



**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/19/3463**

**Re: Property at 128 Auchinraith Road, Blantyre, G72 0XR (“the Property”)**

**Parties:**

**Miss Aimee Douglas, Mr Mark McCrae, 18 Coursington Gardens, Motherwell, ML1 1LT (“the Applicant”)**

**Mr Fouad Anis, Mrs Angel Anis, ; Casa Amira, Hyndford, Lanark, ML11 9TD (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.**

- Background
- 1. This was a hearing to consider the application by the Applicant for damages for breach of contract and breach of statutory repairing duty under Rule 111 of the Tribunal’s rules.
- 2. The Applicants alleged that *“The Property had mould, dampness and excessive moisture which damaged many of our belongings. This was caused by the roof not being watertight This was brought to the landlords attention but they delayed making the necessary repairs and so certain items of our property were damaged and required to be replaced.*
- 3. *The Applicant was seeking a payment of £745 in compensation for items they claimed were lost due to the Property not being wind and watertight namely:-*
  - a. *A 24 inch TV – replacement cost of £148*
  - b. *Ikea Rug – cost of £45*

- c. *Bed frame - £132*
- d. *Chest of drawers - £215*
- e. *Mattress - £60*
- f. *Mattress protector £20*
- g. *Bedding £60*

Following enquiry by the Tribunal, the Applicant accepted that the value of items claimed amounted to £680 only and agreed to amend the claim to this reduced sum. This amendment to the application was accepted by the Respondent and agreed by the Tribunal.

4. At the hearing only Mr McCrae of the Applicants attended in person with his representative Mr Bruce Clayson.
5. The Respondents both attended and were unrepresented.
6. Prior to the hearing there were 2 CMDs held on 6<sup>th</sup> March 2020 and 12<sup>th</sup> August 2020. At the first CMD the Applicant advised they were seeking compensation for damage to possessions as the Property was not wind and watertight. The Respondents denied this completely and produced documents indicating the roof was fully repaired prior to the tenancy commencing. The Applicant's representative claimed that he had photographs showing the condition of the property and that witnesses could speak to it, the legal member then invited comments on the nature of damage to the possessions and the value of them and the Applicant's comments were to the effect that mould and dampness had affected each item mentioned above and the cost attributed to each item was the cost of purchasing a new similar item.
7. The Tribunal made comments in the CMD note that it would expect something to show a causal link with the damage before it could consider making an award and that the value of each item should be the value of the item at the date of destruction or damage or the diminution of the value should it not be destroyed.
8. The CMD was then continued for the parties to lodge further evidence with a list of witnesses.
9. The second CMD was held on 12<sup>th</sup> August, there being a considerable delay and postponement of the CMD due to the current Covid 19 pandemic. The second CMD took place by teleconference due to the need for social distancing. No productions had been lodged by either party at that CMD.
10. Further to the second CMD the applicant lodged 22 photographs and stated that both Applicants would attend the hearing as witnesses. The Respondents slightly later lodged some WhatsApp messages and photographs from Mr McCrae and their own photographs amounting to some 25 in number.
11. The Tribunal had therefore the following papers before it:-
  - The Application dated 20<sup>th</sup> October 2019
  - Written submissions from the Respondent
  - List of evidence from Applicant which consisted of 22 photographs
  - Copies of statements from 6 contractors and a neighbour for Respondent

