



**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/21/0999**

**Re: Property at 6 James Street, Aberdeen, AB11 5AP (“the Property”)**

**Parties:**

**Mr Edvard Kingissepp, EVilde Tee 92 91, Tallinn, 12914, Estonia (“the Applicant”)**

**Bowden Buildings LTD, 17 Queens Den, Aberdeen, AB15 8BW (“the Respondent”)**

**Tribunal Member:**

**Gabrielle Miller (Legal Member)  
Angus Anderson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is not entitled to be made an award of any amount.**

**Background**

1. An application was received by the Housing and Property Chamber dated 26<sup>th</sup> April 2021. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Property being in such poor state that the Applicant was not able to have full enjoyment of the Property.
2. On 28<sup>th</sup> July 2021, all parties were written to with the date for the Case Management Discussion (“CMD”) of 31<sup>st</sup> August 2021 at 11.30am by teleconferencing. The letter also requested all written representations be submitted by 18<sup>th</sup> August 2021.

3. A Case Management Discussion (“CMD”) was held on 31<sup>st</sup> August 2021 at 11.30am by teleconferencing. The Applicant was present and represented himself. Mr Fred Bowden and Mr Martin Bowden represented the Respondent. Ms Llona Belova was also present. She was a joint tenant in the Property with the Applicant. The Applicant submitted that his position remained as stated in the application of 26<sup>th</sup> April 2021 namely that the Property was not in a good state and that he should have his rent returned with compensation paid in addition. The Applicant confirmed that he had signed the inventory. As the Property had been recently painted he could not tell if it was in a good condition or not as he could only smell the paint. The Property looked good in the inventory but the Applicant considered that these photos were not current. After a period of time in the Property he had found insects. He had been concerned regarding the insects within the Property and called an insect specialist. The specialist stated to him that the insects were caused by the condition of the windows. Mr Fred Bowden submitted that the Property was in a good state when let. It was the way that the Applicant inhabited the property that cause the ongoing issues. He stated that the photos from the inventory were from just before the Applicant moved into the Property. It is their procedure to repaint between each tenant. He told the Tribunal that he and his brother are not full time landlords. The windows are over 200 years old. He was happy to replace it but there were restrictions upon them as the Property is attached to a Grade B listed building. Covid reasons reduced availability of windows for him to purchase and get fitted. They own a few properties and try to let it out in a condition that they would be happy to live in. Mr Martin Bowden advised that the Property was only painted and decorated prior to the Applicant moving in. There was no refurbishment done. Mr Martin Bowden raised that this was not the Applicant’s first application as the Applicant suggested. The Applicant confirmed that he has made applications to the Housing and Property Chamber prior to this but that these applications had been rejected. Mr Martin Bowden had raised this in relation to the Applicant’s credibility. He would evidence this at the hearing as he finds appropriate. The Tribunal was not satisfied that any matters could be resolved. A hearing was fixed. A direction was issued.
4. On 14<sup>th</sup> September 2021, the Applicant lodged further evidence. He stated that Google Maps from October 2020 shows similar buildings with new windows. He also states that both he and the joint tenant have an insect phobia. Having insects in the Property ruined their enjoyment of the Property. They consider that clause 15 of the lease which states that the Property requires to be wind and water tight was broken. He stated that the Respondent had failed to meet their duty regarding the provision of smoke detectors in the Property. He said that the boiler in the inventory was different from the one in the Property when he had let it. He submits that this leads to the credibility that the inventory photographs were done just prior to the letting of the Property. The Applicant confirmed that he had applied to the Housing and Property Chamber previously but his application had been rejected. He attached photos of the boiler from the inventory, photos of the boiler when he had occupied the Property and the Google Map screenshots.
5. On 20<sup>th</sup> October 2021, the Respondent lodged a submission. This submission included the response to the Applicant’s submission. Regarding the windows it

