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 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/25/1225

Re: Property at Auchenfroe cottage, Cardross, G82 5ES ("the Property")

Parties:

Mr Thomas Ethell, 4 Ferry Road, Rosneath, G84 0RR ("the Applicant")

Mrs Karen Malcolm, Old Mill, Cheltenham Road, Broadway, WR12 7BY ("the Respondent")

Tribunal Member:

Ms H Forbes (Legal Member) and Mr A Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application for an order for payment should be refused.

Background

1. This is a Rule 70 application made on 19th March 2025, whereby the Applicant was seeking an order for payment in respect of a full abatement of rent in the sum of £53,515 for the period of the tenancy, which ran from 1st April 2017 to 1st December 2023, return of his tenancy deposit in the sum of £695, an expenses claim in the sum of £550, moving costs due to alleged forced relocation in the sum of £4500, and compensation in the sum of £6500 for stress and unfair treatment.

2. The Applicant lodged 946 pages of representations and documents, including the tenancy agreement, EICR certificates, email correspondence, subject access request correspondence, complaint correspondence, notice to quit, and correspondence with the local authority. The Applicant stated that his complaint, which included allegedly invalid EICR certification throughout the tenancy and a failure to comply with the repairing standard, was made against the Respondent, the letting agent, various electricians and the local authority.

3. A Case Management Discussion ("CMD") took place on 16th October 2025. It was adjourned to allow the Applicant to take advice and consider matters. The Tribunal issued a Direction to the Applicant to provide a submission no later than 28 days before the next CMD setting out:

    (i) The legal basis for his application.
    (ii) Details of all losses suffered as direct consequence of the Respondent's alleged failures to obtain and provide valid EICRs in satisfactory terms for the property and ensure that the electrical installation at the property was safe throughout the tenancy.
    (iii) The reason why he considers that no rent was due for the whole of the tenancy.
    (iv) Justification for the claim for £6500 in relation to stress and inconvenience

4. The Respondent was directed to provide a submission no later than 14 days before the next CMD as follows:

    (i) Their response to the Applicant's submission, and
    (ii) Clarification of the position regarding the tenancy deposit, whether it was adjudicated by the tenancy deposit scheme or repaid to the Respondent without adjudication having taken place.

5. By email dated 6th March 2026, the Respondent representative lodged a submission and second inventory of productions in response to the Direction of the Tribunal. The Respondent stated that an application had been made to the tenancy deposit scheme for the return of the full amount of the deposit of £695 as there were outstanding rent arrears. The Applicant had 30 days to dispute the refund sought, and did not do so. The sum of £695 was paid to the Respondent.

6. By email dated 16th March 2026, the Respondent representative lodged a third inventory of productions.

7. By email dated 16th March 2026, the Applicant responded to the Direction of the Tribunal. The Applicant stated he was restricting his application to the matter of recovery of the tenancy deposit of £695. The Applicant stated his position that the three months of withheld rent was disputed rent. It was not admitted arrears, so the Respondent was not entitled to claim the deposit due to rent arrears.

8. A CMD took place by telephone conference on 19th March 2026. The Applicant was in attendance. The Respondent was not in attendance and was represented by Mr Forrester Smith, Solicitor.

9. The Applicant confirmed his position as set out in his response to the Direction. Responding to questions from the Tribunal as to the legal basis of the claim, and whether he was seeking an abatement of rent, the Applicant

said he had tried to obtain legal advice with no success. The Applicant said he had previously spoken to the CAB and may try to contact them again.

10. Mr Forrester Smith stated that the Applicant had failed to answer the points set out in the Direction from the Legal Member at the last CMD. The Applicant had been given the opportunity to put forward a stateable claim and had failed to do so. Mr Forrester Smith stated that the Respondent was being prejudiced by the considerable length of time taken to deal with the matter, and it would be manifestly unfair on the Respondent to continue the matter for another six months to another hearing. The tenancy deposit had been repaid to the Respondent in accordance with the tenancy deposit scheme regulations. The Applicant was entitled to dispute the payment of the deposit to the Respondent and had chosen not to do so. The Respondent had chosen not to pursue any claim for the withheld rent and had drawn a line under the matter. Mr Forrester Smith said he was confused as to what possible remedy the Applicant could have, as he had failed to avail himself of adjudication by the tenancy deposit scheme.

11. Mr Forrester Smith said the previous Legal Member had been very clear that the application was baseless, and had allowed the Applicant time to put forward a stateable claim. The Applicant had not done so. The Applicant had not done any of what he was told to do. Mr Forrester Smith said he was concerned that the Appellant would be able to relitigate matters within the vast swathe of entirely irrelevant material lodged by the Applicant. Mr Forrester Smith made a motion to dismiss the application.