## The Hearing

12. The Applicant's evidence was given by Mr McCrae in response to questions posed by Mr Clayson.
13. Mr McCrae began by advising he and his partner Ms Douglas were tenants in the Property along with their two young children aged 2 and a baby and advised that for a short time Ms Douglas's brother came to stay with them in the Property before he went to the army.
14. Mr Clayson asked Mr McCrae to explain his occupation and it was confirmed Mr McCrae is a sales representative for Capita but he advised at one point he was a surveyor for a moulding and dampness company where he worked for 5 months and received training on recognising types of dampness.
15. Mr McCrae advised that he first noticed mould growth in the bathroom in January 2019, specifically on the ceiling. He said it wasn't too bad, being only a small patch which could have been dealt with quickly and easily. He advised that told Mr Annis the fan wasn't big enough. Mr Annis had people out to look at it was determined the fan should be on for longer. He confirmed that "We left the fan and light on with window open. Didn't go away and extended to whole roof. Mr McCrae confirmed that Mr Annis his landlord had visited and took numerous steps including having a builder out and he advised it needed a new fan or a switch that would mean it was on for longer." On another occasion he advised Mr Annis had given them a humidifier and used mould spray and maybe painted the roof.
16. Mr Clayson then asked Mr McCrae to look at the photographs and went through each one starting with numbers 21 and 22. He asked Mr McCrae when they were taken. Mr McCrae replied "Not sure, after the tenancy, when we moved out at end of May 2019? He advised that the mould was still there and none of the steps taken had sorted it.
17. When asked what 19 and 20 showed he was not sure. He thought 19 was the living room because it showed a carpet but was not sure what no 20 represented. He then stated that a "lot of them are unrecognisable". Mr Clayson advised that Mr McCrae has written on the back of them and said 19 was the bottom of toilet unit and no 20 was the rim of the toilet. He then went on to confirm that none of the items Mr McCrae was claiming for were in the toilet and Mr McCrae agreed that was the case. Mr Clayson asked if there was mould in the rest of the property and Mr McCrae said "yes pretty much in every room."
18. Mr Clayson then asked what was the cause in Mr McCrae's opinion and from his experience and training and Mr McCrae confirmed that he thought it was the lack of damp proofing in a sandstone property. He said there would be holes in the property where resin would be inserted and when asked if any specialist damp proof specialists or contractors came to the house he said he did not believe so but he thought the people that had come out were friends of the landlord.
19. Mr Clayson came back to questions regarding the photographs and Mr McCrae confirmed 17 was a picture of mould on silicon round the window frames. Mr Clayson said on back of the picture it was described as bedroom. Mr McCrae could not tell which room picture no 18 related to. He did however confirm that nothing in the bedrooms for pictures no 17 and 18 were damaged as the list of items he was claiming for were in the room in the extension of

the property where Ms Douglas' brother stayed and where he advised they had the main issues.

20. Photographs 15 and 16 were identified on the applicant's inventory of productions as the main living room area. Mr McCrae went on to say every window in every room was affected "so very difficult to say what rooms were what". With prompting from Mr Clayson he confirmed that no 16 was a picture of the back door.
21. He then identified photographs no 13 and 14 as rising damp at the staircase and said water was coming in through the property and he advised a builder came out to the property to move the air brick up the wall, which was done it, was removed placed higher and the previous space filled in. He also said he was told it would dry up but said it didn't.
22. Mr McCrae agreed that the landlord had tried to fix problems but they hadn't worked.
23. He was then asked to comment on photos 1 and 2 and confirmed that this was a picture of damage to a chest of drawers. He confirmed that all the items the Applicants were claiming for were in the extension to the property confirming "yes rugs, TVs, all sorts were ruined". He also confirmed however he had no receipts for any of them. He advised the chest of drawers was from Ikea and when asked if £215 was not quite expensive he advised that "his partner does not have a cheap taste in furniture" and that if it had been possible to buy good second hand they would but could not find items of the same condition. Mr McCrae confirmed that he believed the mould had spread to the chest of drawers, that the extension room was not wind and watertight and the felt roof over the extension was completely rotten as a contractor who came out had shown him the rotten wood.
24. Mr McCrae was then asked to confirm if there were 3 issues with the Property namely
  - a. Generally rising damp
  - b. Issue with the extractor in the bathroom not being adequate and
  - c. The extension having a leak.

Mr McCrae confirmed this was correct. In relation to the extension he said a contractor came and stripped the roof back and replaced it when he was present. He was asked if he witnessed damp him in the extension and said "Yes every morning when Calum was going out I would make the bed, open the window and wipe up moisture." Mr McCrae indicated this moisture was on the window ledge.

25. Mr Clayson then returned to question Mr McCrae about the remaining photographs and Mr McCrae confirmed they showed mould potentially for photos 3 and 4 in a bedroom but he wasn't sure which, and no 4 was perhaps a painted skirting board where he felt it showed rising damp. Photos 5 and 6 were perhaps bedroom behind the door and kitchen area. Again he mentioned a lot of the pictures were unrecognisable. Photos 7 and 8 he thought were living space or one of the bedrooms and mould on the wall in the hallway. Photos 9 and 10 – there is a circle in no 10 and so Mr McCrae identified that as the roof of the kitchen where he advised there had been a leak from a pipe above. He advised there were multiple visits to the property and the damp patch may not have been painted over. He described no 9 and nos 11 and 12 as mould in the living room.

