



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of The Private Housing (Tenancies) (Scotland) Act 2016 and Rule 111 of the of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

**Chamber Ref: FTS/HPC/CV/22/0705**

**Re: Property at 17 School Brae, New Pitsligo, Aberdeenshire, AB43 6LQ (“the Property”)**

**Parties:**

**Mr James Stewart, East View Cottage, Caravan, Cantley, Keith, AB55 6LJ (“the Applicant”)**

**Miss Nicola Edith Cowie, Mr Kristien Harrott, 17 School Brae, New Pitsligo, Aberdeenshire, AB43 6LQ (“the Respondents”)**

**Tribunal Member:**

**Martin McAllister (Legal Member) and Frances Wood (Ordinary Member) (“the tribunal”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents pay the sum of One Thousand Seven Hundred and Seventeen Pounds Thirty Seven Pence (£1,831.94)**

**Background**

- 1. This is an application seeking a payment order. It is dated 7<sup>th</sup> March 2022. The application states that a payment order for £2,600 is sought.**

**Case management Discussion**

- 2. A case management discussion was held by audio conference on 13<sup>th</sup> July 2022. At the case management discussion, the sum being sought in respect of a payment order was amended to £2,187.54.**

## Hearing

3. A hearing was held by audio conference on 23<sup>rd</sup> August 2022. An application for eviction was determined at the same time. The Applicant was present and was represented by Mr Jeffrey Livingstone of Landlord Specialist Services. The Respondents were present.

## Preliminary Matters

4. It was noted that both parties had submitted documents subsequent to the date of the case management discussion. During the course of the Hearing, there was reference to a letter which Aberdeenshire Council had sent to the Applicant with regard to repairs requiring to be done to the Property. Mr Livingstone helpfully sent a copy of the letter to the Tribunal administration and it was made available to the tribunal members and to the Respondents.
5. Mr Livingstone referred the tribunal to rental statements which he had lodged with the Tribunal administration. He said that a further payment of rent had been made by Housing Benefit and that the arrears of rent currently amounted to £2,289.92. He said that the Applicant is seeking a payment order in respect of that amount.
6. Mr Harrott said that he agreed that the level of arrears of rent was £2,289.92 but that the position of the Respondents was that the rent was not due because of the condition of the Property.
7. The Respondents did not challenge that the amount of rent arrears was £2,289.92 and the Tribunal allowed the application to be amended so that the sum claimed was for that amount.
8. Documents before the Tribunal
  - 8.1 Undated lease between the parties for the Property.
  - 8.2 Rent Statements.
  - 8.3 Letter from Aberdeenshire Council dated 27<sup>th</sup> May 2022.
  - 8.4 Copies of text messages between the parties.

## Evidence

9. Mr Harrott said that rent had been withheld because of the condition of the Property. He said that there had been leaking windows, a leaking door, a damp patch in a kitchen cupboard and a mouldy bathroom for over a year. He said that the Respondents had last paid rent in November 2021 and that, after some months, the Applicant had received payment of rent direct from the local authority after making application for it to be paid direct to him.

- 10. Mr Harrott said that the Respondents had been so concerned about the Applicant's failure to carry out repairs to the Property that they had sought advice from various sources. He said that he had received advice that, if rent was withheld by a tenant because of repairs issues, there would be no problem if the rent was set aside and available to be paid. He had advised the landlord verbally of his intention to withhold rent at an inspection in November 2021.**
- 11. Mr Harrott said that the Respondents had set the rent aside and that he had adequate funds to pay the whole sum of the arrears of rent which he agreed was £2,289.82.**
- 12. Mr Harrott said that payment of rent direct from the local authority to the Applicant had been delayed because concerns had been intimated to it about the condition of the Property. Mr Harrott said that a person from Aberdeenshire Council inspected the Property in April 2022 and that it was after then that payments were released to the Applicant. He said that he thought that funds were released because the Council had taken the view that the Applicant was going to carry out repairs.**
- 13. Mr Harrott said that the Respondents had been ignorant of what steps they could take to ensure that the landlord properly maintained the Property and that it was only around the time that the person from the Council had inspected the Property that they had been aware that an application could be made to the Tribunal to enforce the repairing standard. He said that, on 21<sup>st</sup> April 2022, he had sent a formal letter to the Applicant with regard to repairs which required to be carried out. This letter had not been provided to the Tribunal. He said that an application had been submitted to the Tribunal in July 2022.**
- 14. Miss Cowie said that the Applicant had inspected the Property in November 2021 and had been asked what he intended to do about repairs requiring to be done to the bathroom, doors and windows and that he had indicated that he intended doing nothing.**
- 15. Mr Harrott said that the Applicant had told the Respondents that there was more money to be made from the Property if it were sold. Miss Cowie said that, at the inspection in November 2021, the Applicant had made it clear that he wanted to sell the Property.**
- 16. Mr Harrott said that Emma Bain of Aberdeenshire Council had inspected the Property in May 2022 and had issued a letter to the Applicant detailing work which had to be done to the Property to bring it to the appropriate standard. He said that he had asked for a copy of the letter but the Council had told him that it was private and that he could not get a copy.**
- 17. Mr Harrott said that the Council had given the Applicant a couple of months to carry out the work to the Property. He said that some work**