12. The Legal Member indicated that the motion to dismiss was denied. The Applicant had narrowed down his claim to a stateable claim in respect of the tenancy deposit. The Legal Member explained to Mr Forrester Smith that the Applicant is not prohibited from making an application to the Tribunal where no adjudication has taken place by the tenancy deposit scheme. Adjudication is not compulsory, as set out in Regulation 34(4) of the Tenancy Deposit Schemes (Scotland) Regulations 2011.

13. Following the CMD, the Tribunal decided to set matters down for an evidential hearing to take place by video conference. The matter to be decided was whether or not the Applicant was entitled to the return of his tenancy deposit. Parties were reminded that there is no barrier to settlement discussions taking place outwith the Tribunal if so minded.

14. By email dated 26th May 2026, the Respondent representative informed the Tribunal that an offer had been made to repay the deposit of £695 to the Applicant.

15. By email dated 29th May 2026, the Applicant informed the Tribunal that he was not prepared to accept an offer which was made without admission of liability and would prevent the substantive issues from being considered. The

Applicant asked for permission to amend and restore the claim to reflect the wider basis of his original position.

16. By email dated 9th June 2026, the Respondent representative opposed the application to amend the application.

17. By email dated 20th June 2026, the Applicant stated as follows:

> *My principal claim is for continuing breach of tenancy/breach of contract by the landlord from the commencement of the tenancy until its termination. In relation to that head of claim, I rely on the sums paid by me under the tenancy as the financial benchmark for the damages sought. The total contractual value over the relevant period was £55,600, of which I actually paid £53,515, having withheld £2,085.*
>
> *My secondary claim is in relation to the withholding and non-repayment of the tenancy deposit. Under that head I seek repayment of the deposit of £695, together with such further award as may be competent and appropriate within the powers of the Tribunal.*
>
> *In addition, I seek recovery of my direct evidential expenses, namely:*
>
> *1. TRACE report: £500*
> *2. Independent EICR: £200*
> *3. Printing costs: £300*
>
> *The total direct evidential expenses presently claimed are therefore £1,000.*
>
> *I also seek a further award for distress, inconvenience and loss of amenity arising from the same continuing breach, in an amount to be assessed by the Tribunal or further specified in due course.*

18. By emails dated 22nd, 23rd and 24th June 2026, the Applicant provided further information and made Direction requests.

19. Parties were informed that the hearing scheduled for 21st July 2026 had been converted to a CMD to consider whether to allow the application to amend.

20. A CMD took place by telephone conference on 21st July 2026. The Applicant was in attendance. The Respondent was not in attendance and was represented by Mr Forrester Smith, Solicitor.

The Applicant's position

21. The Applicant said he had now realised that the case was based on a breach of contract. The Respondent had not met their statutory obligation to ensure the Property met the repairing standard throughout the tenancy. Responding to questions as to why the Tribunal should allow the application to be amended

again, the Applicant said he was unable to obtain representation. He was now focused on what the legal route should be, and required someone who could understand the electrical certification and tests.

22. Responding to questions as to his loss arising from the alleged breach, the Applicant said the loss was represented by everything he had paid on the contract because the Respondent failed to meet their obligations. The Applicant said he would not have remained in the Property if he had known the true position in respect of the electrical installation. The Applicant said he left as soon as he could be re-housed and that he was given additional points by the local authority because the Property did not meet the tolerable standard. The Applicant said he accepted it was difficult to quantify his stress over this matter. This had been exacerbated by the local authority, who had taken a proportionate approach and dealt with matters as a new issue, rather than considering historical matters. The issues were long-standing and affected other properties on the estate.

23. The Applicant said the electrical certification was insufficient, so he withheld the rent for three months. The Applicant said the Respondent then moved towards eviction and the Applicant had to move out. The Applicant said he could not stay, knowing the Property was unsafe. The Applicant said issues in the previous EICRs had been miscategorised and downplayed. The 2017 EICR is not legitimate. The Applicant said he would question why the Respondent used different electricians rather than their usual electrician who knew about the system. The Respondent only dealt with the smoke alarm issue.

24. Asked whether he had been aggrieved by the Respondent denying liability in offering settlement, the Applicant said this was avoiding the issue. The Applicant said he thought this matter should be discussed rather than just accepting the offer. The Applicant said the deposit would have accrued interest over the period since the end of the tenancy. The Applicant said he would rather argue the matter than have the money back. The most recent certification should be looked at, as it was not an EICR, and was not sufficient to deal with the problems.

