



**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/20/0881

Re: Property at 64 Westergreens Avenue, Kirkintilloch, G66 4AR (“the Property”)

Parties:

**Mr Charlie Cox, Mrs Jacqueline Cox, C/o Victoria Letting, 4 Chancellor Street,
Glasgow, G11 5RQ (“the Applicants”)**

**Miss Catherine Wilson, Mr Darren Tait, UNKNOWN, UNKNOWN (“the
Respondents”)**

Tribunal Members:

Ms H Forbes (Legal Member) and Miss E Munroe (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment should be granted against the
Respondents and in favour of the Applicants in the sum of £1404.66.**

Background

1. This is an application received in the period between 11th March and 16th December 2020 in terms of Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicants were seeking an order for payment in respect of rent arrears arising from a tenancy agreement between the parties that commenced on 24th April 2016, at a rent of £675 per month, and repairs and cleanings costs following the termination of the tenancy. A copy of the short assured tenancy agreement was lodged, together with an invoice for cleaning costs, rent statements, photographs, an inventory and information in regard to repairs carried out.
2. Case Management Discussions (“CMD”) took place on 6th and 30th April 2021 by teleconference call. The Respondents confirmed they were claiming an abatement of rent because they did not have full use of the Property due to a failure by the Applicants to attend to various repair issues. The Respondents disputed the cleaning costs and claimed they

were prevented from attending to clean the Property as the locks had been changed on or after 27th January 2020, when the Property was vacated. There was no agreement on the end date of the tenancy.

3. Both parties lodged written representations and productions.

The Hearing

4. A hearing took place by telephone conference on 9th June and 31st August 2021. The Applicant, Mr Cox, was in attendance and represented by Ms Annette Hanna of Victoria Lettings. Mr Tait was in attendance and represented by Ms Kasia Prochalska, Solicitor, and supported by Ms Stacey Gurr (on 9th June only). Ms Wilson was in attendance.

Cleaning and removal costs/Lock change

The Applicants' position

5. Ms Hanna referred to photographs lodged on behalf of the Applicants, stating they were taken on 3rd June 2021. They indicated rubbish left in the Property, unopened mail, stained carpets, broken toys and furniture, pen marks on the fire surround, dirty cooker, unclean flooring and unclean bathroom. The Tribunal was referred to an invoice from Louise Smart (Document 40) dated 26th June 2021, stating that a deep clean had been carried out on 10th and 12th June 2020 at a cost of £180 with a further charge of £50 for disposal of unwanted items. The cleaner was at the Property for a day and a half, and the black bags, broken furniture and garden items had to be disposed of at the dump, with a cost involved, as the bins at the Property were full. The Respondents had a duty in terms of the tenancy agreement to make good any damage or necessary cleaning and take reasonable care of the accommodation.
6. The Tribunal heard from Louise Smart, a self-employed cleaner and proprietor of Smart Cleaning Services. She has owned the company for 8 or 9 years. She mostly cleans for letting agents. She attended at the Property on 10th and 12th June 2020, having collected the keys from the letting agent. The Property required a deep clean which usually takes 4 to 8 hours. She described the condition as disgusting. It had not been recently cleaned and there was dust and staining on the skirting boards. The cupboards, oven and bathroom were dirty. She attended from 8.30am to 3pm on 10th June and from 10am to 1 or 2pm on 12th June. Her charges are £15 to £20 per hour. She discarded items at the dump and there was a cost of £50.
7. Under cross-examination by Ms Prochalska, Ms Smart said she carries out a lot of cleaning for the letting agent, denying she would lose their business if she did not give evidence on their behalf. She said she was at the Property on 10th June until 3 or 3.30pm. There was a leak from the pipes for the washing machine. There was food in cupboards and toys

lying around. Asked whether she was told to leave items outside for collection by the Respondents, she said she no. She would have done so had she been asked. She thought she had done two runs in her car to the dump but could not remember clearly. Asked whether anyone came to the Property at 3pm, Ms Smart said no. It was put to her that she was not there at 3pm on that day, which she denied. Asked whether it looked as if the Property had been empty for some time, Ms Smart said she could not remember. There was mould in the bedrooms, on the skirting boards, the windows and the cupboard.

8. Ms Prochalska asked Mr Cox why redecoration was carried out on 13th June 2020, the day after the cleaning had been carried out. Mr Cox said the Property had been left in a poor state, with damage to carpets. His insurers had confirmed it was not repairable. There had been a botch job removing the washing machine, which had caused a leak. The walls were in a state. The redecoration was done prior to new carpets being fitted.
9. Under cross-examination, Ms Hanna confirmed that the photographs were taken at the Property on 9th March and 3rd June 2020. She could not say if the mail at the Property was excessive as she was unaware of the normal levels of mail received. Ms Hanna said the cleaner was told to leave the belongings outside for collection by the Respondents. The cleaner had deep cleaned the carpets in an attempt to remove stains, but they could not be removed and the carpets had to be replaced. She had received no confirmation from the Respondents that they would collect their belongings, despite communication between Ms Hanna and an advisor at Shelter Scotland, whereby Ms Hanna had told the advisor that the belongings would be left under the kitchen window on 10th June 2020 for collection. Ms Hanna could not remember exactly how the cleaner had collected the keys but, as she is the office cleaner, she has a key to the letting agent's office and could have let herself in to collect them.

