



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under s.16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/CV/20/0021 and FTS/HPC/20/0022**

**Re: Property at 31 College Bounds, Old Aberdeen, Aberdeen, AB24 3DX (“the Property”)**

**Parties:**

**University Court of the University of Aberdeen, University Office, King's College, Aberdeen, AB24 3FX (“the Applicant”)**

**Mr Ralph Magadzire and Mrs Nyarai Magadzire formerly residing at 31 College Bounds, Old Aberdeen, Aberdeen, AB24 3DX (“the Respondents”)**

**Tribunal Members:**

**Paul Doyle (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.**

**Background**

1. The Applicant sought an order for payment of rental arrears totalling £5,800.00. The Applicant had lodged with the Tribunal Form F. The documents produced were a Tenancy Agreement and schedule of rent arrears. A copy title sheet was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.
2. An evidential hearing took place before the Tribunal by telephone conference at 10.00am on 11 August 2020. The Applicants were represented by Ms J Rattray, solicitor. The respondents were present but were not represented. They were

accompanied by a union representative who offered support but did not participate in the hearing.

3. In advance of the hearing, the applicants lodged an inventory of productions consisting of 909 pages. One of the productions is a report from Hardies, surveyors, dated 23 July 2020. In addition, witness statements were produced for Pamela Ross and Ryan Mackie. The respondents confirmed that they had received and read all of the documentary evidence.

4. A case management discussion held on 3 March 2020 clearly focused the issues between the parties. The applicants' position is set out in detail in the documentary evidence. Each of the respondents answered questions from Tribunal members to set out their position before answering questions from the applicants' solicitor.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The applicants are the owners of the property at 31 College Bounds, Old Aberdeen, Aberdeen. A short-assured tenancy was entered into between the applicants and respondents on 16 January 2017. The tenancy agreement provided for monthly rental of £560.00. During the course of the tenancy the rent fell into arrears. The respondents stopped paying rent in March 2019. On November 2019 the applicants served notices on the tenants to terminate the lease of 31 January 2020.

2. The tenants vacated the property on 31 January 2020. By then, rent arrears of £5800 had accumulated. All parties agree that there are rent arrears of £5800. The respondent say that the property was not in tenantable condition while they occupied the property and that the property was infested with damp, mould and condensation. Since this application was raised the applicants have recovered the tenancy deposit which has been applied to the arrears of rental, so that the amount of rent arrears has reduced to £5,050.00

3. The applicants accept that the property was not in perfect condition when the respondents took occupancy. Before the respondents moved into the property. The applicants renewed the carpets in the property, redecorated the property and installed a new cooker, extractor hood, and freezer. Acknowledging that the property had not been fully renovated, they accepted a reduced rent.

4. The first respondent was an employee of the estate section of the applicants' University. In November 2017 the respondents reported water ingress through the windows of the property. The applicants' clerk of works inspected the property. He did not find water ingress but found condensation. The condensation was cleaned & the windows and affected areas were redecorated. Some repairs to the internal

woodwork on the windows were carried out. The applicants gave the respondents advice on heating and ventilation.

5. In the autumn of 2019 the respondents contacted the applicants complaining about humidity and condensation within the property. The applicants' clerk of works inspected the property and checked the windows and gutters. He did not find water ingress but found condensation. The condensation was cleaned and the windows and affected areas were redecorated. The applicants gave the respondents advice on heating and ventilation.

6. On 21 August 2019 the first respondent emailed the applicants and acknowledged that the respondents had amassed rent arrears and explained that he intended to enter into a payment plan to clear the arrears. It was only after this application was made that the respondents said that they were withholding rent because of defects in the property.

7. The respondents believe that the property is impossible to properly heat and ventilate, and believe that damp was caused, at least in part, because the property has single glazing.

8. On 23 July 2020 Jack McGowan, surveyor, of Hardies property and construction consultants examined the property on the instructions of the applicants. He was provided with a summary of the history between the parties together with a copy of the lease between the parties, photographs of the property taken by the applicants before the lease commenced, and a schedule of works completed by the applicants before the lease commenced.

9. Mr McGowan examined the photographs and documents that he was presented with. He then visited the property and carried out a visual inspection during which he took photographs of the current condition of the property and took damp meter readings of areas where there is evidence of mould growth. Mr McGowan inspected the interior and the exterior of the property.

10. After examination of the property, Mr McGowan concluded that there is mould staining on the interior of some windows and walls within the property, but that the mould staining was caused by condensation during the occupancy of the property. His conclusion is that the mould staining and damp was caused by condensation because the property was not properly ventilated and heated. He reports that there is no present mould growth within the property because the property is now sufficiently heated and ventilated.

11. The lease entered into between the parties contains *inter alia* the following obligation placed on the respondents

## Clause 8

You will keep the subjects clean, sufficiently heated and properly aired and ventilated to ensure that the property is kept clear of mould and condensation

12. Condensation is caused by a combination of excess moisture in the air and poor ventilation. It is caused by the activities of the occupier of a property. It can be eradicated by adequately heating and ventilating a property.

13. Rising damp can look like condensation, but it has a very different cause. Rising damp starts at ground level and rises upwards, climbing the walls of a property from the floor. It can cause more damage than condensation. Penetrating damp is caused by water from the outside of a building leaking through the walls. The most common causes of penetrating damp are leaking pipes, aging brickwork and poor guttering.

14. The condensation mould complained of by the respondents was the responsibility of the respondents alone. If they had adequately ventilated and heated the property, any mould could have been cleaned off and the condensation problem eradicated. The property does not suffer from either rising or penetrating damp.

### **Reasons for Decision**

1. At the case management discussion on 3 March 2020, the respondents said that they had withheld rent because the property was not habitable. The respondents focused on humidity and condensation within the property and said that they had reported the humidity and condensation to the applicants. The legal member of the Housing and Property Chamber noted that the issue to be resolved by this tribunal is whether rent for the period from 31 May 2019 to 31 January 2020 was lawfully due either in whole or in part, and if not, what level of abatement is justified. At the start of today's hearing, the respondents suggested that an abatement of 50% of the rent should be made.

2. Expert evidence comes from Mr McGowan. He is an experienced surveyor who has examined the property and taken damp meter readings. His unchallenged evidence is that the problem with mould and damp within the property was caused by condensation.

3. The remedy lay in the respondents' hands throughout. All they had to do is adequately heat and ventilate the property to remove the problem. The responsibility for heating and ventilating the property lay (in terms of the lease) with the respondents.

4. The weight of reliable evidence indicates that the respondents have no valid reason to withhold rental. Parties agree that arrears of rent now total £5050.00. On the facts as we find them to be the arrears of rent are due and should be paid by the respondent to the applicants.

5. The Tribunal determined to make an Order for payment of £5,050.00. Rent was lawfully due in terms of clause 4 of the Tenancy Agreement at the rate of £560 per month. Since March 2019 the respondents have not paid the monthly rental. By 31 January 2020 the arrears of rent totalled £5,800.00. The applicant has recovered the tenancy deposit so that today the rent arrears total £5,050.00

### **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for payment.

### **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.**

P. Doyle  
Legal Member

11 August 2020