has been done and that bathroom works were starting the day after the Hearing.

18. Mr Harrott, in response to a question put by Mr Livingstone, denied that the Respondents had withheld rent as a result of having received intimation that the Applicant wanted to recover possession of the Property.

19. Mr Harrott said that the Respondents had advised the Applicant in April 2022 that rent was being withheld because of the repairs needing to be done to the Property. He referred to a text message dated 25<sup>th</sup> March 2022 which had been sent to the Applicant by Miss Cowie:

*“Will confirm this in a letter.... The rent has been held back because of the state of the house it is not worth the amount per month we are being charged and the repairs have been little to none in the 7 years we have been here.*

*We have mould building on walls and the floor from the leak that happened months ago what you said was going get back someone on it and never have.”*

20. Mr Harrott said that the Applicant had previously been advised that rent was being withheld and that this had been by a text message from a phone which he no longer had access to.

21. Mr Harrott said that the Applicant did respond to the text of 25<sup>th</sup> March 2022 and the subsequent letter which had been sent to him with a Text to the Respondents on 28<sup>th</sup> April 2022:

*“ ...I have addressed all issues in a timely manner. I would normally visit the property but due to ill health I am unable to do a property inspection at this time. I would welcome an independent inspection by the environmental health. I would let them decide if the property is within tolerable standards. And I would address any issues recommended by them. You can do this by first contacting Aberdeenshire landlord registration....”*

22. Mr Stewart said that he had not said, at the property inspection, that he wanted to sell the Property. He said that he had carried out a limited inspection in November 2021 and that Miss Cowie was present and that one of her neighbours was present. He said that, at the meeting, he had handed Miss Cowie a letter about rent arrears since, at that time, there were arrears of rent amounting to two months.

23. Mr Harrott agreed that there had been two months' rent outstanding at that point and that this was because of a mix up with Benefits. He said that the matter had been resolved.

24. Both parties agreed that after the inspection by the Applicant, the sum of £1,300 in respect of two months' rent had been paid by the Respondents to the Applicant in November 2021.
25. Mr Stewart said that Miss Cowie had not raised any particular matters at the inspection but that, in due course he had recognised that work had to be done to the bathroom and a patch of mould attended to. He said that there had been a persistent problem with a leaking shower which had been repaired on a number of occasions. He said that mould in the kitchen cupboard had been attended to in November 2021 and that the bathroom door had been fixed.
26. Mr Stewart said that, because of the issues with Covid and a backlog of work, he had encountered difficulties in getting tradespeople to deal with matters and that one he had instructed had not done work which was up to a standard acceptable to the Respondents. Mr Harrott had requested he not be used again.
27. Parties were referred to the letter from Aberdeenshire Council dated 27<sup>th</sup> May 2022 which stated that an officer of the Council had inspected the Property and had determined that it did not meet the repairing standard set out in section 13(1) of the Housing (Scotland) Act 2006. The letter had a schedule entitled "Action Plan" which set out various items where it was considered that the Property fell short and gave a timescale of 30<sup>th</sup> June 2022 by which the necessary works required to be completed:
28. *Windows draughty and some leaking. All windows to be made wind and watertight.*

Mr Stewart said that one window had been resealed and had a new sill fitted, work done to the frame and had been painted. Mr Stewart said that he had three people inspect the windows and that it had been identified that cracked render was causing water ingress. Mr Harrott said that the window repair had not been good and that windows generally were draughty. He agreed that there was a problem with render which was causing water ingress but that the windows also needed replaced.

