



**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/19/1954**

**Re: Property at Flat L 2, Brown Street, Dundee, DD1 5EJ (“the Property”)**

**Parties:**

**Martin & Co, 14 Golden Post, Hereford, HR2 7BZ (“the Applicant”)**

**Mr Russell Brown, 18 Greig Court, Aberdeen, AB25 1FA (“the Respondent”)**

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**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member)**  
**Jane Heppenstall (Housing Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £1,220 should be granted in favour of the Applicant.**

**Procedural Background:**

**Background:**

The application was made on 21 June 2019 by the Applicant’s representatives Campbell Boath. The application asked for an order for payment then of £1,100 rent arrears for the property.

Attached to the application were:

1. the Tenancy Agreement for the property commencing 9 March 2017 with copy AT5 form completed 4 February 2016
2. Deposit Status form
3. Statement of account to 2 March 2019

On 12 August 2019 the Respondent lodged a 10 point reply to the application and advised that he had moved to Aberdeen. A Case Management Discussion (CMD) was scheduled for 24 September 2019 but the Applicant and the Respondent asked

for a postponement due to the Applicant's representative being on annual leave and the Respondent stating he was unable to travel due to a lack of funds. A further CMD was scheduled for 9 October 2019 but the Respondent asked for a postponement due to work commitments in recently started employment. This was granted and a further CMD scheduled for 14 November 2019. The CMD note from 14 November 2019 and the Directions issued on 17 November 2019 are referred to for their terms and held to be incorporated herein.

In answer to said Directions the Applicant lodged a bundle of documents and further representations on 3 December 2019 as per the list of documents provided in the cover letter dated 3 December 2019. The Applicant also asked for the sum to be amended to £1,340 as per the updated rent statement lodged.

A brief reply to said representations was received from the Respondent on 5 December 2019 when he again referred to problems with the tenancy in 2017 and asked for the production of photographs taken by the Applicant in 2017.

A hearing was scheduled for 13 January 2020 and this was intimated to both parties on 6 December 2019. On 6 December 2019 the Respondent again stated in an email to the First-tier Tribunal that he would not attend a hearing unless the photographs he had referred to would be lodged. On 12 December 2019 the Respondent asked for the hearing to be postponed to March 2020 due to a course he wished to attend. The Tribunal issued further Directions to both parties on 18 December 2019 including a request to the Respondent to provide information regarding his postponement request by 23 December 2019. No information was received by 23 December 2019 and the postponement request subsequently refused. The Directions are referred to for their terms and held to be incorporated herein.

On 3 January 2020 the Respondent made representations that he would not be able to participate in the hearing due to lack of funds. On the same day in reply to the Directions the Applicant on 3 January 2020 lodged further submissions and subsequently on 10 January 2020 the photographs previously requested and a further adjustment of the sum sought to £1,220.

In order to accommodate the participation of the Respondent at the hearing the Tribunal offered him to participate by conference call and he confirmed to the Tribunal administration on 9 January 2020 that he would participate by conference call on 13 January 2020.

The Parties had been advised of the time, date and venue of the hearing on 6 December 2019. The Tribunal thus considers that the appropriate notice of more than 14 days in advance as required by Rule 24 of The First –tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules) had been given to the Respondent.

### **The Hearing**

On 13 January 2020 Mr Ian Burness from Martin & Co attended together with Mr Alec Campbell from Campbell Boath. The Respondent did not dial into the conference call. At a brief adjournment the case worker tried to telephone the

Respondent directly on 2 occasions but there was no reply. The hearing thus proceeded in the absence of the Respondent, who had received notification of the hearing.

At the hearing Mr Campbell for the Applicant confirmed that the application should be amended as previously intimated to £1,220. He explained that this represented the rent for the months of January, February and March 2019 less the amount already received from the deposit as shown in the documentation. The Tribunal noted that these amendments had been intimated to the Respondent prior to the hearing and granted the request to amend.

Mr Burness confirmed that the tenancy had been brought to an end by notice in terms of S 33 and S32 of the Housing (Scotland) Act 1988 and that the keys had been returned on or about 12 March 2019 by the Respondent. The tenancy had formally terminated on the 2 April 2019. He further explained that during the tenancy period the Respondent at no point had advised the Applicant that rent had been retained for the purpose of achieving works to be done and that the Respondent at no point during the duration of the tenancy had intimated that he was seeking an abatement of rent. In fact rent arrears had developed in July and August 2018 when the Respondent had problems with his income but the rent had been brought up to date again by the end of 2018. At no point had the matter of abatement of rent been argued by the Respondent during the period of the tenancy.

Mr Campbell also referred to previous submissions that the representations lodged by the Respondent did not constitute a defence to the payment action.

The written representations by both parties and the evidence lodged by both parties are referred to for their terms and held to be incorporated herein.

#### **Findings in Fact:**

- 1. The parties entered into a Short Assured Tenancy for the property with a start date of 9 March 2017 which was brought to an end on 2 April 2019.**
- 2. The Respondent had been residing in the property since July 2015.**
- 3. A deposit of £550 had been paid by the Respondent.**
- 4. Rent of £550 per month was payable monthly in advance.**
- 5. No rent was paid for the months of January, February and March 2019.**
- 6. The Applicant received the deposit from SDS which resulted in a part payment of the arrears of £430 as show in the rent statement lodged.**
- 7. As at the date of the hearing the arrears were £1,220.**
- 8. The Respondent had made several complaints about mould and moisture in the property in or about March 2017.**
- 9. This had been timeously addressed by the Applicant.**
- 10. At that time complaints arose the Respondent had not made any claim that rent for the property should be abated or retained.**

#### **Reasons for the Decision:**

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant.