Lock change

10. Ms Hanna said the locks were changed on 10th June 2020 as shown by Document 24, which was a receipt for £60 from a locksmith, dated 10th June 2020. This was the only time the locks were changed. The locksmith had attended while the cleaner was there, but the actual time was unknown.
11. Ms Hanna had noticed no issues with the lock when accessing the Property prior to the lock change, with the front door key. Responding to questions from the Tribunal, Ms Hanna said the new keys would have been collected from the shop round the corner from the office, where payment would also have been made. She was unaware if two people had written the receipt. Locks are not always changed after tenants leave. In this case, the Respondents had retained a key, so the locks were changed.

12. Under cross-examination, Ms Hanna said the locks were changed on the morning of 10th June 2020. Asked why there was no address on the locksmith receipt, Ms Hanna said they do not instruct many lock changes and would know which property it was for. Asked whether there were two different hand-writings on the receipt, Ms Hanna said she could not say. There would be no reason to falsify the receipt and she took offence at the suggestion. Despite stating at a CMD that she would call the locksmith to give evidence, she had not done so as she thought the invoice was sufficient evidence.
13. Mr Cox said there was no instruction to change the locks until he gave an instruction on 9th June 2020. Prior to that date it had been believed the Respondents were still in the Property.
14. Under cross-examination, Mr Cox said the Property had been accessed on 9th March 2020. He was unable to answer questions regarding the handwriting on the receipt for the lock change, as these matters were handled by the letting agent. The Respondents' belongings were still in the Property.

Mr Tait's position

15. Mr Tait attended the Property on or around 29th January 2020 with a van to collect his belongings, having left the Property on 27th January 2020. On the date of leaving, he had assistance from the local authority but time was limited and they were unable to take everything. He got a discretionary payment to get a van to return to the Property. He tried the doors and found the keys did not work. He called the letting agent and spoke to someone called Jill. He told her they had left the Property and expected this message to be passed on. He awaited a return call but did not hear back. He had not arranged storage for his belongings as he intended to transfer them straight to his new address. He posted a key through the door of the Property and retained a key. He moved his plants to a neighbour's garden. All his outdoor furniture and toys had been removed, except for a sun bed. The blinds in the Property were closed. Neighbours said people had been at the Property and removed items. Mr Tait said he spoke to Jill another couple of times but she didn't know what was going on.
16. Mr Tait attended the Property on 12th March 2020. He tried the door and the key did not work.
17. Mr Tait attended the Property on 10th June 2020 to collect his belongings following communication between a Shelter Scotland advisor and Ms Hanna. He was told by the Shelter advisor that the belongings would be left under the kitchen window for collection at 4pm. He attended at 3.04pm. There was no one at the Property and the belongings were not

there. He knocked on the doors and tried to unlock the door but the key did not work. He was there until 4.30pm.

18. Mr Tait said he intended to access the Property to clean it. He did not accept that the photographs were a true indication of how the Property had been left, nor did he accept it needed the amount of cleaning described by Ms Smart, especially if the carpets had to be replaced. He said the Respondents would not have left the Property in a bad state if they had been allowed to return to clean it.
19. Responding to questions from the Tribunal as to why he had said in an email to the letting agent that he had left £650 in the Property, Mr Tait said there was some cash, but not as much as that. He described it as a last ditch attempt to get into the Property and said he was trying to get a reaction.
20. Under cross-examination, Mr Tait denied having the telephone number for the Applicants. He had never corresponded with them. He had met them at a property inspection in August 2019 and discussed decorating the Property.

Tenancy end date

The Applicant's position

21. It was Ms Hanna's position on behalf of the Applicants that the tenancy ended on 3rd June 2020, following email correspondence from the Shelter Scotland advisor (Documents 16 & 17). The Respondents had not notified the letting agent that they had left on 27th January 2020. From that date to 9th March 2020, the letting agent was unaware of any change.
22. A notice to quit was served on the Respondents requiring them to leave by 26th January 2020. On that day, Ms Hanna, a colleague and the Applicants called at the Property and were told by the Respondents that they were not moving. Ms Hanna said Jill did not recall any calls from the Respondents stating they had left, and there was no system to record calls made and received.
23. By email dated 9th March 2020 (Document 3) Ms Hanna had contacted the Respondents to say she had been advised that the Respondents had absconded from the Property. She had visited the Property and noted damage and missing white goods. On the same date, Mr Tait had responded twice, including the statements: *'I have not absconded from the property and your own admission of entering the property is both illegal and unlawful'; 'I fully intend to return to the property and carry out a deep clean this week'; 'You have no right to enter the property unless you have obtained my consent'; 'It is not reasonable to assume we have*

absconded’; and *‘The return of my deposit would allow me to leave the property and put down a deposit on a new place.’* (Documents 4 & 5).

24. By emails dated 16th and 24th March 2020 (Documents 6 & 7), Jill Loan had asked the Respondents to confirm that they had left the Property. Mr Tait responded on 24th March 2020, but did not answer the question as to whether they had left the Property (Document 8). In all the emails that went back and fore, not once did the Respondents ask for their belongings.
25. It was Ms Hanna’s position that they could not be certain the Respondents had left the Property. They had regard to an advice factsheet from the Scottish Association of Landlords (Document 14) and they erred on the side of caution by requesting confirmation from the Respondents. They knew in April that the Respondents were not living in the Property but the Respondents had retained a key and were coming back and fore. There were additional difficulties due to lockdown. A monthly automatic rent reminder was sent to the Respondents by email. It was only following correspondence with the Shelter advisor that they were able to ascertain that the Respondents had left the Property and the end date was taken to be 3rd June 2020.
26. Under cross-examination, Mr Cox confirmed that he had attended at the Property on the date of expiry of the notice to quit. He thought this happened on 25th or 26th January; however, he accepted it could have been Friday 24th January. Mr Tait told them to get off his property and closed the door. Mr Cox said he relied on Document 16 whereby the Shelter advisor had stated that Mr Tait had vacated the Property.