29. *Front door- this door is currently draughty and leaks when it rains. The door lock is also sometimes difficult to operate. This door should be made wind and watertight and the lock should be either adjusted or replaced.*

Mr Stewart said that the door had been realigned three times. Mr Harrott said that the door had been adjusted by a handyman but that he did not consider that a proper repair had been done. He said that the person carrying out the work had told him that he did not think

that the work he did was effective and that the problem would get worse because there was no more adjustment possible.

- 30. *The gutters should be inspected and either repaired or replaced. It appears the gutter joints are currently leaking therefore the rainwater is not currently draining away correctly. Ensure all the household gutters and external downpipes are in working order.***

Mr Stewart said that he had had the gutters and downpipes inspected and that they were not requiring repair. He said that he did not accept that work required to be done to the gutters and downpipes.

- 31. *Bathroom -Shower- The shower heat controller is not secure; it is slightly loose on the wall....the controller should be inspected and made secure to the wall.***

Mr Stewart said that the shower had been repaired at least three times and that he did not know why it was leaking. Mr Harrott said that the reason there had been a problem with the shower was that the pipes had not been properly secured and that this caused movement which, in turn, caused leaks. He said that the Applicant's tradesperson had been unable to fix it and had removed the unit leaving his family with no ability to have a shower. He said that work on the bathroom was to start the day following the Hearing. Mr Harrott referred to a text message which Miss Cowan had sent on 1<sup>st</sup> July 2022 in reference to a plumber being at the Property: *"Did he tell u he's wrote it off and capped it off."* Mr Harrott said that there has not been a functioning shower since the end of June 2022.

- 32. *Both extractor fans in the kitchen and bathroom currently do not work. These should be replaced to allow condensation to be removed from the rooms and to reduce the draughts.***

Mr Stewart said that two new extractor fans had been installed. Mr Harrott said that the fans had not worked since the commencement of the tenancy. He indicated that he had not been particularly bothered about their non operation and had not made that part of any complaint he had made to the Applicant about the condition of the Property.

- 33. *Water damage is evident to the plasterboard and skirtings due to a previous leak from a pipe at the back of the shower. The plasterboard and skirtings should be repaired/replaced and repainted.***

Mr Stewart said that this work still had to be done.

- 34. *Kitchen/hallway/bathroom-threshholds x 2- the threshold strips are missing between the kitchen and hallway and bathroom. There is a possible trip hazard; therefore 2 threshold strips should be fitted.***

**Mr Stewart said that this issue had been caused by the Respondents replacing carpeting with laminate flooring and he thought that his tenants should deal with these matters and that he had asked them to reinstate carpet.**

- 35. *Garden Fence- The wooden garden fence to the right- hand side of the garden has blown down. The broken fence should be either reinstated or repaired.***

**Mr Stewart said that he considered this to be a matter for his tenants and that it is not his responsibility. Mr Harrott said that the fence had blown down four years previously and that the Applicant had done nothing to deal with it. He said that the fence had been in place at the commencement of the tenancy. He said that, over the years, he has carried out repair work to the fencing at the Property.**

- 36. Mr Stewart said that, when he had been sent photographs of the bathroom by the Respondents, he had been shocked at its condition. He confirmed to the Tribunal that works required to the bathroom were to start imminently and that other work which he accepted was his responsibility had been largely completed.**

- 37. Mr Harrott said that the issue with mould caused by problems in the bathroom had been reported to the Applicant in June/ July of 2021 but that it had taken many months to resolve.**

- 38. Mrs Tracy Willerton gave evidence. She said that the Property is a semi-detached house and that she owns and lives in the adjoining semi-detached property which is 15 School Brae, New Pitsligo.**

- 39. Mrs Willerton said that she was present when Mr Stewart inspected the Property in October/November 2021. She recalled that there had been some mention by Mr Stewart of him wanting to sell the Property. She said that there had been some discussion about the mould in the Property and also the guttering.**

- 40. Mrs Willerton said that she purchased her property from the Council in 2006 and had replaced the windows because they were of poor quality. She said that the windows which she replaced were the same as those in the Property. She said that cast iron gutters and downpipes had been in both 15 and 17 School Brae. She said that she had plastic gutters and downpipes fitted to her property primarily from safety concerns. She said that there had been rotten parts of the gutters which could potentially have caused injury if part had fallen off. She said that, where the replacement guttering on her house met the original on the Property, there was a gap.**

## **Submissions**

- 41. Mr Livingstone submitted that an order should be made for the whole amount which was being claimed: £2,289.92. He said that this sum is lawfully due and that the Respondents accepted that this sum represents the level of arrears.**
- 42. Mr Herratt submitted that the rent was not due because of the condition of the Property and the fact that the Applicant had not carried out necessary repairs which he had been advised of.**

