunal in support of his submission.
49. He confirmed that when the Sheriff Officers attended the property to carry out the eviction on the 22 October 2025 the Respondent was no longer in occupation. He sought an order for the rent arrears that were due as at that date. He accepted that the actual date on which the respondent had left was unclear. He pointed out, however, that the Respondent had not notified the Applicant when she vacated the property. In response to a question from the tribunal Mr Mathie was unsure whether he received notification from the local authority council tax department about when the Applicants liability for council tax resumed. He suspected there would be paperwork to demonstrate that, but did not have it to hand. Following the hearing he located the paperwork and emailed it to the Tribunal. It demonstrated that the Applicants council tax liability, as far as the local authority was concerned, resumed on the 22nd of October 2024.
50. The background to the Respondents defence in the related proceedings was that she had argued that she had lawfully withheld rent because of the state of repair of the

property. In response to a question from the Tribunal Mr Mathie confirmed that he had been sent screenshots of the Respondents Monzo bank account showing sums set aside in a “pot”. That screenshot was not before the Tribunal but Mrs Mathie confirmed that he had it and that he would lodge it with the Tribunal. He explained to the Tribunal that the screenshot appears to have been sent in May 2024 and demonstrated that the rent for January February March and April 2024 appeared to have been set aside in the “pot”.

51. The Applicants position was that the Respondent had not advised the Applicant at the time that she was in fact withholding rent. He explained that the first intimation the Applicant received of this fact was in an email from Govan law Centre who were at the time acting on behalf of the Respondent in May 2024. His understanding was that the Respondent claimed to have withheld rent because of concerns she had about damp in the walls adjacent to the door to the Juliet balcony, which was in the living room of the property. He referred the Tribunal to the report lodged from Allied Surveyors and to their finding that there was evidence of light condensation around the windows and patio door on the front elevation of the property. Although the seals around the patio door were 14 years old at the time of the inspection the surveyor didn't see any significant evidence of drafts around the window. The surveyors view was that the extent of reported dampness was not at a level that was in excess of what would be expected from a ground floor modern flat where there was a lack of appropriate heating and ventilation and where the occupants clothes were dried internally. In short the Applicants position was that the issues surrounding the Juliet balcony were insufficient to justify the Respondent withholding rent, even if intimidation of that had promptly been made to the Applicant.
52. In response to questions from the Tribunal Mr Mathie accepted that there were significant damp readings in the mutual wall between the bathroom and bedroom two. The Tribunal referred Mr Mathie to the findings of the Tribunal Surveyor in the eviction proceedings. Mr Mathie accepted that they had required to have a plumber inspect the property after they had received the report from Allied Surveyors in June 2024. The Respondent made it difficult for them to get access to the property. When the property was inspected by the Applicants plumber, he discovered three or perhaps four separate leaks from the two bathrooms. He carried out work to remedy these leaks but it did become apparent when the Applicant recovered possession of the property in October 2024 that there was significant damage to the property as a result of the leaks. Mr Mathie pointed out that he had messaged the Respondent asking if she was satisfied that the leaks had been fixed after the plumber had been out but did not get a response. He accepted that abatement of the Respondent's responsibility to pay rent might arise from the condition of the property from the point that the surveyor carried out the inspection in June 2024.
53. It was apparent to the Tribunal that although work had been carried out by the Applicants plumber the underlying problems had not been completely fixed during the

time the Respondent was an occupation of the premises. By the Applicants account the cost of remedying the damage to the property caused by the leaking bathrooms to the applicant was in the region of £20,000, which the Tribunal concluded pointed to a significant leak over a period of time.

54. Mr. Mathie did not lead any evidence about any steps taken by the Applicant to ameliorate the effects of the leaks and their impact on the Respondent.
55. The Tribunal asked Mr Mathie for his submission on the interest which the applicant sought on any order the tribunal made. He acknowledged that the short assured tenancy agreement made provision for interest to be calculated at 4% above the base rate of the Royal Bank of Scotland from time to time. Mr Mathie acknowledged that no interest calculation or evidence as to the interest rate chargeable by the Royal Bank of Scotland had been submitted to the tribunal. He submitted however that were the Tribunal to order interest to be paid at the rate of 4% per cent per annum that would in all the circumstances be reasonable.
56. Mr Mathie emailed the Tribunal following the hearing with evidence of the screenshots showing the sums apparently withheld and placed in a separate Monzo pot.