Mr Tait’s position

27. Mr Tait said the Respondents left the Property on 27th January 2020. They had received several notices to quit with different end dates on them, including 24th, 26th and 27th January 2020. On 24th January, Ms Hanna and Ian Barkley attended from the letting agent along with the Applicants. Mr Tait had emailed to say they did not have his permission to be on the property on that date as the tenancy agreement was still in place. Mr Tait told them he did not have to vacate the Property until 27th January.
28. Mr Tait confirmed the Respondents had been given a temporary tenancy by the local authority that commenced on 27th January 2020. He reiterated his previous evidence on attempts to get access and having left personal items, which amounted to around £2000 in value and included his watch.
29. Mr Tait said he took advice from Shelter Scotland and was told if he asked for the deposit, that would signify the end of the tenancy. He then requested return of his tenancy deposit from My Deposit Scotland.

Document 5 showed confirmation of his request dated 12th March 2020. The deposit was not returned to him. He did not object at the time as there were rent arrears and he felt stressed by the situation. The relationship with the letting agent had deteriorated due to repairs not being carried out. There had been seven unannounced visits by the letting agent. Mr Tait was surprised to be accused of absconding.

30. Under cross-examination, Mr Tait said he knew on 24th January that they were to leave on 27th January 2020 and that he did not get the chance to tell the visitors on 24th January as they were confrontational. If they had come on the correct date, they could have had the conversation. It was very stressful for the Respondents, very unprofessional and intimidating. Asked why he had not contacted the letting agent before March, he said he was seeking advice. If given the opportunity to return to clean, he would have done so.
31. Responding to questions from the Tribunal, Mr Tait said he had a forty minute call with Jill Barkley at the letting agent in May 2020 and she apologised for how he had been treated. He was very relieved when she said he could retrieve his belongings. He had asked to record the call, but she refused.
32. Asked why he had not made any effort in February 2020 to sort matters out, Mr Tait said he was living in a remote area and his car had broken down. Asked why he had indicated in his March emails that he had not vacated the Property, Mr Tait said the letting agent was saying the tenancy was still in place, so he was questioning why they were entering if they believed that to be the case. The letting agents were playing a game. He wanted his belongings back and they had changed the locks. He was trying to get a response from them. He had also contacted the CAB in March and they said if he was still being considered a tenant, he had a right to get his belongings.

Repair Issues

The Applicant's position

33. Ms Hanna said there were two gates and a new fence. The gate was damaged before 2019 but could be opened and closed. There was a thumb lock and a shaky post. There was agreement at a meeting to have it repaired. She disputed the issues restricted use of the garden.
34. There was mould in a bedroom cupboard in the Property. It looked like it was caused by condensation. The cupboard was packed with belongings and no air was circulating. The contractor thought it might be due to the gutters requiring cleaning and this was done in June 2017. No other remedial works were carried out. The roof was not checked. The Applicants were to provide paint to allow the Respondents to redecorate, but this did not happen. Advice was given to the Respondents to

ventilate the Property to avoid condensation mould, and to use a solution of bleach and water to remove the mould.

35. There was a leak from the bathroom in 2018. It was repaired the same day it was reported. Contractors made a hole in the ceiling and there were water marks. There was no plaster damage. The area dried out within a day. Decorative work was required but was not carried out, due to a dispute around the letting agent knowing it needed repaired. The Respondents did not report it for a year, and then the Applicants went and looked at it.
36. The boiler was reported faulty on 7th February 2019 and a gas engineer taped it off and advised against use. The boiler was replaced on 11th March 2019. It took time to get two quotes for the work and a date to instal the boiler.
37. Ms Hanna could not confirm or deny that the Respondents had notified issues with the washing machine. If a repair was required, it was her position that it would have been carried out, and probably passed to the landlord to deal with. She thought it odd that the washing machine and fridge were replaced at the same time. There was no record of a broken toilet seat being reported and no emails advising that a kitchen socket required repair.
38. There had been a full inspection of the Property on 23rd August 2019 attended by Ms Hanna, Mr Ian Barkley, Mr Tait and the Applicants. They went over everything and agreed works to be carried out, as listed in an email of the same date (Document 30). Mr Tait had replied to say he did not know when access could be given but he would advise of this. Some decorating works were to be carried out by the Respondent, with materials to be provided by the Applicants. An electric heater in the hallway was removed at the inspection as the Fire Brigade had informed the Respondents that it was not safe, due to a flex running under the carpet. It was not replaced as it was not required in the small landing area. There was no room for another heater. There was gas central heating in the Property. There were two battery operated smoke alarms in the Property at the start of the tenancy. They were missing at the time of inspection.
39. Ms Hanna said the issue with the bedroom window was pointed out on 23rd August 2019. It was a turn and tilt window and the thumb latch on the window prevented it from opening. A work order was issued on 25th September 2019 to replace the bedroom window, with contact details provided for the Respondents. Responding to questions from the Tribunal as to the reason for the delay in arranging the work, Ms Hanna said the mould was to be addressed first, as it was the priority. They were working their way through the list.