## **43. Findings in Fact**

- 43.1 The Applicant and Respondents are parties to a lease for the Property which commenced on 16<sup>th</sup> August 2014 and which is continuing.**
- 43.2 The monthly rent payable in terms of the tenancy is £650.**
- 43.4 There are rent arrears of £2,289.92.**

## **44. Findings in Fact and Law**

- 44.1 The Respondents are entitled to a reduction in the amount of rent arrears due because of the past condition of the Property.**
- 44.2 The amount due to the Applicant by the Respondents is £1,831.94.**

## **Reasons**

- 45. The Respondents accepted that the level of rent arrears which was evidenced by the rent statements which had been lodged is £2,289.92. The matter to be determined by the tribunal was whether an order for payment should be made for this sum.**
- 46. The case of Renfrew District Council v. Gray 1987 SLT (Sh Ct) 70 is authority for the proposition that a tenant who did not enjoy what was contracted for, with respect to disrepair in a tenanted property, has a right to abatement of rent. The application before the tribunal is one for payment which has been made by a landlord. It is not an application by a tenant seeking abatement of rent and it is not an application by the tenant seeking enforcement of the repairing standard as set out in the Housing (Scotland) Act 2006.**
- 47. The tribunal considered it competent, in an action by a landlord for payment, for a tenant to argue that all or part of rent is not lawfully due because of the condition of a property.**

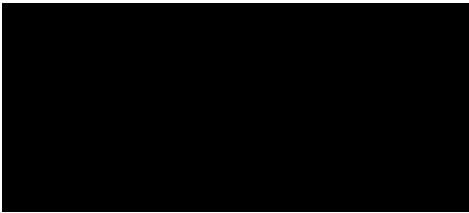


48. In the Renfrew District Council case, the house was uninhabitable. The Respondents did not advance the argument that the Property was uninhabitable. The tribunal heard that it is a three bedroom house with a living room, bathroom and kitchen and front and rear gardens. It is not considered that a property requires to be uninhabitable before the principle of the Renfrew District Council case is engaged. In that case, at page 71, Sheriff Principal Caplan stated “In my view it is long established law that a tenant is entitled to an equitable abatement of rent for at least certain degrees of partial non- performance.”
49. For the Respondents to succeed in their argument that the rent is not lawfully due, the tribunal would have to find that there had been non-performance by the Applicant.
50. The tribunal accepted that the Respondents had retained rent to make the Applicant carry out work to the Property. The principle of such retention is that the moneys retained are available to be paid to a landlord once repairs have been completed. The tribunal could make no finding of an earlier intimation of retention than the text from one of the Respondents to the Applicant on 25<sup>th</sup> March 2022. Although the tribunal did not have documentary evidence of the arrears of rent being available to be paid to the Applicant, it had no reason to doubt the Respondents in this regard and their credibility in the matter of retention of rent was enhanced by the fact that the rent statements lodged by the Respondent showed that from January 2020 to August 2021 the rent had been paid and there had been no arrears. There then was the issue with Benefits and two month’s rent was paid in November 2021 in respect of September and October 2021.
51. There were no substantive matters of credibility to be determined. The tribunal accepted that there are and had been issues of repair with the Property and that some had been addressed and some are still outstanding. The tribunal had the benefit of the report of Aberdeenshire Council dated 27<sup>th</sup> May 2022. Setting aside the issues in that letter where the Applicant disputed responsibility, there were matters of disrepair in May 2022 when the Council inspected the Property: the windows, front door, hallway, bathroom and shower, extractor fans and the wall and skirting next to the bathroom. The tribunal accepted the Respondents’ position that the items highlighted in the Council’s report had existed at least since the point where rent had been retained.
52. The tribunal noted that the Respondents had been without a shower since the end of June 2022.
53. The tribunal determined that it was appropriate for the sum claimed by the Applicant to be reduced to reflect his non- performance of the obligations he had in terms of the tenancy contract. Some works have been completed and others are outstanding. The tribunal considered it reasonable to take a fairly “broad brush” approach in arriving at an

**appropriate level of reduction of the amount claimed. In all the circumstances, it considered that the sum claimed should be reduced by 20% and that the payment order be for £1,831.94.**

### **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.**



**Martin J. McAllister  
Legal Member,  
23<sup>rd</sup> August 2022**