At the CMD the Tribunal member had identified the following matters to be determined:

1. was there a breach by the Applicant of clause 8.4.1 of the tenancy agreement?
2. when had this taken place?
3. did this entitle the Respondent to retain the rent or have it abated and if so to what extent?

The Respondent did not dispute that rent for the months of January, February and March 2019 had not been paid. He also made no representations to dispute that the amount unpaid as per the calculation submitted by the Applicant was £1,220.

In his written representations he did argue that due to complaints he had itemised in his representations of 12 August 2019 about mould and moisture in the property as well as an allegedly unsafe electric socket in the kitchen and problems with lights in the hallway he should not have to pay the outstanding rent. He did not provide any documentary evidence on any of the alleged issues and did not participate in the hearing to speak to these matters.

The Applicant had lodged detailed documentary evidence regarding the nature of the complaints, the photographs of the mould issue in March 2017 and had lodged documentary evidence to show that these matters had been dealt with in 2017 by the Applicant.

The Applicant in his statement of 22 November 2019 confirmed that the mould issue had been dealt with appropriately by cleaning the area and applying anti mould paint as shown in Invoices 1 and 2 of the bundle dated 9 June 2017. The Applicant also had set out advice provided to the Respondent regarding how to keep the property aired and heated to avoid further problems.

With regard to a problem with the loft insulation the Respondent had been referred to the Block Factors West One Properties for any damage to the Respondent's clothing after a leak had occurred in the attic space. This was evidenced by the correspondence lodged regarding the leak and loft insulation for 2 May 2017.

The Applicant further referred in the statement to never having received complaints about an electric socket but set out that electricians attending the property never mentioned an unsafe socket. The electrician's visits were evidenced by invoices 3 and 4 of the bundle.

The Applicant provided evidence that the property and in particular the cooker had been cleaned prior to the start of the tenancy (as per invoice 5 lodged in the bundle) and that the issue of small marks on the laminate had been noted and recoded at the start of the tenancy as per the inspection report of 13 August 2015.

The Tribunal had no information from the Respondent regarding any discussion about abatement of rent at the relevant times of complaints about the condition of the property in 2017.

The Respondent had been asked in Directions of 18 December 2019 to set out precisely which complaints had been made and to explain how this might provide a defence to his obligation to pay rent for the property in 2019. He did not do so.

Although he made unspecified allegations that he had to visit hospital and get a chest X-ray, no date was given and he provided no medical evidence and no evidence of any link of that alleged hospital visit to the claim in question.

He did not make any representations setting out how the matters he may have complained of in 2017 related to his obligation to pay rent in 2019.

Neither party referred the Tribunal to any case law.

The Applicant in his representations of 3 January 2020 referred the Tribunal to the textbook by Peter Robson quoting that “withholding rent had to be distinguished from a counterclaim where the tenant refuses to pay rent because of the problems and formally meets a claim for rent with a claim for damages” and arguing that as no claim for damages had been formulated the rent is due.

Having considered the above the tribunal answers the matters to be determined as follows:

#### Question 1:

The Tribunal accepted that although there had clearly been some problem with mould and moisture in 2017, the Applicant had resolved this within a reasonable time and had provided appropriate advice to the Respondent as to how to keep the property aired and heated to address this matter. The matters raised with regard to the electric socket, lighting and marks to the flooring were not sufficiently evidenced by the Respondent to be considered. The Tribunal thus considered that the complaints regarding the state of the property did not amount to a breach of the tenancy agreement clause 8.4.1 as there was no breach of the repairing standards in terms of the Housing (Scotland) Act 2006 and although there was a leak leading to moisture in the loft insulation in the attic in May 2017 and some issue with condensation in 2017, this was addressed within a reasonable time by an immediate referral to the Block Factors on 2 May 2017 for the loft insulation and appropriate treatment and cleaning of the mould in June 2017.

#### Question 2:

The relevant complaints regarding the property had arisen in 2017.

#### Question 3:

The Tribunal was satisfied that any problems with the tenancy had occurred in 2017 and not at the time the arrears of rent arose. Previous rent arrears in 2018 had been made good. The Tribunal found that there was no apparent causal link between the complaints of the Respondent to the Applicant in 2017 and the non payment of rent in 2019. The Respondent had not sought an abatement of rent at the time when there had been a complaint made regarding the state of the property and had only

raised the matter of the complaint in 2017 once the Applicant had made the application for payment to the Tribunal.

The Respondent had not formulated a claim for damages.

The reference in text books such as the reference in Peter Robson's book on Residential Tenancies (3<sup>rd</sup> edition page 80 item 4-17) make it clear that if rent is retained "advisors make it clear in a situation where an abatement is sought that the rent is not simply being retained pending remedial action". This indicates the requirement for a link between any rent retention by a tenant and the request to have the rent abated. Indeed the leading case on rent abatement, Renfrew District Council v Gray 1987 S.L.T. (Sh Cr) 70 deals with circumstances of rent retention then resulting in a claim for payment.

There had been no retention of rent by the Respondent at any time. The Tribunal considered that in this case there was no link between any issues with the property and the non payment of rent. The Tribunal was thus satisfied that whatever problems may have been present in 2017 with regard to the property would not entitle the Applicant to an abatement of rent in 2019.

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## Decision

**The Tribunal grants an order against the Respondent for payment of the sum of £1,220 to 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.

**Petra Henning - Mcfatridge**  
Legal Member/Chair

*13 January 2020*  
Date