

**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/21/2702

Re: Property at 16 Shaw Street, Dunfermline, KY11 4AX (“the Property”)

Parties:

**Dr George Bittar, Gepmadar Ucta 3111/20, Budapest, Hungary, 1106, Hungary
 (“the Applicant”)**

**Mr Gordan James Hoggan, 21 Christie Street, Dunfermline, KY12 0AQ (“the
 Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that a payment order in the sum of Two Thousand Nine
 Hundred Pounds Only (£2900.00) be made in favour of the Applicant and
 against the Respondent.**

Background

1.This application for a payment order was submitted to the Tribunal on 29 October 2021 and accepted by the Tribunal on 17th November 2021.A case management discussion was fixed for 14th January 2022.Neither party attended or was represented on that date and the case management discussion was continued to 18th March 2022.

Case Management Discussion

2.The case management discussion on 18th March 2022 was attended by Mrs Barclay, Lettings Property Manager from Morgan Law, on behalf of the Applicant and

by the Respondent who represented himself. Mrs Barclay on behalf of the Applicant initially moved for a payment order in the sum of £3409.40 which was the amount requested in the application but with the recovered deposit deducted.

3.The Tribunal had sight of the Application, a lease agreement a rent statement, copies of letters sent to the Respondent in relation to possession of the property, a survey report from Peter Cox Preservation and photographs, all lodged by the Applicant. The Respondent had lodged photographs and written representations.

4.The parties had entered into a tenancy agreement at the property with effect from 27th October 2016 which was for a 6-month period and continued monthly after the expiry of the 6-month period. The monthly rent payable was £495.Rent arrears had accrued during 2021 and were still outstanding.

5.Mrs Barclay had attended the property in January 2021 at the request of the Respondent and had seen what she described as a wet patch near wood panels at an internal stair and black mould in the bedroom used by the Respondent at the property. She had arranged for the roof to be checked and had asked the landlord to provide a bigger radiator as she felt that the property seemed cold and the radiator she saw seemed small. The roofer had reported back that that there were no obvious problems with the roof. Peter Cox Preservation, damp specialists, had surveyed the property in January 2021 at the request of the Applicant and found evidence of black spot mould on the walls of a bedroom, hallway and staircase which was said to be consistent with high levels of atmospheric moisture and the report gave information as to how to avoid the build up of condensation in the home. A copy of this report was given to the Respondent at the time.

6.Mrs Barclay indicated that when the property was vacated and an inspection was carried out there was no sign of any wet or mould on the walls and the property was sold without any redecoration by the landlord. The Home report prepared made no mention of any issues relating to dampness.

7.Mrs Barclay indicated that rent had not been paid in 2021 and documentation was sent to the Respondent giving him notice to quit with effect from 27th September 2021.The Respondent vacated the property with effect from that date.

8.Mrs Barclay indicated that the Respondent had simply stopped paying rent early in 2021 and no intimation had been received from the Respondent that he was withholding rent because of any required repair.

9.The landlord had obtained a quote for a new roof, but this was for £12000, and a neighbour had requested a second quote and the matter had not progressed after that and the Applicant had later sold the property.

10.The Respondent in his representations and at the case management discussion on 18th March 2022 indicated that he did not feel that he should have to pay rent for the period in 2021 as he said the property was damp. He described having to keep the internal door shut at the top of the stairs and said that the whole stairway was affected with water staining and at the back end of the hall. He said it had been suggested he open windows to ventilate the flat whilst having the heating on and he explained that this would have cost him money. He described furniture at the property being smelly and damp and said that he struggled to breathe at night in the property and his young son was not allowed to stay at the property because of its condition. He said that at the start of 2021 he had started living with his partner

and coming back and forward to the property every week. He indicated that he felt the property had been sold rather than fixing the roof

11.The Respondent further described that he had asked joiners to look at the windows at the property, but vents could not be fitted due to the style of the windows. He said that the walls dried out in summer which explained why when the property was vacated there was no sign of wetness or dampness on the walls. He accepted that some rent was due but not all of it. He had he said kept the rent aside, but he no longer had it as he and his partner were due to have a baby at the time of the case management discussion on 18th March 2022 and the money had been required,

12.Mrs Barclay responded by indicating that she felt that a reduction in rent due for January, February and March 2021 might have been considered at the time but there had been no communication from the Respondent at the time and she had no instructions to amend the sum being requested by the Applicant.

13.The Respondent asked for time to consider his position on how much rent he considered to be due and for him to take legal advice and the Tribunal allowed an adjournment for this purpose. The Respondent was not present on the conference call when the date of 12th May 2022 was fixed for a new case management discussion.