Findings in fact and law

57. The Applicant was the owner of the property, which is a ground floor flat.
58. In terms of a short assured tenancy signed by the parties on 6 March 2017 the Applicant was the landlord, and the Respondent was the tenant of the property at Flat 0/2 191 Auchentoshan Terrace Glasgow G21 4UA.
59. The term of the tenancy was for six months from and including 6th March 2017 until 6th September 2017.
60. The tenancy continued by tacit relocation thereafter.
61. The Respondent resided in the property with her daughter.
62. By order of the First-tier Tribunal under reference EV234373 the Tribunal decided that the applicant was entitled, in terms of section 33 of the Housing (Scotland) Act 1988 to recover possession of the property
63. On the instructions of the Applicant Sheriff Officers visited the property on 22nd October 2024 to carry out an eviction
64. By the time the Sheriff Officers visited the property, the Respondent had already left.
65. The Respondent did not give notice to the Applicant in advance of 22nd October 2024 that she was leaving the property.
66. In terms of the short assured tenancy agreement, the Respondent was liable for to pay rent at the rate of £575 per month while she remained in occupation of the property.
67. In May 2024 Govan Law Centre sent the applicant an email with a screenshot showing that the rent for January to April 2024 had been set aside by the respondent in a separate Monzo pot.

68. Prior to receiving that email, the Applicant had no knowledge that the Respondent was withholding rent.
69. The last payment made by the Respondent of rent was on 7th December 2023 in the sum of £575.
70. The Respondent did not lawfully withhold rent from the applicant.
71. Rent from 7 January 2024 to 22 October 2024, totalled £5403 and was unpaid by the Respondent.
72. Since June 2024 when the Applicant instructed a survey of the property, she was aware that there was a problem with damp affecting the second bedroom, arising from plumbing leaks within the property identified by the Applicants plumber.
73. The said damp problem was not rectified by the Applicant fully while the Respondent remained in occupation of the property.
74. The Respondent was not able to fully enjoy the use of the property during that period given the damp problem caused by the leaks.
75. The Respondent is accordingly entitled to an abatement of rent for the period 7 June 2024 to 22 October 2024.
76. An appropriate abatement of rent given the damp problems suffered by the respondent during that period would be 20% of the monthly rent.
77. The daily rent due by the Respondent was £18.90. She was entitled to an abatement of rent of £3.78 per day. The period over which she was entitled to an abatement of rent was 141 days. The Respondent is accordingly entitled to an abatement of rent of £532.98.
78. The Respondent is due the Applicant the sum of £4870.02 by way of outstanding rent.
79. Interest should be applied to the award of the rate of 4% per annum.

Reasons for decision

80. The Tribunal was satisfied that the Respondent had had every opportunity to set out her statement of defence. She failed to lodge with the Tribunal the information required in terms of the directions issued by the Tribunal, failed to attend the Case Management Discussions and did not appear at the Hearing.
81. Nevertheless, the Tribunal took the view that the Applicant still required to establish their case at the hearing.
82. The Tribunal took into account in so far as it was able to do so the information before it in relation to the condition of the property.
83. As far as the Respondent position in relation to the condition of the property, the Tribunal did not have the benefit of hearing from the Respondent about her specific concerns. It was apparent that at the point when she stopped paying the rent her concerns as expressed to the Respondent related to potential damp on the outside wall of the front elevation of the property on either side of the Juliet balcony. The Applicants' surveyors noted that there was some damp on either side of the balcony

but blamed that on condensation. In the related proceedings the Tribunals own surveyors also noted that there were damp readings on either side of the balcony, which were low to moderate. Without hearing from the Respondent the Tribunal was not satisfied that she had given the Applicant proper notice of her intention to withhold the rent, or that the damp at the Juliet balcony was such that she was entitled to do so. There was evidence from Mr Mathie that she had made it difficult for the Applicant to inspect the property and to get tradesmen in. The Tribunal considered that there was insufficient evidence before the Tribunal about the effect that the damp which was noted either side of the Juliet balcony had on the Respondents enjoyment of the property. The Tribunal was not satisfied that in all the circumstances she had the right to withhold her rent in relation to this complaint.

84. The Tribunal however, concluded that when the Applicant received the report from her surveyor in June 2024, it put her on notice that there was a significant problem with damp internally in the property, which damp emanated from various plumbing leaks within the property itself. The Respondent did allow the Applicants plumber into the property to carry out an inspection and to attempt to repair the leaks, but the Tribunal concluded from the evidence heard from Mr Mathie that the plumber did not successfully remedy the leaks during the Respondents occupation of the property. Further there was no suggestion that the Applicant had assisted the Respondent in trying to have the property dried after the plumber had attended. The Tribunal concluded therefore that it was inevitable that the Respondents use and enjoyment of the property was detrimentally affected by the damp caused by the internal plumbing leaks. The Tribunal was satisfied that the Respondent accordingly was entitled to an abatement of rent covering the period between the Applicants surveyor inspecting the property and the Respondent leaving the property. The Tribunal was aware that the Respondent had lived in the two bedroomed property with her daughter. The Tribunal concluded that a 20% abatement of rent for the relevant period was fair and reasonable in all the circumstances.

85. The decision of the Tribunal was 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.

Robert MacDonald

Legal Member/Chair

7th September 2026

Date