



**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/20/1682

**Re: Property at Workshop Cottage, Glendaruel, Argyll, PA22 3AA (“the
Property”)**

Parties:

**Mr Paul Morley, Ms Dawn Evelyn Morley, The Old Steading, Glendaruel, Argyll,
PA22 3AA (“the Applicants”)**

**Mr Robert Hayes, 20 Kilmun Court, Kilmun, Argyll, PA23 8SF (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Eileen Shand (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application be dismissed and that no award be
made for the reasons given in this decision**

Background

[1] This is an application for a payment order dated 9th August 2020 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicants seek payment of damages in the sum of £5,250.00 in relation to the Property from the Respondent, and provided with their application copies of a short assured tenancy agreement and substantial documentation in evidence.

[3] A Case Management Discussion was held on 29th October 2020 by Tele-Conference. Both parties accepted that there were clear and substantial factual

disputes between them as to the circumstances surrounding this matter, which could only be determined by the Tribunal after hearing evidence, and for that reason the Tribunal set a Hearing.

Hearing

[4] A Hearing was held at 10.00 on 14th December 2020 by Tele-Conference. The Tribunal noted that both parties had submitted written statements from various persons that they appeared to wish to rely on in evidence before the Tribunal. The Tribunal, however, had not received lists of witnesses nor confirmation of contact details for those potential witnesses.

[5] Both parties explained that they did not realise that the witnesses that each wished to use in evidence required to give their evidence in person to the Tribunal. The parties had both thought that they could lodge written statements and letters from their witnesses. The Tribunal explained that although the parties were welcome to lodge witness statements in advance of a hearing, the Tribunal would expect to hear oral evidence given to it by any such witnesses if parties wished the Tribunal to accept what those witnesses might say.

[6] Both parties indicated that they wished to lead witnesses in evidence, and the Tribunal adjourned the Hearing to allow witnesses to be lead in evidence.

[7] A continued Hearing was held on 28th January 2021 by Tele-Conference, at which evidence was led by the Applicants. The Hearing was continued for the purpose of hearing further evidence.

[8] Prior to the continued Hearing, the Applicants e-mailed the Tribunal advising that they wished to lead evidence from a number of witnesses regarding allegations by them that the Respondent engaged in domestic abuse of his wife. The Tribunal in advance of the continued Hearing advised the parties that it would not hear further evidence at the continued Hearing, but would invite the parties to address it on the scope, extent, relevance and purpose of such evidence in relation to this application.

[9] A continued Hearing was held on 26th March 2021 by Tele-Conference, at which both parties addressed the Tribunal with regard to the scope, extent and relevance and purpose of evidence to be led regarding those allegations. The Tribunal explained to the parties the legal concept of relevance, and the issues which the Tribunal had to consider in this application, and the issues which it did not. Having done so, and after discussing progress and scheduling issues with the parties, the Tribunal further continued the Hearing to 5th, 7th and 11th May 2021.

[10] The Tribunal heard evidence on behalf of the Applicants from both Applicants, Ewan Morley, Hannah Morley, Mr Alistair Bradley, Mr Alex Robertson, Mrs Jean MacKellar, Mr Colin Steadman and Mr Graham Sharp. The Tribunal then heard evidence on behalf of the Respondent from the Respondent, Mrs Janice McLaren, Brenda Vaughan and Mr Michael Hayes.

Findings in fact

[11] After hearing all the evidence led by both parties on the issues in dispute between them and upon which the Tribunal requires to reach a decision, the Tribunal found in fact:

- 1) That the Respondent was tenant at the Property for a period commencing 1st July 2009 until he left on 11th January 2020 when the tenancy ended.
- 2) That the monthly rent for the Property was £300.00.
- 3) That the Respondent lived in the Property with his wife throughout his period of occupation of it.
- 4) That the Respondent advised the Applicants in early 2019 that he intended to end the tenancy, and was looking for alternative accommodation to allow him to do so.
- 5) That the personal relationship between the parties broke down in or around November 2019.
- 6) That the First Applicant, Mr Paul Morley, entered the Property on 14th November 2019 whilst the Respondent and his wife were not there, and after inspecting the Property, changed the locks and turned off the water supply to it from the lane outside.
- 7) That the Respondent returned to the Property later on 14th November 2019 and called the police.
- 8) That the Applicants provided the Respondent with a key to the new lock on the door of the Property, but thereafter refused to turn the water supply to the Property back on.
- 9) That the Respondent withheld paying rent from 1st December 2019, until he left the Property, as a result of the Applicants' refusal to restore the water supply to the Property.
- 10) That the Property was in poor structural condition by the end of the tenancy.
- 11) That the Property had suffered substantial structural damage by the end of the tenancy as a result of water penetration, which had caused damp damage to internal floors, walls and ceilings.
- 12) That the Applicants required to carry out extensive remedial work to repair the structure of the Property after the end of the tenancy.
- 13) That the cause of the damage, the cost of remedying which represents the sums sought by the Applicants from the Respondent, is attributable to the poor condition of the Property which was the legal responsibility of the Applicants.
- 14) That the Respondent is not liable for the remedial costs sought in this application by the Applicants upon the basis that they are not attributable to any fault or neglect on his part.

Finding in law

[12] The Tribunal found in law that the Respondent is not liable to the Applicants for the cost of the remedial work which the Applicants required to carry out to the Property after the tenancy ended.

The Evidence

[13] The Tribunal heard evidence from a number of witnesses led by both parties. It was noteworthy that almost all were related to, employed by, or known to the Applicants or Respondent personally.

[14] Both parties, but particularly the Applicants, were keen to lead evidence on disputes and grievances between the parties which were peripheral to the critical issue which the Tribunal required to decide, namely what was the cause of the extensive damage which the Applicants required to fix after the tenancy ended.

[15] The parties were substantially in agreement that by the end of the tenancy, the Property was in very poor internal structural condition. In particular, there was very little dispute between them that there was extensive water damage to internal floors, walls and ceilings, much of which required to be stripped out and replaced by the Applicants after the tenancy ended.

[16] The critical issue upon which the parties disagreed, was on the cause of that water damage. The Applicants asserted that the Respondent and his wife had been repeatedly urinating and defecating over a prolonged period on the floors and against the internal walls of the Property. The Respondent denied this, and asserted that the extensive water damage was caused by the very poor structural condition of the Property, which was not wind and watertight, and had suffered repeated damage caused by dampness over the duration of the tenancy as a result of the Applicants neglecting their duty to maintain the Property in good structural condition.

[17] The Tribunal heard extensive and lengthy testimony from a substantial number of witnesses for both parties over four days. Their evidence, in so far as relevant and material, can be summarised as follows:

The Applicants

[18] The Applicants' evidence was that they rented out a number of Properties in the local area, which were managed by a letting agent on their behalf. However, the Property adjoined their business premises and was in close proximity to their home, having formerly been occupied by a member of the First Applicant's family.

[19] The Applicants stated that their tenant and his wife kept themselves to themselves, and that they had little interaction with them. The curtains at the Property were always drawn, so it was not possible to see inside. On occasions they did interact, they got on reasonably cordially. The Applicants rarely carried out inspections of the Property, having only done so on two occasions during the tenancy.

[20] Towards the end of the tenancy however, in about early 2019, they became increasingly concerned with what they perceived to be the odd behaviour of the Respondent and his wife. They led extensive evidence that the Respondent had engaged in domestic abuse of his wife, for whom he also acts as carer, over a prolonged period by shouting at her and verbally abusing her both inside and outside the Property. They did not report any of these incidents to the police or any other agencies.

[21] The Applicants led extensive evidence to seek to establish that the Respondent was in their view a serial liar and fantasist, who was fabricating stories to explain away his appalling behaviour in relation to the extensive damage which he and his wife had caused to the Property during the tenancy. They referred to various alleged incidents where they asserted that the Respondent had abused others verbally resulting in the police having to attend.

[22] The Applicants stated that they noted that unusually, there was no sign of the presence of the Respondent and his wife at the Property on 14th November 2019. They were aware that he was looking to move out to another home, and were concerned that he might have vacated the Property without telling them. In light of their concerns about the Respondent's erratic behaviour, the First Applicant entered the Property using his key.