states that the property shown in the photo was owned by the same landlord and the new window was put in with the assistance of Historic Scotland through a lengthy process. The Respondent listed restoration work that had been carried out previously. The single glazed windows were obvious from the inventory. The Respondent addressed the wind and watertight claim by the Applicant. They noted that Storm Christoph affected Aberdeen when they were contacted about the leak in the bedroom and limited what could be done straight away. The Respondent disputes that the tolerable standard was not met for the Property. The Respondent considers that the smoke detector adequate as it is in the hall which is the linking room for the whole property. The Respondent confirmed that photos are not retaken for the start of each inventory. The Respondent raised issues of credibility of the Applicant noting that there was a decision previously by the Housing and Property Chamber. Within the submission was a copy of an email from the Applicant dated 24<sup>th</sup> March 2021, copy of email dated 29<sup>th</sup> March 2021, 19<sup>th</sup> March 2021, screenshot showing the Applicant to be a director of two companies, photos of the Property, Housing and Property Chamber decision reference FRS/HPC/RP/21/0526 rejecting the application, review the Applicant had written on his previous landlord and reviews for the Applicant's company completed by the Applicant and the joint tenant.

6. On the 21<sup>st</sup> October 2021, the Applicant responded to the Respondent's submission. The submission included the Private Rented Tenancy agreement ("PRT") and photos of the Property.
7. On 21<sup>st</sup> October 2021, the Respondent further submitted evidence of forthcoming changes to fire and smoke alarms regulations, quotation for the windows and proof of payment for the windows.
8. On 22<sup>nd</sup> October 2021, the Applicant emailed the Housing and Property Chamber disputing the responses by the Respondent.
9. On 27<sup>th</sup> October 2021, the Applicant emailed noting that only one window was ordered when issues were raised about three windows. This email included email correspondence between parties.
10. On 28<sup>th</sup> October 2021, the Applicant emailed adding a new issue of prescribed information.

### The hearing

11. A hearing was held on 28<sup>th</sup> October 2021 at 10am by teleconferencing. The Applicant was present and represented himself. Mr Fred Bowden and Mr Martin Bowden represented the Respondent. Ms Llona Belova attended as a witness.
12. As a preliminary matter the Applicant had raised that Ms Belova be added as an applicant. The Tribunal told him that as long as the Respondent did not object to this he could do so. He should be aware that any award made would be made to both applicants in such circumstances. The Applicant stated that

he was concerned that it was only his voice that he was adding but felt that he could add Ms Belova as a witness to support his position without adding her as joint applicant.

13. As a second preliminary matter the Tribunal addressed the late submission of information by the Applicant. Emails had been received by the Housing and Property Chamber on 27<sup>th</sup> October 2021 and 28<sup>th</sup> October 2021. The Tribunal considered this insufficient time for the Respondent to fully consider the contents. The email of the 28<sup>th</sup> October 2021 raised a new issue. New issues must be raised 14 days in advance of any hearing under Rule 14. The Tribunal considered that the Applicant would be able to talk to the contents of the email of 27<sup>th</sup> October 2021. Both emails had been crossed over to the Respondent.

14. The Tribunal identified that there were key issues raised were the following:-

- a. The smoke alarms and whether there was compliance with the regulations;
- b. Insects within the Property;
- c. The Property was not wind and water tight; and
- d. The Respondent failed to communicate in a prompt and appropriate manner for the role.

15. It was accepted by the parties that these were the core points to be addressed.

16. The Tribunal addressed the points regarding the smoke alarms. The parties agreed that the Property consisted of an entrance hall, a bedroom, an open plan kitchen/living area and bathroom all located on one level. The parties agreed that there was only one smoke alarm in the Property which was located in the hall and two carbon monoxide alarms located adjacent to the boiler. The smoke alarm is hardwired with batteries. The Respondent confirmed that there is no heat detector in the open plan kitchen/living area. The Applicant gave evidence that he first realised that the Property was not compliant to legal requirements for fire safety at the end of January when he wrote to the Respondent. The Respondent told the Tribunal that the Applicant had first emailed on 24<sup>th</sup> March 2021 to state that the smoke detectors were not compliant. The Applicant then confirmed he had been wrong about the dates. He had only become aware of the issue when he examined his lease in the days prior to leaving. The Applicant stated at that point he became anxious that he could be in danger from only having one smoke alarm in the Property.