26. Mr Clayson asked if there were any other issues with the Property and Mr McCrae advised that there were some including use of a garage space; lack of gas or electricity certificate.
27. In summary Mr McCrae confirmed that property suffered from dampness from various sources and mould had appeared on various items.
28. Mr McCrae then commented on the items the Applicants are claiming for:-
- a. A TV costing £148. He advised that Ms Douglas' brother was staying for a while and under questions from the Tribunal he confirmed that this was probably from after Christmas until about March, and the furniture was put in to the room to give him living space. The window and window sill in that room was pooling with water and he believes the condensation caused the TV to stop working. He confirmed that they did not try and get it repaired, that the cost of £148 was the cost of buying a replacement and that pretty much everything they had was brand new and they couldn't get second hand items. Under questioning from the ordinary member of the Tribunal the Applicant confirmed that they may have been a year and half old. Mr Annis also questioned the age of the items claimed and suggested they Mr McCrae had told him they were maybe 2 years old. Mr McCrae responded by saying "they were not brand new but were in good condition." He also confirmed that they have replaced all the items claimed.
  - b. The Applicants are claiming for a replacement bedframe for £132 and Mr McCrae advised the bedframe was affected by mould as were the bedding and mattress. He advised under questioning that the mould was found on the wooden slats of the bed frame as the head board and base were metal. This was found he explained when they changed the bed and he also confirmed that the Applicants had dumped all of the items.
29. Mr McCrae confirmed he had showed the mould on chest of drawers to Mr Annis but he didn't say what he was going to do about it. Mr McCrae confirmed he had not withheld any rent or advised prior to leaving the Property that he wished compensation. He advised he brought this action after pursuing the failure to lodge the deposit in a scheme as that claim was a priority. Mr Annis asked why Mr McCrae had not sent him or shown him these photographs of windows and mould prior to raising the action and sent them only to the Tribunal? Mr McCrae advised this was because they had asked Mr Annis to come to the Property however Mr Annis then advised that the parties had not been able to agree a time to conduct the inspection of the Property at the end of the tenancy and Mr McCrae had instead sent some photographs of the rooms and they don't show any mould. Mr McCrae's response was that rising damp usually shows on the external walls.
30. The Tribunal then asked some questions of Mr McCrae. He advised that the room in the extension was used by them as a bedroom but could be a dining room. It is on the ground floor and has a flat roof. He also advised that the extension was brick built with a roughcast finish as opposed to the sandstone structure of the original building. He advised that they had received a large bill for gas and so decided to use oil heaters in the Property. He advised they had one in each room but not the front living room. He confirmed they didn't use the radiators and central heating mostly. That there had been an issue with the boiler but this was fixed and someone came out to clear gunge in the

radiators but said that they remained tepid. He also confirmed that at Christmas they were using both heating systems as the oil heaters were not heating the Property up properly. He did not believe he contacted the landlord about issues with the heating but did raise issues with mould and damp before they left the property. He said that either Mr Annis would attend to the issues of contractors but would never engage the right ones.

31. Mr McCrae confirmed that none of the photographs taken and submitted as evidence for the applicants were of the extension room. He also advised that there was no physical mould in that room only water ingress from the roof.
32. Mr McCrae confirmed that a builder came out to the property several times and provided joinery for the fan and moved an airbrick. He was not sure when that would have been. That the flat roof over the extension was replaced possibly about January time and that after the roof was replaced it wasn't bad some condensation on windows. Advised that he was not sure if it had dampness but believes there were issues. Said there was a leak in the roof (over the extension) but then advised it was fixed. Also confirmed later in evidence and under questioning from Mr Annis regarding the extension that roof was sagging for a while and the contractors had showed him rotting wood but confirmed that there was no physical water dripping down the wall.
33. Mr Annis asked about where the Applicants found out about the Property and Mr McCrae confirmed it was from his partner's mother who they don't now speak to. Mr Annis confirmed that Property was being fully refurbished and asked if the Applicant had agreed to move in before the Property was finished. Mr McCrae advised they had nowhere to go and there were only a couple of things to be done. He agreed that he did see brickwork in the kitchen and that plastering was being carried out. He disputed they had ever been given a gas certificate although he agreed they received a service certificate.
34. The parties disagree over whether the landlord had approved of Ms Douglas' brother staying in the Property prior to his moving in or agreed to this after he moved in. They disagree over whether the replacement of the flat roof was prompted by the Applicant mentioning it was sagging or whether it was pre planned as part of the overall refurbishment. They disagree over whether there is damp proofing in the Property
35. After a break for lunch the hearing resumed in the afternoon and Mr Annis gave evidence first.
36. Mr Annis explained that he brought the Property from a friend as he had an emotional attachment to it and thought it would be useful for his daughter to stay in later on. He advised it had to have extensive renovation, which took a year and half and it was Ms Douglas' mother who asked Mr Annis to rent it to her daughter and her partner. This was his first property as a landlord and he was not sure what he should rent it out for' He claimed he was not really ready to rent it out and felt that Mr McCrae claimed that Mr and Mrs Annis took advantage of them as a young couple but Mr Annis felt it was more the other way around. He thought it should be rented for £750/800 but Mr McCrae said they couldn't afford that and eventually he agreed to rent it out for £645. Due to his inexperience as a landlord Mr Annis confirmed he did not register as a landlord straight away or prepare a contract until the tenants moved in.
37. Mr Annis confirmed however that he made sure the radiators were all in and working and had the plumber working to ensure this to midnight before it was