40. By 7th October 2019, no arrangement had been made for access. An electrician and a joiner had tried to contact the Respondents. Ms Hanna emailed Mr Tait on 7th and 29th October 2019 regarding lack of access and received no response. On 5th November 2019, the letting agent visited the Property and got no answer. A follow-up email was sent that day informing the Respondents of an inspection on 7th November 2019. A notice to quit was served on 7th November 2019. On 12th November 2019, there was a further email to the Respondents from Ms Hanna which included mention of access for repairs.
41. Mr Cox concurred with Ms Hanna's evidence and said the Applicants had always reacted through the letting agent very quickly to carry out any work required.
42. Under cross-examination, Ms Hanna said the damp was still present after the Respondents moved out. It had been reported in May 2017 and a repair had been carried out to the gutters, which the letting agent believed was causing the damp. The cupboard required washing down, the stain blocked and painted. Mr Tait said he was happy to do this, if the Applicants provided materials, but he did not carry it out. Ms Hanna said she was not aware of Mr Tait mentioning damp throughout the tenancy. It was raised again on 23rd August 2019, when Mr Tait said he wanted the Applicants to carry out works, but no access was given.
43. Ms Hanna said that the window could have been mentioned during an inspection on 29th July 2019, which would mean it was two months before a work order was raised. It was never repaired. The spotlight did not require repair following the leak. Ms Hanna confirmed that smoke detectors were not listed on the inventory, which had been prepared by her, although they should have been listed. She said no interlinked smoke detectors were fitted after they were requested as the electrician could not get access. Ms Hanna said she could not recall the back fence panel lying on the ground at the inspection on 23rd August 2019.

Mr Tait's position

44. Mr Tait said he reported damp in May 2017. A contractor attended and said the plasterboard would have to be removed or the damp would spread. Mr Tait assumed this had been passed on to the letting agent. Ms Hanna was overheard saying she had forgotten to tell the landlord some weeks later. He chased this matter up several times, by phoning the letting agents, as it was affecting the health of his son who was diagnosed with infant wheezing which is now full blown asthma. No paint was provided for the cupboard. Use of the bedroom depended on the weather. It was not so bad in the summer and worse in the winter. Sometimes the mould would affect his breathing too. He sometimes slept on the couch while the children slept with his partner. The letting agents did not always get back to him.

45. During his time without a boiler, Mr Tait said they used the electric shower. Although the main issue with the flood to the bathroom was fixed, repair works to décor were never carried out, and although the contractor had said a panel required to be removed, it was never done. He was told by a contractor not to use the spotlight after it had been affected by the water leak. He taped it off so his children would not use it. The Fire Brigade had done a visit on spec. They said mains-wired smoke detectors were required, and they fitted two battery operated smoke detectors. This was mentioned to the letting agent at inspections. The Fire Brigade recommended removal of a hall radiator, with a wire running under the carpet. Mr Tait said they needed this heater, despite having gas central heating, but it was never replaced.
46. Mr Tait said he reported a problem with the washing machine in May 2017. His partner chased this up three weeks later. They had young children and needed the washing machine. Nothing happened, and they were two or three months without a washing machine, so he borrowed money from his mother and bought a new machine, also paying £50 to have the old machine removed. The fridge was leaking and the temperature dropping over a period of four to six weeks. He bought a new fridge freezer.
47. The side gate of the Property was really old and did not shut properly. The children caught their fingers in the gate and it was not safe. There was no concrete for the post at the back gate and the post had rotted and snapped. Both matters were reported to the letting agents before and at the inspection on 29th July 2019. Ian Berkeley had said they were not bothered about the garden. The problems were not attended to.
48. Mr Tait had asked the letting agents for the inspection reports but was told they were only for the landlords. He wanted to see them to prove that issues had been reported several times.
49. The relationship with the letting agent declined in June 2019 after the Respondents were late with their rent. They received an email then an unannounced visit from Ms Hanna who was rude and aggressive and told them she would recommend they be thrown out of the Property. By emails dated 25th and 26th July 2019 (Documents 10/3 & 10/4) Mr Tait told Mr Barkley he did not want to deal with Ms Hanna, and he wanted communication to be by email so he would have an audit trail. The letting agents' emails were evasive as they knew they had not done the repairs.
50. At the August 2019 inspection, the Applicant, Mr Cox, had said the biggest difficulty in getting repairs carried out was that the Property was occupied. Everything was looked at. There was disagreement over whether the window was in working order. The letting agent staff said it was working. Mr Cox said it needed fixed. Mrs Cox said the Respondents could decorate the Property.