[23] He found the interior of the Property filthy, cluttered, and stacked high with numerous boxes, refuse, and discarded uneaten food. The First Applicant noted approximately 50 bags of rubbish strewn within the Property.

[24] Various areas of the Property, including the only bathroom and toilet, were entirely inaccessible and did not appear to have been used for some considerable time by the Respondent and his wife. The Applicants considered the clutter and refuse to be a fire hazard, and the First Applicant changed the lock on the Property.

[25] The First Applicant also turned off the water supply to the Property at the toby valve in the lane outside to avoid the risk of frost damage to pipes being caused by the very low external temperature of minus 8 degrees centigrade that day when the Property was unoccupied and unheated. The Applicants explained that they changed the locks in order to force the Respondent, should he return, to make contact with them to discuss the condition of the Property.

[26] Most importantly, the First Applicant gave evidence that the internal floors and walls of the Property were saturated with human urine. He described the revolting and overpowering stench of this in his evidence, and his utter disgust that the Respondent and his wife would live in this way. He asserted that he could tell definitively that the smell was human urine from his extensive and long experience in the building trade.

[25] The Applicants stated that Respondent had arrived at their home on 14th November 2019 in the early evening and started shouting at, and verbally abusing, the First Applicant. He telephoned his son, Ewan Morley, and asked him to drive to their house. The Respondent had left by the time Ewan arrived.

[26] Later that evening, the First Applicant and Ewan, who work together in the family building business, were in their office of their business premises which adjoined the Property when two police officers arrived and requested they attend next door at the Property with them. The police officers acted as peace-makers between them and the Respondent, who was waiting at the Property. The police officers asked the First Applicant to provide a key to the Respondent, and advised him to avoid further contact with him before leaving. Ewan entered the Property whilst the police officers were

there and took photographs inside. Those had been lodged by the Applicants and he referred the Tribunal to them.

[27] The Applicants subsequently arranged for the attendance of an environmental health officer, Mr Gorman, on 20th November 2019, and provided him with access to inspect the inside of the Property, and they lodged a copy of their correspondence with him.

[28] Ultimately, the Respondent and his wife did vacate the Property on or about 11th January 2020. When the Applicants regained possession of the Property, it had been cleared of all the clutter, boxes, refuse, and discarded uneaten food and left vacant. On inspection, the Applicants found extensive structural damage to the internal floors and walls caused, in their opinion, by prolonged saturation with human urine and faeces.

[29] The Applicants required to spend substantial sums to repair this damage and to remove the overpowering stench of urine. The First Applicant and his employees carried out this work themselves through his building business.

Ewan Morley

[30] Ewan Morley is the son of the Applicants, and works with his father in the family building business. He stated that he received a telephone call from his father on 14th November 2019 in the early evening. His father told him that the Respondent had arrived outside the Applicants' home and started shouting at and verbally abusing him, and asked Ewan to drive to their house.

[31] Ewan Morley gave evidence that rather than drive to the Applicants' home, he drove to and parked in the lane outside the Property and his father's business Property. He stated that this was because it was very close to his parents' house and was one of the quickest ways to get there. He noted the Respondent by that time was outside the Property, and he asked the Respondent what he was doing. The Respondent responded in an abusive manner, and shouted and swore at him before walking away.

[32] Later that evening, Ewan Morley was in the office of the family business premises which adjoined the Property with his father, when two police officers arrived and requested they attend next door at the Property with them. The police officers acted as peace-makers between them and the Respondent, who was waiting at the Property. The police officers asked the First Applicant to provide a key to the Respondent, and advised him to avoid further contact with him before leaving.

[33] Ewan entered the Property whilst the police officers were there and took photographs inside. He described the overpowering smell of urine, rotting rubbish and cigarettes, and stated that the inside of the Property was piled high with rubbish and boxes. The Toilet and bathroom were inaccessible, and he noted extensive staining and damage to the interior of the Property. He asserted that he could tell definitively that the smell was human urine from a past experience where an elderly upstairs

neighbour in his old flat was incontinent and he had remembered the smell from when he went inside there.

[34] He was present when Mr Gorman, environmental health officer, attended the Property and inspected it on 20th November 2020.