let out. Mr Annis categorically denied there was any leak in the extension roof but said there was a leak from a pipe into the kitchen ceiling and this was repaired straight away. Mr Annis disputed that some of the Applicant's photographs were even of his Property as he did not recognise the window shape which in photographs 3 and 4 appeared to be a different angle from any of the pictures in the other rooms or the pictures lodged by the Respondents and did not recognise the photograph that appeared to be of a painted skirting board.

38. Mr Annis confirmed that as new landlords they did not realise the deposit had to be lodged in a deposit scheme and they have paid for that mistake (an award has been made to the Applicant in a separate claim). He confirmed that any issues Mr McCrae raised were sorted straight away.
39. Mr Annis agreed there was dampness in the bathroom. He referred to the contractor's statements that advised there was a lack of heating and ventilation in the Property and Mr Annis advised the walls were wet walls and needed more ventilation and the light in the bathroom should be left on for longer to allow the extractor to work.
40. Mr Annis also advised that the roof over the extension was reroofed as part of the planned renovations and referred to the quote lodged in evidence dated which refers to the extension roof being done.
41. Mr Annis confirmed that as a parent himself he wouldn't want anyone to live in the Property if it wasn't fit to be lived in and any issues were dealt with properly. He referred to the photographs that he and his wife had lodged and it was clarified that some of them were taken by the agent who they engaged after the end of this tenancy to relet the Property, which showed no mould in the rooms. He also referred to the rest of the photographs lodged which were taken recently by Mr Annis himself and show the same wallpaper which the Applicant confirmed was put up by the himself as a tenant. Mr Annis referred to this evidence as showing that the property does not suffer from dampness as there was no sign of the paper being affected by dampness and no sign of damp or mould on the walls or windows.
42. Mr Annis confirmed that there was a tenant after Mr McCrae and Ms Douglas and they did not complain of dampness or mould.
43. Mrs Annis supported her husband's statements confirming that it was not their original intention to let out the property and that they would never have let it out to a young couple with a baby if it wasn't fit for purpose.
44. Mrs Annis was more angry in her presentation claiming that the tenants had left rubbish and other issues in the property but this wasn't part of the dispute and it was not confirmed or otherwise by any evidence.
45. Mrs Annis had submitted a written response earlier when she enclosed 6 letters from workman who had been to the Property before during and after the tenancy period. In that e-mail she confirmed that mould on the bathroom ceiling was caused due to lack of ventilation and that Mr McCrae had been reminded to keep the vent on after a shower by a few workmen when she instructed them to look at it and fix the problem. She advised that each of the workmen had concluded that the problem was caused by steam. She also advised in the e-mail that "Mark and Aimee were feeling it having to pay for the gas and noticed the few times I was allowed in the Property that the heating as not on when it was cold". Mrs Annis confirmed in her e-mail that the entire roof was renewed by ARH Contracts Ltd and that they had taken

every wall to the bricks and completed the damp proof course and it was re-plastered by Mr Tunnicliffe. She confirmed that they had spent a year doing the property up and had worked hard to get it ready as soon as possible spending a lot of money on it. She also confirmed that Mr McCrae was constantly asking me to let them move in before the work was finished.