51. Mr Tait said the phone number given to the contractors was no longer in use, so he did not get their calls after the August 2019 meeting. He did not get any email from contractors regarding access. He did not think his partner had got any calls. The Respondents were keen to get the repairs addressed, especially the window repair, but they became resigned to the fact that repairs were not going to be addressed, so they decided not to allow access. The letting agent had once attended without notice and let themselves in when the Respondents were out. Asked whether he had taken housing advice, Mr Tait said it was a difficult time. He had closed his business and benefits did not cover the rent. He contacted the local authority, and later contacted Shelter Scotland. He said this was one of the worst experiences he had had in over twenty years of renting. It was a nightmare.
52. Responding to questions from the Tribunal as to why he had not responded to the letting agents' emails regarding access for repairs, Mr Tait said he did not receive them. He then said he had received the October emails but did not want to communicate with Ms Hanna. He thought he had responded to Mr Barkley on one occasion. Asked whether he had responded to the issue regarding the date of rental payments in the email from Ms Hanna dated 29th October 2019, Mr Tait said he had, but he had not answered the point about access as he did not want to deal with Ms Hanna. He said he received the email from Ms Hanna dated 5th November 2019, which mentioned repairs and an inspection. He responded to refuse permission for inspection. A notice to quit was received dated 7th November 2019. There was so much work to be done which would be a massive inconvenience, especially if they had to leave the Property after the notice to quit.
53. Under cross-examination, Mr Tait accepted he had not provided any receipts for the toilet seat or white goods. He took the toilet seat when he left as he had not been reimbursed by the Applicants. Asked why he had not told the letting agents that they had missed the back fence off their list of issues after the August 2019 inspection, Mr Tait said everyone saw the back fence was down.
54. Ms Hanna put it to Mr Tait that 2 electric heaters were provided to him when the boiler broke down. He disputed this. He agreed there was an electric fire but it was not PAT tested and he did not want to use it with young children.
55. Asked whether he had texted the Applicant, Mr Cox, or had communications with him, Mr Tait said he could not remember. Asked why he had not contacted the Applicants about repairs, he said he had no details for them. Responding to questions from the Tribunal, Mr Tait said his partner overheard Ms Hanna saying on the phone that she had not passed on the repair issues to the Applicants or contractors.

56. Mr Tait said the damp cupboard was used for storage of old toys and, if there were any clothes in there, they were also old. A contractor had told him there was water trapped at the back roof and it had to be addressed.
57. Under re-examination, Mr Tait said Mr Cox agreed the back fence was rotten. Mr Tait had taken the white goods at the end of the tenancy as they belonged to him. The toilet seat was a decent replacement for the original flimsy item. He had not wanted to use electric heating as the heaters only heated patches of the rooms and were not sufficient. The cost was high. While the boiler was out of use, the children slept with his partner due to the cold.

Ms Wilson's position

58. The Respondent Ms Wilson had been invited to lead evidence or cross-examine witnesses, and she declined throughout the hearing, stating that she was adopting the position taken by Mr Tait.
59. Responding to questions from the Tribunal, Ms Wilson said she was unsure whether the contractors that told them works would be required to address the damp were the same contractors that cleared the gutters. She thought not, as she thought it was dark when the contractors came into the Property and looked at the damp cupboard. She had reported the damp to the letting agents and Ms Hanna had come out to the Property. Ms Wilson said she was not contacted by contractors seeking access to carry out repairs. She could not recollect receiving emails from the letting agents about access for repairs in late 2019, but she could not deny she received them. There were only two months of their tenancy left by then.
60. Asked if they had sought advice on repairs, Ms Wilson said they considered the Ombudsman but were unaware of the possibility of applying to the First-tier Tribunal for Scotland for a determination as to whether the Property met the repairing standard. Ms Wilson said she considered the tenancy to have ended on 27th January 2020. She was unaware of the correspondence from Mr Tait to the letting agents in March 2020.
61. Ms Wilson said she was not with Mr Tait when he attended the Property with a van, but she was with him on 10th June 2020 when he attended at the Property. She was standing at the bottom of the drive and saw Mr Tait try to access the Property with his key, with no success. It was 3pm and the cleaner was not at the Property. They had been told the cleaner would be there until 4pm. They knocked on both doors, and waited for a while, during which time they contacted Shelter Scotland.
62. Ms Wilson said she had nothing to add to the evidence regarding abatement. She accepted the Property needed a clean, particularly the

kitchen and living room floors. Otherwise, she adopted Mr Tait's position on this matter.

63. Under cross-examination by Ms Prochalska, Ms Wilson said they had not been aware of their rights as tenants until Mr Tait contacted Shelter Scotland. They intended to return and clean the Property.

Submissions

64. Ms Wilson was unable to be present for submissions. She said she was happy to adopt submissions made on behalf of Mr Tait. Mr Cox was unable to be present for submissions.

The Applicant's position

65. Ms Hanna said the letting agents tried everything to ascertain the end date of the tenancy. It was 3rd June 2020. There was no discrepancy with the lock change. It took place on 10th June 2020.
66. The abatement claimed by the Respondents was excessive and amounted to more than the arrears. The Respondents had been provided with the usual repairing standard letter at the start of the tenancy. The Property required repairs throughout the tenancy, as would any tenancy of that length. The Applicants and the letting agents acted reasonably within the correct timescales. The Respondents had bathing facilities and hot water when the boiler was in disrepair. The key to the window had been lost by the Respondents. The window required repair but there was a thumb turn that worked.
67. All rooms were utilised. There was full access to the kitchen and the problems were only decorative. Garden problems do not form part of the repairing standard. The fence panel was not down and did not require repair. The bedroom cupboard was used throughout despite the damp. Only the cupboard was affected. It could not be proved that the white goods required repair or that they had been replaced. All evidence had been provided that the cleaning costs were not excessive and there was a lot of damage to decor. The cleaner was there for two days and the carpets were stained throughout. The Property had been fully decorated prior to commencement of the tenancy and the state in which it was left went way beyond fair wear and tear. The Applicants chose not to claim the cost of decoration and carpets because they wanted to draw a line under this and they knew the Respondents were struggling.
68. The letting agent did not attend at the Property until March 2020. They did not remove anything from the garden in January 2020. Anyone else could have taken the items that were left. By June 2020, there was only a broken sun-lounger in the garden. Ms Hanna was certain that no one else in the letting agents had arranged a lock change. The Applicants were adamant that everything must be done as legally as possible.