25. Asked whether he had made an application to determine whether the Property met the repairing standard while he was a tenant, the Applicant said he thought he had the support of the local authority, but they did not support him when he moved out.

26. The Applicant said the Tribunal should be looking at this, but he may consider whether he could raise the matter in another place. The Respondent's failure should be a point of public record, even if the Applicant had got it wrong when making the application. The Applicant said he could get an expert witness to scrutinise and report on the paperwork.

The Respondent's position

27. Mr Forrester Smith said the position was as set out in the email of 9th June 2026. The Respondent did the correct thing throughout and attended to issues when they were raised. The Respondent lived in an adjacent house, and it would have been in their interests for the electrical installation to be dealt with promptly and properly.

28. Mr Forrester Smith said there was no eviction. The decision to issue a notice to quit had nothing to do with this matter. The Respondent wished to sell the Property and the estate. The Applicant chose to leave. The estate was sold. Mr Forrester Smith said the issue was with a socket in an external greenhouse, and not inside the Property.

29. In respect of the application to amend, Mr Forrester Smith said concerns had been raised at the first CMD as to the legal basis of the case. The Applicant had failed to comply with a Tribunal Direction. The Applicant restricted the claim voluntarily and was now seeking to rewind after a considerable period. Mr Forrester Smith said there is no basis for a claim of this scope and breadth to be resubmitted. There was nothing to justify a full rent abatement. The correct paperwork was in place throughout the tenancy and required works were carried out.

30. In response to questions from the Tribunal, Mr Forrester Smith confirmed the offer to refund the deposit was still in place.

Tribunal decision on application to amend

31. The Tribunal decided not to allow the application to amend. The Tribunal was not persuaded there was justification for allowing amendment given the history of the application and the fact that the Applicant voluntarily restricted the scope of the application before the previous CMD. An offer of settlement has been made, and remains on the table.

32. The Tribunal must observe the overriding objective, by dealing with proceedings justly. It would not be just to allow the Applicant to reinstate this large claim having previously amended the claim significantly to a single issue. The Tribunal must avoid unnecessary delays, and the application has already been delayed significantly to reach this point.

33. The Tribunal is not persuaded that there would be any prospects of success if the application was amended. The Applicant has lost the opportunity to make an application during the tenancy to determine whether the repairing standard was met.

34. In order to successfully claim breach of contract, the Applicant would have to show a quantifiable loss or injury from the alleged failure to meet the repairing standard. No evidence has been provided to substantiate such loss. The email correspondence between the parties from July 2023, when the Applicant raised

the issues in respect of EICRs with the Respondent, to December 2023 when the Applicant left the Property, does not support any quantifiable loss or injury from the alleged failure to meet the repairing standard. The Applicant did not inform the Respondent that he was living in fear due to the issues, or that his health had been affected. The Applicant denied access to the Respondent's contractor to carry out electrical work. There is no medical evidence of stress or anxiety caused by the Respondent's alleged failures. The legal threshold for an award of this nature is high, and the evidence of how the Respondent's alleged failures harmed the Applicant is not there.

35. The Tribunal is not persuaded that the Applicant could successfully argue that an abatement of rent was due in respect of the alleged breach, as the electrical installation within the Property worked without any issues throughout the tenancy. In Scots law, a rent abatement is an equitable remedy based on the concept of loss of use and enjoyment. A tenant can claim that they are entitled to pay less rent if they did not get what they contracted for. In order to make such a claim, the Applicant would have to show that he could not use or enjoy the Property because of the electrical issues. That is not the case. Rent abatement cannot be imposed as a fine or penalty against the landlord for a failure to meet the repairing standard.

36. The correct route, which the Applicant has already taken, to raise issues in respect of safety certification, is the local authority. The Tribunal noted that the case file contained extensive correspondence between the Applicant and the local authority, and the Applicant and his local MSP. The local authority stated in writing that the Property was of a high standard, that the tolerable standard was met, and that the work was carried out satisfactorily following the Applicant's complaints. The Tribunal also noted that the Applicant said he had evidence to show that he was rehoused because of the standard of the Property.

37. The application to amend the application to reinstate the original claim, or a version of it, was, therefore, denied.

38. The Tribunal decided to issue a Direction in respect of further procedure, in the following terms:

The Applicant is required to provide within 14 days of the issuing of the Direction:

1. Written representations as to why the application should not be withdrawn or dismissed, given that the Applicant seeks return of the tenancy deposit of £695 and the Respondent has made an offer of payment of the sum sought.