46. The letters from the contractors are as follows:-

- a. Quote from ARH Contractors dated 11<sup>th</sup> September 2017 for full roof works to the Property including "flat roof flitted at rear extension". The total cost for supply and fit Including scaffolding and a skip was £7250.
- b. Letter from Mr K Tunnicliffe plasterer dated 23<sup>rd</sup> January confirming before and after June 2018 and January 2019 when he was at the Property plastering and in particular in January 2019 plastering after a damp proof course was inserted confirming *he saw no sign of damp or mould anywhere in the house.*
- c. E-mail from Mr Lewis Cutkelvin dated 10<sup>th</sup> February 2020 confirming that he carried out work within the Property "*consisting of fitting additional radiators in various rooms and filling central heating system making sure the system was holding pressure and therefore there were no leaks. There was a small leak in the roof space in the kitchen which Mr Annis was on top of very quickly and therefore was sorted that evening by myself. I believe there was a new roof fitted to the property prior to this and everything seemed dry and watertight at areas I was working.*"
- d. Email from ARH contractors dated 16<sup>th</sup> January 2020 saying that "*following up to the conversation I had with Mr Annis I can reassure that there is no water ingress coming from the new roof which we installed before the clients moved in. I have been back to the property to check it over inside when the clients said there was mould and dampness coming in from the roof. When I inspected the property inside I found that when the couple were having showers there was obviously a build-up of condensation because the extractor fan was never on and also they had the window closed all the time so the steams got nowhere to go. This mould section was only in the toilet.*"
- e. Letter from M. Fitzpatrick dated 20<sup>th</sup> January 2020 stating "*On January 2019 I was asked by Mr Annis to look at some small jobs at 128 Auchinraith Road including fitting a handrail and refitting some doors. I remember on entering the garden eh roof seemed in excellent repair although the garden needed some attention. ..Accepting the job on February 15<sup>th</sup> when I carried out the repairs as I worked I could not help but notice that there was little or no heating on. I got to the bathroom door it was warped that's when I noticed mould on the walls, the steam from the shower most likely causing the damage. After setting the door right I took a closer look. The dampness problem seemed minor probably caused by not opening a window or letting the extractor or letting the extractor run long enough. The lack of heat would not help either.*"
- f. Letter from Mr Keith Wardrop of KWP installations LTD dated 20<sup>th</sup> January 2020 advising he installed a washing machine for Mr Annis when there were tenants in the property and that the tenants had asked him to look at mould on the bathroom ceiling and he thought he



*radiators may be leaking. The contractor confirmed "I found no leaks and advised Mr Annis and the tenant that the issue was caused by condensation and to leave the vent and window open after a shower. The tenant never brought any other issues to my attention. I have been to the property on several occasions and I never noticed any mould in any other parts of the property. In my opinion the property was very well maintained and newly renovated. I have been in recently to fit a bath and the bathroom had no issues with mould on the ceiling."*

*g. The final e-mail lodged by the Respondents is from Fiona Cameron dated 21<sup>st</sup> September 2020 who states "We have known Fouad for 4 years. We have been fortunate enough to have access to his house when we have been doing work on our own house in July 2019 and more recently. On all occasions we have found the house to be in good condition specifically no sign of mould or dampness."*

47. Mr Clayson then asked several questions and cross examined the Respondents. He asked about what steps they had taken to find out about their landlord's duties the respondents accepted they were new to this and didn't look into it properly, they accepted they should have lodged the deposit in a scheme and registered as a landlord and any failure or delay was unfortunate and due to their naivety.
48. Mr Clayson asked if it was bought with a mortgage and Mr Annis responded that he bought it out of sentimentality not wishing to see it knocked down and spent a lot of his savings on it.
49. Mr Clayson challenged the statement made by the Respondents that the house was left in a dreadful state and mentioned the fact the Respondents did not claim the deposit. Mr Annis just referred to not lodging it in a scheme which he regrets. None of the photographs lodged showed any mess in the property.
50. Mr Clayson then questioned Mr Annis about the work done on the flat roof and said why did the estimate by the builder ARH contractors ltd dated 11<sup>th</sup> September 2017 mention fitting flat roof at rear extension if this was not done until the tenant were both in the Property. Mr Annis responded advising that he wanted the roof done but the roofer needed to order material for it and did it at a later date. He also clarified he paid for the majority of the works about £5300 before the tenants moved in and strongly refuted Mr Clayson's suggestion that Mr Annis had never intended to do the flat roof and only got the builder out when Mr McCrae mentioned that it was bevelling. Mr Annis strongly disagreed with this suggestion that the work was prompted by comments from the Applicant saying it that he had always intended it to be done and it was the roofer who could not do it at the time the rest of the roof was done.
51. Mr Clayson commented on the fact the statements provided by contractors are all in letters and not oral evidence and Mr Annis advised this was because he could not afford to pay them for their time to attend at the Tribunal hearing. Mr Clayson noted that this meant they could not be questioned.
52. Mr Clayson then challenged in particular a letter submitted by the Respondents from Mr Tunnicliffe the plasterer dated 23<sup>rd</sup> January 2020 confirming  
" Completed by June 2018 – every room in the house fully replastered.