14.The Tribunal issued a Direction to the Respondent to provide written representations on his position regarding how much rent he considered to be due by him once he had taken advice. These representations were to be sent to the Tribunal by 5th May 2022.The Tribunal received no written representations from the Respondent after the Direction was issued.

15.The Case management discussion on 12th May 2022 was attended by Mrs Barclay on behalf of the Applicant and there was no appearance by or on behalf of the Respondent. A letter had been sent to him with the date and Mrs Barclay requested that the Tribunal proceed in his absence. The Tribunal was satisfied that fair notice of the case management discussion had been given and was prepared to proceed in the absence of the Respondent.

16.Mrs Barclay requested a payment order in the sum of £2900 which was less than the sum she had previously been seeking. She explained that she had contacted the landlord after the previous case management discussion, and he had indicated that the sum being requested could be reduced as a “goodwill gesture”. She explained that that sum now requested was a reduction of just over one month’s rent and the sum being requested was a round figure of £2900 to make this easier for the Respondent.

17.Mrs Barclay explained that it was still the landlord’s position that everything that could have been done regarding the report of wetness and mould had been done. The issue she said was condensation due to lack of heat and ventilation and she said that the property was able to be lived in at all times and that the Respondent had simply stopped paying rent and had also stopped communicating with them. She said they would have worked with him but when it was suggested he wash off the mould in order to remove it this had prompted an angry call from the Respondent’s girlfriend. She reiterated that the roof had been inspected and surveyors had attended who reported condensation and not dampness.

18.The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

19.The Applicant and Respondent entered into a tenancy agreement at the property with effect from 27th October 2016.

20.The tenancy agreement was for 6 months but continued on a monthly basis thereafter.

21.The monthly rent payable was £495 per month.

22.The Respondent complained of dampness at the property and stopped paying rent due in terms of the tenancy from February 2021 until he vacated the property in September 2021.

23.The roof was checked and no obvious issues were found and a damp specialist attended the property and reported high levels of moisture within the property.

24.The Respondent ceased to communicate with the Applicant's agents and vacated the property with effect from 27th September 2021.

25.The property was sold some time after that date and there were no signs of mould or damp visible to the Applicant's agents at the time the property was inspected prior to sale and the property was sold without any redecoration.

26.The Respondent did not seek an abatement of rent during the tenancy and did not formally advise the Applicant's agents that he was withholding rent due to any required repair or issue at the property.

27.The Respondent lived between his girlfriend's home and the property during 2021 but returned to the property each week and did not cease to occupy it until 27th September 2021.

28.The Respondent initially held back the rent he was due to pay in terms of the tenancy but required to use the money for other costs.

29.The rent arrears accrued at the property for rent due from February until 27th September 2021 amount to £3409.40.

30.The Applicant seeks to recover only £2900 of that rent arrears figure.

31.The sum of £2900 is lawfully due by the Respondent to the Applicant in terms of rent arrears incurred during the tenancy.

Reasons for Decision

32.There was no dispute in this application that rent had not been paid over a period of some months when this tenancy agreement was in place. The reasons for that appeared to relate to wetness and mould which was investigated and high moisture levels were found at the property. The Respondent was given time to consider his position and take advice. He was required to submit his final position in writing, but he did not do that and did not attend the final case management discussion. He had not intimated that he was seeking an abatement of rent during the tenancy and although he indicated when he took part in the proceedings that he had initially withheld the rent he had not advised the landlord's agents of this, and this money had been used for other costs. He had raised issues around the smell of damp at the property and furniture being damp and breathing problems which he said he had but provided no evidence of these issues and raised no counterclaim for damages despite being given time to consider his position. The facts before the Tribunal

suggested the issue related to condensation and it was noted that when the property was checked after the tenancy ended there was no sign of the issues which had been reported, and this without any remedial work being carried out. The Respondent had ceased to take part in the proceedings, but the Tribunal was able to consider the information he had given when he attended the first case management discussion and take account of his position when making a decision. On the facts before the Tribunal, it appeared that the property was in a liveable condition throughout the tenancy and the unpaid rent was lawfully due. The Applicant's representative amended their claim to reduce it by one month's rent and they are entitled to do that as they see fit. That did not alter the facts presented to the Tribunal and it appeared fair and reasonable on the facts presented and in the face of the Respondent no longer taking part in the Tribunal proceedings that a payment order be made.

Decision

The Tribunal made a payment order in the sum of Two Thousand Nine Hundred Pounds Only (£2900.00) in favour of the Applicant and against the Respondent.

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.

Valerie Bremner

Legal Member/Chair

12.5.22

Date