17. The Tribunal then discussed the photos with the parties. As the photos were unnumbered and without description or comment, the Tribunal ran through the photos one by one starting at the back of the hard copy file completed by the Housing and Property Chamber sent to all parties and the Tribunal. The photos varied from photos of the window sills with water on them or insects on them to photos of the ceiling illustrating the lack of smoke detectors.

18. The insects in the Property were discussed next. The Applicant gave evidence that insects had been found in the bathroom and living room windows three

weeks before the he left the tenancy on 27<sup>th</sup> March 2021. He found insects, which appeared to be woodlice from the photos, within the towels on the window sill in the living room. He and the joint tenant had omitted to remove the towels after the storm on 21<sup>st</sup> January 2021. He found one on the toilet roll in the bathroom. Upon discovering the insects the Applicant did not remove them or the towels. He said that he and the joint tenant had a phobia which meant that he could not go near them. He did not ask anyone else to remove them for him. He had contacted a pest control company who said that the windows would need to be fixed. A verbal report was given to the Applicant so he could not provide any further information to the Tribunal. The first message that the Respondent had regarding this issue was on 16<sup>th</sup> March 2021. After Fred Bowden cleared the insects from the window sills there was no recurring problems with insects. Mr Fred Bowden gave evidence that it was made clear to the Applicant and the joint tenant that the towels were not to be left on the window sill. The Respondent received notice on the 16<sup>th</sup> March 2021 about the insects. Mr Fred Bowman attended the Property on 17<sup>th</sup> March 2021 and cleaned up 5 woodlice. The Applicant and the joint tenant put their notice in on 18<sup>th</sup> March 2021.

19. The Tribunal then discussed whether the Property was wind and water tight. The Applicant gave evidence that water had come in the window. He had noticed it a few days before the storm of 21<sup>st</sup> January 2021. Previously, there were only a few drops on the window sill on a rainy day. On the day of the storm on 21<sup>st</sup> January 2021, the Respondent had been called and then emailed to advise that water was coming in through the window. Mr Fred Bowden attended the Property that evening to restart the boiler. Towels were put on the window sills to stop the water that was coming falling on the floor. After towels were placed at the windows for the storm only a few drops were ever apparent when it was raining. The Applicant said that the window should have been filled with foam and fixed after the storm. When discussing the photos the Applicant had said that, after checking, the photos of the water on the window sills were taken on 16<sup>th</sup> or 17<sup>th</sup> March 2021. The Respondent challenged this noting that these were the same photos that were sent on 21<sup>st</sup> January 2021. The Applicant corrected himself and said that the photos were from 21<sup>st</sup> January 2021. The Applicant considered that his enjoyment of the Property was affected by the amount of time that it took dealing with this matter and that his heating bills were higher. Mr Fred Bowman gave evidence he had attended and put towels at the window on 21<sup>st</sup> January 2021 as there was nothing else that could be done that night. The storm had affected a large part of North East Scotland. The window could not simply be filled or replaced due to the type of building, as consultation is required with the local authority and Historic Scotland. A new window has been now purchased but has not been fitted as the current tenants have deemed it not essential. The Respondent did not consider that more could have been done. The Respondent noted that on each visit to the Property the was stifling. The Respondents questioned whether subsequent water was condensation.