Return to the house January 2019 –in the living room, hallway and kitchen as a precautionary measure several walls were fully stripped back to the brickwork, injected with a DPC (damp proof course) treatment, they had a membrane fitted and were re-plastered in order to prevent any damp or mould.

Before and after the above dates and works were completed I have never seen any sign of damp or mould in the house.”

Mr Clayson suggested that despite this there was no work done in the way of a damp proofing course which Mr Annis strongly denied claiming that there as a damp proof course installed but confirmed he didn't get a guarantee for it because that would cost extra. Mr Annis acknowledged this was another mistake he felt he had made and in hindsight should have paid for one.. Mr Clayson suggested that work had been done on the cheap but Mr Annis strongly refuted this the workman including the plumber and roofer were reputable and he did not do things on the cheap.

53. Mr Annis was then asked if he was contacted regularly about damp issues and Mr Annis confirmed only that he was contacted about the bathroom and a bedroom and sometimes Mr McCrae did not let the workman in. He then referred to WhatsApp messages dated April 2019 when it appeared the builder had called round and Mr McCrae had not been in and then said to the Respondents in the messages that this would just have to wait until we have left.

54. Mr Clayson then invited the Respondents to agree that the photographs lodged by the Applicants were a fair representation of the mould and dampness caused by the Respondents failing in their duties as landlords. Mr Annis strongly objected to this mentioning that the photographs sent by Mr McCrae at the end of the tenancy showed no sign of mould or dampness and if the house was like that the wallpaper would be falling by now.

- **Findings in Fact and Law**

1. The Applicants entered into a Private Rented Tenancy Agreement with the Respondents which commenced on September 2018.
2. The Tenancy ended on 31 May 2019
3. The rent agreed was £650 and was paid in full by the Respondents for the duration of the tenancy
4. The Property was renovated prior or at the commencement of the Tenancy.
5. The Roof of the main and older part of the Property was completely reroofed prior to the Property being rented and the flat roof over the room in the extended part of the property was reroofed or repaired in January 2019.
6. There was no leak in the flat roof during the tenancy.

7. New radiators were fitted into the property and they were bled during the tenancy to release a build-up of air in the radiators.
8. A repair to a leak from a pipe which resulted in water seeping into the kitchen was repaired during the tenancy.
9. The boiler was serviced during the tenancy.
10. The Applicant made numerous requests to the Respondent during the Tenancy for items to be checked or fixed and the Respondent responded promptly to all of these.
11. There was mould and dampness in the bathroom of the Property.
12. The Respondents attended to that mould and dampness by sending a contractor and having it looked at and advising the Applicant on how to use the fan and windows to ventilate it properly.
13. There was condensation and water on the window sill from time to time in the extension room used as a bedroom by the Applicants.
14. The cause of any condensation or build-up of water on the window was lack of adequate heat or ventilation in the room.
15. The Applicants moved out of the Property a few weeks prior to the end of the tenancy and went to live with Mr McCrae's mother.
16. At the end of the tenancy the deposit was repaid to the Applicants and the Applicants raised and were successful in claiming a penalty from the Respondents in respect of a breach of the Tenancy Deposit Regulations for failing to place the deposit in a scheme timeously.
17. There is no evidence to support the TV failed to work due to dampness.
18. Any damage to the chest of drawers, mattress, bedframe or bedding belonging to the Applicant was not caused by the fault or negligence of the Respondents.