Mr Tait's position

69. Ms Prochalska asked the Tribunal to find that the tenancy ended on 27th January 2020. A notice to quit had been served and the contractual tenancy had ended. There was no obligation on Mr Tait to confirm the end of the tenancy in writing. The Respondents' new tenancy commenced on that date. The locks were changed between 27th and 31st January 2020. There was no reason for the Respondent to make up a story that he returned with a van and could not get access. He should be liable for rent to 27th January.
70. The evidence on the lock change was not credible. Ms Smart was vague and there were inconsistencies in her evidence. There was confusion as to how she collected the keys. She was vague about what she did with the items that were left in the Property. Ms Smart has a business relationship with the letting agent and it was not in her interests to give evidence against the letting agent. It was disputed that she was even there on 10th June 2020.
71. Ms Smart did not mention the locksmith attending on 10th June 2020. There was no address on the locksmith receipt. It looked as if the date had been added later, in different handwriting. It could have been for any property. The Applicants terminated the tenancy by changing the locks. It was submitted that if the Applicants had sought legal advice after changing the locks in January 2020, they would have found that they had unlawfully evicted the Respondents, which is a criminal offence, therefore they were unwilling to confirm their actions.
72. If the Tribunal was not minded to agree, the alternative date on which the tenancy ended should be 9th March 2020, when the Applicants accessed the Property and considered it abandoned with no furniture, no food and no occupants. The photographs lodged showed a large amount of mail and items packed in bags. The letting agents emailed the Respondents on that day stating it had been abandoned. In terms of section 16(1)(a) of the Housing (Scotland) Act 1988, after the termination of a contractual tenancy, so long as the tenant retains possession of the house, there will be an assured tenancy. 'Retaining possession' should be read as requiring occupation. In Adrian Stalker's book *Evictions in Scotland* (2nd edition), page 26 onwards, the test for establishing occupation when there is no physical presence in the house is set out. Two factors need to be satisfied: physical signs of occupation and an intention to return that could be established by some visible state of affairs. It was clear on 9th March that there were no physical signs of occupation and no intention to return.
73. The alternative position if the Tribunal is not satisfied that 9th March 2020 was the end date, is 12th March 2020, when the deposit was dealt with. Charging rent until 3rd June 2020 was not justified or reasonable.

74. Mr Tait should not be liable for the cleaning or removal costs. A deep clean was carried out, including carpets that were then replaced. It made no sense that the Property was accessed for decoration and repairs the day after a deep clean was carried out. The letting agent failed to follow instructions regarding leaving the Respondents' property outside for collection.
75. It was not in dispute that the Property was in a state of disrepair. It did not meet the repairing standard as set out in section 14 of the Housing (Scotland) Act 2006. The damp was still present after Mr Tait moved out. The Respondents were unable to fully utilise the Property. The items in the cupboard were not in use. The children had to sleep in another room. There was no central heating for 5 or 6 weeks in the winter. This was inconvenient for a family with three small children. A bedroom window was faulty and this was not attended to. The damage caused by a leak into the kitchen was not repaired. The garden fence was not repaired. Some of these issues were reported in 2017 and the lack of action could not be blamed on access problems.
76. This is not an action for compensation. The figures given in terms of an abatement on behalf of Mr Tait were simply to demonstrate that, had he raised an action for compensations, that is how the figures would be calculated. The case *Renfrew District Council -v- Gray 1987 SLT (S Ct) 70* was authority for the proposition that a tenant who did not enjoy what was contracted for, with respect to disrepair at their tenancy, has a right to an abatement of rent from their landlord. The Tribunal case *KEY-LETS -v- Hunter* is authority for the basis on which abatement calculations are reached.
77. The last payment of rent was on 25th September 2019, after which the Respondents were unable to pay rent due to financial hardship. The rent arrears at 27th January 2020 were £877.22. A further calculation will be required if the Tribunal finds the tenancy ended on 9th or 12th March 2020.
78. Responding to questions from the Tribunal regarding the figures submitted for abatement on behalf of Mr Tait, Ms Prochalska said the calculations were estimates. It is for the Tribunal to reach a decision on the calculation of any abatement. It was submitted that the boiler affected the whole property and that worrying about safety issues took away from the enjoyment of the Property. It was also for the Tribunal to decide if any abatement should be due for the period that access was not provided by the Respondents for repairs. Ms Prochalska said the contractors should have tried emailing the Respondents and calling Ms Wilson, as the number given for Mr Tait was no longer in use. It was not clear that contact by contractors was made within a reasonable period. She pointed out that the Tribunal did not have the benefit of seeing the responses from the Respondents to the emails sent by the letting agents.

Following the notice to quit, the Respondents were not happy for substantive works to be carried out. The repairs would have been disruptive. It was for the Tribunal to decide if access had been denied, and, if it had, to recalculate the abatement accordingly.

79. There were difficulties because the Respondents did not want to deal with Ms Hanna. Mr Tait had put in earlier submissions that mentioned harassment. Ms Wilson was suffering from post-partum depression and was on medication. There were unannounced visits by the letting agents and so many fruitless inspections. These should be taken into account as mitigating factors in relation to allowing access.