Reason for Direction

Following a Case Management Discussion ("CMD") on 21st July 2026,

the Tribunal refused to allow the Applicant to amend his application to reinstate his original claim for breach of contract. As a result, the application before the Tribunal seeks the return of a tenancy deposit in the sum of £695. At the CMD, the Respondent representative confirmed that an offer in the sum of £695, which had been previously made and refused by the Applicant, is still on the table. There would appear, therefore, to be no dispute between the parties and nothing further for the Tribunal to rule upon. The Applicant indicated he would wish a hearing so that documentation which would prove an alleged failure by the Respondent to comply with repairing standard obligations could be considered fully by the Tribunal. The Tribunal cannot grant any greater remedy than the offer that has been made, no matter what conclusions are reached about the paperwork. There is no active dispute between the parties that requires the Tribunal's judgement. The Tribunal is bound to observe the overriding objective and avoid delay. There is no benefit to the matter being drawn out when an offer of settlement in the exact sum sought is on the table. A hearing on the matter would be disproportionate.

39. By email dated 8th August 2026, the Applicant lodged extensive written representations, seeking to reframe his arguments and requesting the Tribunal not to dismiss the application.

40. By email dated 8th September 2026, the Respondent representative lodged written representations seeking dismissal of the application.

41. The Tribunal issued a further Direction to the Applicant dated 17th September 2026 in the following terms:

> The Applicant is required to provide:
>
> > A final indication as to whether he intends to accept or refuse the offer made by the Respondent in the sum of £695.
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> The said information should be lodged with the Chamber no later than close of business on 14 days after the issuing of this Direction.
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> **Reason for Direction**
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> Following a Case Management Discussion ("CMD") on 21st July 2026, the Tribunal refused to allow the Applicant to amend his application to reinstate his original claim for breach of contract. The Applicant has made further representations, requesting that the Tribunal allow the amendment. The Tribunal has already decided not to allow the amendment for the reasons stated in their note of the CMD on 21st July 2026. The Tribunal intends to determine the proceedings without a hearing and issue a decision. The Tribunal is aware that the offer of £695 has not been withdrawn. The Applicant should now confirm their intention to accept or refuse the offer.

42. By email dated 1st October 2026, the Applicant indicated his acceptance of the Respondent's offer in the sum of £695, stating that his acceptance of the offer was not intended to withdraw, compromise or waive any competent right he may have to seek review or permission to appeal the Tribunal's refusal of his application to amend or in relation to any final decision issued by the Tribunal.

Findings in Fact

43.

(i) Parties entered into an assured tenancy agreement in respect of the Property which commenced on 1st April 2017 at a monthly rent of £695.

(ii) In 2017, an Electrical Installation Condition Report ("EICR") was issued in respect of the Property.

(iii) In 2022, an EICR was issued in respect of the Property.

(iv) In 2023, an EICR was issued at the request of the Applicant in respect of the Property.

(v) In 2023, the Applicant raised an issue in respect of the Respondent's alleged failure to install interlinked smoke and heat alarms before February 2022.

(vi) In 2023, the Applicant raised issues in respect of the EICRs, including the status of the electricians carrying out the reports, and alleged misrepresentation of serious faults and safety issues.

(vii) In 2023, the Applicant complained to the Respondent that he had no record of PAT testing having been carried out. The Respondent stated that this was not required.

(viii) During the tenancy, the Applicant did not report any issues in respect of the operation of the electrical installation.

(ix) By notice to quit dated 3rd August 2023, the Applicant was required to remove from the Property by 1st November 2023.

(x) The Applicant withheld the rent for the final three months of the tenancy.

(xi) The tenancy ended on 1st December 2023.

(xii) The Respondent was allocated the tenancy deposit of £695 by the assured tenancy deposit scheme.

Reasons for Decision

44. The Tribunal's decision in respect of the application to amend is set out at paragraphs 31 to 37 above.

45. Given that the application to amend has been refused, the remaining matter before the Tribunal is the return of a tenancy deposit in the sum of £695. The Respondent representative has confirmed that an offer in the sum of £695 is still on the table. The Applicant has confirmed his intention to accept the offer. There is, therefore, no dispute between the parties and nothing further for the Tribunal to rule upon. The Tribunal cannot grant any greater remedy than the offer that has been made. There is no active dispute between the parties that requires the Tribunal's judgement. The Tribunal is bound to observe the overriding objective and avoid delay. There is no benefit to the matter being drawn out when an offer of settlement in the exact sum sought is on the table. A hearing on the matter would be disproportionate.

Decision

46. The application for an order for payment is refused.

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.

H Forbes

Legal Member/Chair

13th October 2026
Date