### **Reasons for Decision**

19. The Applicants are claiming for damage caused by mould to various items of property however there are no pictures of the room in which that property was allegedly damaged by mould.
20. The mould that is shown in the pictures lodged by the Applicant relate to other rooms in the Property although they are close ups of the windows or walls and do not show the wider room so it is difficult to confirm they do relate to the Property. The pictures taken by Mr McCrae himself and sent by WhatsApp app to the Respondents as evidence of the good condition of the Property at

the end of the tenancy show no sign of mould. The pictures lodged by the Respondents of the property now show the same wallpaper as was there and placed by the tenant during the tenancy and there is no sign of damp affecting those rooms even after several months of the property being empty.

21. Mr McCrae was vague and inconsistent in his evidence. He needed prompted to say what the photos he lodged referred to; he claimed in one comment that there was no water penetration in the room in the extension but in another comment there was no mould only a leak. He is claiming in his application for compensation for damage caused by water penetration but agrees the flat roof on the extension was replaced in January around the time he claims he had a problem with mould.
22. Mr Annis agrees there was an issue with mould in the bathroom caused he believes by a build-up of moisture and lack of ventilation by the Applicants not leaving the fan on for long enough.
23. Mr Annis' evidence is supported by that of his wife and by the written statements made by 5 different contractors who all mention the house did not seem to be affected by mould apart from in the bathroom area where they put that down to lack of ventilation from not leaving the fan on or the window open. Some also commented that the house seemed cold and not heated adequately. Although the contractors were not able to give evidence personally and so could not be questioned their statements support each other and that of the evidence of Mr and Mrs Annis. It appears to be accepted and uncontradicted that various contractors did visit the Property, that the Respondents did arrange for repairs to be carried out timeously and so the Tribunal accepts that the contractors have carried out the work they state in their letters and e-mails and find their evidence to be credible about the lack of mould or damp other than in the bathroom.
24. The Applicants have admitted to receiving a large gas bill that caused them to use oil heaters in the house rather than the radiators and central heating and yet Mr McCrae also admitted this wasn't enough at Christmas to heat the house properly and they had to use the central heating. The downstairs living room had no oil heater in it and the extension room was alongside the kitchen also on the ground floor.
25. The Tribunal was convinced by the evidence of the Respondents that any mould in the Property was caused by lack of heating and ventilation by the Applicants. The Tribunal preferred the evidence of both Respondents. They were open and honest in their acceptance that they were new landlords and naïve, of how they failed to know about certain of their responsibilities as landlords such as landlord registration and the lodging of the deposit in an approved scheme. Their evidence however of the work they did on the Property and their response to any complaints or requests for repairs was clear and credible and supported by their photographic evidence and the written statements of the various contractors. It is also supported by the photographic evidence that was sent by Mr McCrae himself at the end of the tenancy in the what's app to Mr Annis. The Tribunal found that in respect of taking care of the fabric and fittings and fixtures in the Property the Respondents acted promptly and responsibly.
26. Mr McCrae confirmed that his landlord was responsive to complaints and agreed he sent various contractors to the property, including a builder to replace the roof on the extension although he felt that it was due to comments

- made by himself and not as the landlord argued part of a pre-planned replacement of the roof.
27. He provided no explanation or evidence as to why a TV should have stopped working if there was mould or condensation in the room.
  28. The Tribunal accepts that there may have been condensation or water gathering on the window ledge of the room in the extension but finds as fact that this was caused by lack of heating and ventilation rather than any leak in the roof as it was replaced in January 2019.
  29. There are no photographs of any of the items for which damage is claimed, other than of the chest of drawers, and there is no corroboration of the evidence of Mr McCrae that this damage was caused by mould however even if there was any mould on any of these items the Tribunal finds that this has not been caused by any leak in the Property or any failure or negligence of the landlords in their duties to keep the house wind and watertight.
  30. The Tribunal finds that the landlord has been responsive to any request for repairs and the property was refurbished prior to and just after the tenants entered the Property with the exception of the roof on the extension which was replaced in January 2019 the same time when the Applicant advised he started complaining of mould. The Tribunal finds no credible evidence that there was a leak in this room or evidence of dampness for all the reasons explained above. The Applicants evidence on this point was very inconsistent with him contradicting himself and confirming there was no leak under questioning.
  31. The Applicants have not proven on the balance of probabilities that there was any damage caused by a lack of the property being wind and watertight.
  32. Even if the Tribunal had found that there had been any loss effected by the fault or negligence of the Respondents which it has not, the Tribunal notes that the Applicants have not tried to mitigate their loss or estimate what the true value of their items.

## 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.**

Jan Todd

16<sup>th</sup> October 2020

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Legal Member/Chair

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Date