80. There were several different people from the letting agents dealing with the Respondents and, given the issues during lockdown, Ms Hanna might not know that the locks had been changed earlier or belongings disposed of.

Findings in Fact and Law

81.

- (i) The parties entered into a short assured tenancy agreement in respect of the Property that commenced on 24th April 2016 at a monthly rent of £675.
- (ii) On 31st May 2017, the Respondents reported issues with damp in the built-in wardrobe in the children's bedroom in the Property. At some time thereafter, gutters were cleaned out in an attempt to solve the problem.
- (iii) At some time after 31st May 2017, contractors attended and discussed carrying out substantive works to alleviate the damp. No substantive works were carried out. The Respondents reported the issues with damp throughout the tenancy. The problem persisted until the end of the tenancy.
- (iv) On 31st May 2017, the Respondents notified the Applicants' representatives of disrepair issues with the washing machine and fridge. No action was taken by the Applicants in this regard. The Respondents purchased their own washing machine and fridge freezer approximately two months later.
- (v) In April 2018, there was a water leak through the kitchen and hallway ceilings. The leak was attended to, but the subsequent damage to décor was not attended to by the Applicants and persisted throughout the tenancy.
- (vi) In January 2019, the boiler was condemned and the Respondents were advised not to use it. The boiler was replaced by the Applicants on 11th March 2019.

- (vii) The Respondents had access to electric heating and an electric shower during the time that they were without the boiler.
- (viii) In March 2019, the Respondents informed the Applicants' representatives that there were no smoke detectors in the Property. No action by the Applicants was taken to remedy this issue.
- (ix) On 29th July 2019, a faulty bedroom window was reported to the Applicants' representatives.
- (x) On 29th July 2019, a broken garden gate and fence were reported to the Applicants' representatives.
- (xi) On 23rd August 2019, the Property was inspected. Thereafter, an undertaking was given that repair works would be carried out. No further works were carried out by the Applicants before the end of the tenancy.
- (xii) On 25th September 2019, a works order was raised by the Applicants' representative to have the window repaired.
- (xiii) From 7th October 2019, the Respondents, by failing to respond to calls for access for repairs, refused to allow access for repairs to be carried out.
- (xiv) The tenancy became a statutory tenancy on 24th January 2020, following a notice to quit served on the Respondents dated 7th November 2019.
- (xv) The Respondents ceased occupying the Property on 27th January 2020, leaving belongings within the Property and retaining a key to the Property.
- (xvi) The Respondents intended to return to the Property to remove belongings and carry out cleaning.
- (xvii) At some stage between 29th and 31st January 2020, the Respondent, Mr Tait, returned to the Property for the purposes of collecting belongings and cleaning the Property. He was unable to access the Property for reasons unknown.
- (xviii) On 9th March 2020, the Applicants and their representatives became aware that the Property was no longer occupied by the Respondents.
- (xix) The statutory tenancy ended on 9th March 2020.

- (xx) The locks to the Property were changed at some time between 27th January and 10th June 2020.
- (xxi) The Property required a deep clean which was carried out on 10th June 2020.
- (xxii) The cleaner appointed by the Applicants' representative disposed of the belongings of the Respondents despite arrangements having been made for them to be left for collection. The Respondents are not liable for the cost of disposal of their belongings.
- (xxiii) The Respondents did not have full enjoyment of the bedroom affected by damp from 31st May 2017 to 7th October 2019.
- (xxiv) The Respondents' enjoyment of the room with the broken window was affected from 29th July 2019 to 7th October 2019.
- (xxv) The Respondents' enjoyment of the Property was affected by the failure to carry out ceiling repairs and decoration works from April 2018 to 7th October 2019.
- (xxvi) The Respondents' enjoyment of the Property was affected by the failure to repair the gate and fence from 29th July 2019 to 7th October 2019.
- (xxvii) At the end of the tenancy on 9th March 2020, the sum of £2969.53 was outstanding in rent arrears.
- (xxviii) A portion of the rent arrears amounting to £1831.14 is not lawfully due

Reasons for Decision

82. There was insufficient evidence before the Tribunal to find that the Respondents had notified the Applicants' representative that they had left the Property on 27th January 2021, thereby terminating the tenancy. The Tribunal noted that Mr Tait stated that he had been told by neighbours that people had removed items from the Property in late January 2019, however, no evidence was led to establish this or to suggest who these people might be. It was impossible to make a finding that the Applicants or their representative were aware that the Respondents had left the Property at that time, notwithstanding that the contractual tenancy had come to an end. Indeed, the Respondents had retained a key, left belongings in the Property and intended to return to carry out cleaning. With the exception of one attendance at the Property to collect belongings and carry out cleaning at the end of January 2019, when Mr Tait could not gain access, the Respondents did nothing further to try and retrieve their belongings or clean the Property until early March

2019. The Tribunal considered that it was incumbent upon the Respondents, at that time, to properly notify the Applicants' representative that they had left the Property, to ensure that the Property was clean, and to return the key, thereby signifying that the tenancy had come to an end.