20. The failure for the Respondent to communicate in a prompt and appropriate manner was discussed next. The Applicant gave evidence that it took a few

hours to contact the Respondents on 21<sup>st</sup> January 2021. He and the joint tenant had phoned then emailed. He objected to the fact that it took an email to get them to contact. In addition he objected that initially the Respondent did not wish to come out to fix the window but subsequently came out to attend to the boiler. He objected to the Respondent not responding to his emails when he was still a tenant albeit he had moved out. Mr Fred Bowden gave evidence that he had gone to the Property to restart the boiler as this was a repair they could undertake themselves, there and then. They could not do anything further about the windows that day except put towels at the windows. They had been emailed at 16:02 by the Applicant and responded at 17:02 with a read receipt of 17:04. A video was sent to them at 17:12. Mr Fred Bowden attended the Property 30 minutes later. The window could not be fixed on the day as explained above. The Respondent found the emails that were sent after the Applicant moved out to be threatening in terms of stating that he would go to the Housing and Property Chamber if he did not have rent returned. The Respondent did not wish to enter into such correspondence. The Respondent noted that the Applicant has posted a bad review about them as recently as this month. The Applicant denied these emails were threatening. The Applicant stated that he posted the review because they had removed his other reviews.

21. Ms Balova attended as a witness. She said that she agreed with all matters stated by the Applicant. She confirmed that she had not heard the evidence that the Applicant had provided to the Tribunal, however, she was happy to concur with the evidence. She concurred that her enjoyment of the Property was reduced in that manner that had been explained by the Applicant.
22. The Applicant was concerned that the Respondents had raised that he had submitted several applications to the Housing and Property Chamber when he had only submitted one previously which had been rejected. The Tribunal only had the information about both parties that had been submitted within the case. The Tribunal noted that the Respondent had submitted a refused Repairing Standard case. The Tribunal did not get given any other information that the parties did not get.
23. The Respondent was concerned that the Applicant stated that he had been discriminated against within the papers. The Tribunal was satisfied that this had not been evidenced as to how he was discriminated and what the effect of any possible discrimination was. Parties agreed at the outset of the hearing the parameters of the hearing and discrimination was not included within that.

#### Findings in fact

24. The Applicants had entered into a PRT with the Respondents regarding the Property.
25. The Applicant occupied the Property from 10<sup>th</sup> January 2021 to 27<sup>th</sup> March 2021 though the tenancy continued until 15<sup>th</sup> April 2021.

26. There was only one smoke alarm in the Property which is located in the hallway with 2 carbon monoxide alarms adjacent to the boiler. There was no heat alarm in the kitchen area.
27. There was a storm on 21<sup>st</sup> January 2021 causing water ingress through windows. Only drops of water were found to be at the windows when it rained after that date.
28. Towels which had been placed at the window on 21<sup>st</sup> January 2021 had not been removed from the window or touched until approximately 1 – 2 weeks before the Applicant and the joint tenant left the Property.
29. There were woodlice found on the window sill within the Property. The Respondent cleared the Property of the woodlice the day after being notified. No further woodlice were observed to be in the Property after that point.

### Observations

30. The case before this Tribunal is not a Repairing Standards case and as such it does not have the jurisdiction or associated powers with such a hearing. The Tribunal noted the Respondent had not complied with current legislation for the provision of smoke and heat alarms within the Property. The Respondent should re-evaluate the current provision in order to comply with the legal requirements. The Tribunal also noted that using historic photographs in an inventory is at best bad practice and at worst misleading. The Property should be photographed prior to the entry of a new tenant and those photos should be included within the inventory.

### Reason for the decision

31. The Tribunal considered all the evidence before them. The Tribunal was considering whether, on balance, the Applicant was entitled to the return of his rent that he paid (three months in total) and a payment for what the Applicant had stated in the application as 'moral compensation'. The total figure sought was £2185.
32. With regard to the smoke and heat alarms the Tribunal was not satisfied that the Respondent had met the legal requirement within the Property but that did not mean the Applicant was not able to have full enjoyment of the Property during the tenancy. He first emailed on 24<sup>th</sup> March 2021 and left the Property on 27<sup>th</sup> March 2021. Neither tenant smoked. There had been no indication of being subject to danger for the duration of the tenancy. Notwithstanding the absence of the required heat detector in the kitchen/living area, the Applicant did not allow time for the Respondents to address their concerns, having already decided to leave the Property. There was no evidence of anxiety as a consequence. No medical evidence was submitted.
33. With regard to the insects it is accepted that there were insects found on the window sill. These were found two weeks prior to when the Applicant left the