83. At the time of the attendance by the Applicants and their representatives at the Property on 9th March 2020, the situation had changed. Given the intelligence received that the Respondents had left, and the lack of furniture, food or clothing in the Property, it ought to have been abundantly clear that there was no occupation or intent to occupy the Property by the Respondents, notwithstanding the comments made by Mr Tait in response to Ms Hanna's emails. The Tribunal considered Mr Tait's comments to be ill-advised and petty. They appeared to have been made in a fit of pique at what he perceived to be poor treatment by the Applicants' representatives. However, Mr Tait also asked for return of his deposit, stating that it would allow him to leave the Property. As at 9th March 2020, the Applicants had enough information available to them to legitimately consider the tenancy to be at an end, on the grounds that there was no physical occupation and no intent to occupy. There was no justification for allowing the situation to continue until June 2020 awaiting confirmation from the Respondents.
84. The Tribunal was unable to make a finding in regard to the date of change of the locks. Although the Respondents were unable to access the Property in January and March, it was not clear why that was the case. There may have been a problem with the locks. The evidence that the locks were changed on 10th June 2021 was equally unconvincing. The receipt could have been for any property, Ms Smart made no mention of the locksmith attending the Property on that date, and the Applicants chose not to lead the locksmith as a witness. There was insufficient information before the Tribunal to make a definitive finding one way or another. Consequently, the Tribunal was unable to make a finding that the Respondents were prevented from returning to clean the Property by the actions of the Applicants or their representatives. The Tribunal observed that minimal effort was made by the Respondents to comply with the terms of the tenancy agreement in relation to cleaning the Property.
85. The Tribunal considered that the cleaning costs were justified. The Tribunal found Ms Smart to be a credible and reliable witness and accepted her evidence in regards to the extent of cleaning required. The Tribunal considered that the full costs of removing the Respondents' belongings were not justified, given the arrangement made to allow the Respondents to collect their belongings, which arrangement was not adhered to by the Applicants' representatives.

86. In relation to abatement, the Tribunal found that the Respondents are due an abatement of rent as they did not have full enjoyment of the Property as contracted for throughout the tenancy.
87. The Tribunal considered that the Respondents prevented access to the Property from 7th October 2019 onwards. While the Tribunal appreciated there were issues between the parties, the Respondents were not justified in preventing access to allow repairs to be carried out, and cannot legitimately make a claim for an abatement from that date forwards. The Tribunal considered that the Applicants' representatives had delayed dealing with the repairs for a considerable length of time without good reason.
88. In relation to the damp in the cupboard of one bedroom, the Tribunal accepted the evidence of the Respondents that this had been notified repeatedly throughout their tenancy. The Tribunal found that this affected enjoyment of the whole room on occasion; however, the evidence showed that the room was not continually out of use. No figure was put on the amount of time that the room was not able to be used, but reference was made to the children occasionally sleeping in another room. The Tribunal decided to allow an abatement of one-fifth of the rent paid for that room (which would be one-seventh of the total rent) over the relevant period as set out below, considering this to be an equitable sum.
89. The Tribunal considered the defective window to be a significant issue in terms of health and safety, and applied a 10% abatement of the rent.
90. The garden forms part of the subjects of let. The Tribunal applied a figure of 2.5% of the rent in respect of the repairing issues with the gates and fence.
91. The Tribunal considered that the lack of a washing machine for a period of two months was a significant problem for the Respondents and their young family. The Tribunal applied a figure of 5% abatement of the rent in respect of the washing machine.
92. The Tribunal could see no good reason why repairs to the décor were not carried out after the ceiling leak. The Applicants and their representatives were aware that repairs were required. The Respondents were entitled to have the Property restored to the condition in which it was let. The Tribunal applied a figure of 2.5% abatement of the rent in respect of this matter.
93. The Tribunal did not order an abatement in respect of the lack of smoke alarms, as it was not clear from the evidence that the Property was without smoke alarms at the start of the tenancy. If that was the case, it was not clear why the Respondents did not raise this issue with the Applicants sooner. Nor was it clear at what stage the Fire Brigade installed the alarms. The Tribunal observed that the Applicants'

representatives ought to take account of the relevant Scottish Government regulations in respect of fire detection and ensure that provision in the Property comply with these regulations.

94. The Tribunal made no findings in regard to the matter of the leaking fridge, as Mr Tait's evidence was that it did not cause inconvenience and they were able to work around it. Although it was reported as leaking, there was no evidence that it was not operational prior to replacement.
95. The Tribunal did not find an abatement due for the period during which the Respondents were without gas central heating. They had an electric shower and electric heating, and the period was not excessive, given the need to obtain quotes and carry out the work.
96. The following abatements are applied to the outstanding rental figure of £2990.97 (£2702.50 as at 25th February 2020 + £288.47 (13 days @ £22.19)), which was the sum due as at 9th March 2020:

Item	From	To	Period	Rent	%	Abatement
Damp	June 2017	7.10.19	28.25 months	2724.10 (1/7 of total rent)	20%	544.82
Window	29.7.19	7.10.19	9 weeks	1401.93	10%	140.19
Décor	April 2018	7.10.19	18 months	12150.00	2.5%	303.75
Washing machine	May 2017	July 2017	2 months	1350.00	5%	67.50
Garden	29.7.19	7.10.18	9 weeks	1401.93	2.5%	35.05
Total						£1091.31

97. The remaining rent arrears of £1899.66 are reduced further by the £675 deposit, leaving a total of £1224.66 in rent arrears due by the Respondents to the Applicants. A further sum of £180 is added for cleaning costs.

Decision

98. An order for payment is granted in favour of the Applicants in the sum of £1404.66.

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.

H Forbes

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Legal Member/Chair

21st September 2021
Date