Property. The Respondent attended the Property and cleaned them away. There were no further incidences of insects. It is reasonable to conclude that the insects had accumulated around the towel which had been put against the window as it was wet and that the woodlice were inhabiting the area because of the damp towel. The towel was placed on 21<sup>st</sup> January 2021 to stop the water ingress from the storm. The Applicant failed to move or remove the towel for approximately 6 or 7 weeks. The towels were not washed and returned to the window but had stayed in situ. This is a very probable breeding ground for the insects who seek out a damp area to live. On balance, the Tribunal concluded that had the Applicant or the joint tenant removed the towel the issue would not have occurred or not to the same extent. The Applicant was able to confirm that no further insects appeared in the Property. The Applicant stated that both he and the joint tenant were not able to deal with the insects due to being phobic and that this had meant that they had lost 3 night sleep out of the 2 weeks that they remained in the Property. They were able to use in the Property as their home, even with the phobia. They were able to get an insect specialist to attend before they contacted the Respondent. When Mr Fred Bowman attended, on behalf of the Respondent, he cleaned the area. This matter could have been resolved very quickly by removing the towels and cleaning the area after the storm. They did not ask anyone else they knew to assist them but carried on occupying the Property. The Tribunal did not find this evidence to be consistent with significant loss of enjoyment of the Property and that the problem could reasonably have resulted from their failure to remove and launder the wet towels and to clean the area at the window. The Tribunal did not find, on balance, that the Applicant had any loss of enjoyment of the Property. The Tribunal found the Respondent had been reasonable in their actions.

34. With regard to the wind and water tightness of the Property, the Tribunal did not consider this to be an issue that prevented the Applicant having enjoyment of the Property. The Respondent attended on the night of the storm. Towels were put at the windows. The water ingress was only significant on the night of the storm. There were no further photos of water ingress at the windows on any other date. It is not clear that there was any further significant water ingress and that such water ingress was due to the poor condition of the windows or if the water drips were due to condensation, which is more prevalent on single glazed windows and can be exacerbated by poor ventilation/management of moisture from within the Property by the occupants. The evidence is not clear whether there was any further water ingress due to the poor condition of the windows or if the water drips were due to condensation which could be caused by the Applicant and the joint tenant. It was not reasonable to presume that the Respondent could obtain a window and fit it in a short period of time due to the age of the building and the further restrictions upon it. The Tribunal was not satisfied that the Applicant was entitled to a return of his rent payment or an award for moral compensation due to issues regarding water ingress for the night of the storm. It did not significantly affect the enjoyment of the Property. It did not limit the use of any rooms and was only for one night from an extreme and unexpected weather condition.
35. With regard to the correspondence between parties, the Tribunal did not consider that the Respondent had failed in their duties as landlords. They had



attended on the night of an exceptionally bad storm. They had attended to remove the woodlice from the Property. They responded by email and had attended the Property when necessary. It was unreasonable to expect a new window to be made and fitted quickly. The Respondent remedied the situation that was a single occurrence. The Tribunal did not consider that evidence had been led to show why he should have his rent returned or that he required 'moral compensation' on this point.

36. The Tribunal did not consider that Ms Balova provided information in her evidence further than it already had before it. For the majority of her evidence she concurred with the Applicant though said that she had not heard his evidence. This reduced the credibility of her evidence.

37. Given that the Tribunal did not consider that each point merited a loss of enjoyment of the Property, the Tribunal did not consider that the matters as a whole warranted any award in the favour of the Applicant.

### Decision

38. The Applicant did not evidence that he was not able to inhabit the Property or have his enjoyment of the Property reduced to such an extent that an award should be made in his favour. The application is refused.

**NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.**

Gabrielle Miller

28<sup>th</sup> October 2021

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Legal Member

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Date