[35] He was involved in the building repairs, and described the loss of structural integrity of the chipboard internal flooring due to saturation with urine, much of which had to be replaced together with plaster-boarding over the urine saturated plaster internal walls.

Alistair Bradley

[36] Mr Bradley is an employee of the First Applicant. He described the foul odour he smelt from walls and floors whilst repairing those. He asserted that he could tell definitively that the smell was of human urine from a past experience of working cleaning toilets in a fast-food outlet.

Alex Robertson

[37] Mr Robertson is a heating engineer, who frequently carries out work for the Applicants' building business. He gave evidence that he examined the heating system at the Property after the end of the tenancy and confirmed that it would function. He noted a strong smell of human urine in the Property whilst he was there.

[38] He asserted that he could tell definitively that the smell was human urine from his experience as a plumber where he saw "spongy" flooring around the base of toilets.

Colin Steadman

[39] Mr Steadman works as the janitor and cleaner at the local primary school, which is situated very close to the Property. He is acquainted with the First Applicant.

[40] He stated that he often walked past the Property, and noted the curtains were always closed over.

[41] He is responsible for taking out the school rubbish and placing it in the large bins outside for collection. He gave evidence in response to the suggestion by the Respondent that the First Applicant had removed rubbish bags from the school to dump in the Property, that he had never seen the First Applicant removing bags, and that he would have noticed if any rubbish bags had been removed.

[42] He also stated that he had witnessed the Respondent shouting both within and outside the Property at his wife. The Respondent's voice was loud, bullying, degrading and swearing when he heard it. He did not report any of these incidents to the police.

Hannah Morley

[43] Hannah Morley is the Applicants' daughter. She stated that she had witnessed the Respondent verbally abusing his wife on one occasion outside the Property in about 2018.

Mrs Jean MacKellar

[44] Mrs MacKellar lives across the road from the Property, and has been friends with the Applicants for many years. She had witnessed the Respondent shouting and swearing at his wife, and told the Tribunal that the Respondent had been verbally aggressive in a local jeweller's shop resulting in the police being called.

[45] She had never seen smoke from the chimney at the Property, indicating that the heating was never run there, and had also seen various persons calling at the Property and not being admitted by the Respondent and his wife.

Graham Sharp

[46] Mr Sharp was an SSE meter reader, and now works as a delivery driver. He is acquainted with the First Applicant.

[47] He had visited the Property many times over the years to attempt to take a meter reading. He had only been allowed in once, and noted stuff piled up everywhere in the house and an unbelievable smell which left him wanting to leave as fast as he could. He described the smell as gagging, and stated that he had to put his coat over his nose as the smell was so strong.

The Respondent

[48] Mr Hayes gave evidence at length, and in great detail about the history of the tenancy, and his interaction with the Applicants.

[49] He was in the process of preparing to move out of the Property in November 2019, and he and his wife had started packing their belongings up in anticipation of that.

[50] They had been away overnight on the 13th November 2019 staying at their new home in Kilmun, which was not yet ready to live in. On their return to the Property, they found the locks had been changed. He contacted the police, who attended, spoke with him, the First Applicant and Ewan Morley, and asked the First Applicant to provide him with a key to the new lock. He considered the changing of the locks to be an attempted illegal eviction.

[51] The following day, the Applicants turned off the water supply. He asked them to restore the supply, but they refused. After taking advice from Shelter Scotland, he withheld paying rent until they restored the supply. The Respondent provided the Tribunal with a letter addressed to the First Applicant dated 22nd November 2019, in which he advised that if the water supply was not restored he would withhold payment of rent with effect from 1st December 2019. The Applicants did not restore the water supply by the time he quit the Property on 11th January 2020. He considered that their actions in removing the water supply were intended to force him to leave the Property.

[52] The Respondent explained that he had made repeated requests of the First Applicant to attend to the disrepair of the Property, but that the Applicants had never done so. As accommodation is difficult to find in the area in the price range he could afford, he did not wish to antagonise his landlord for fear of being served with notice to quit. Both he and his wife, for whom he was also carer, had health difficulties, which meant they were anxious about becoming homeless if they left the Property.

[53] He accepted that the bathroom and toilet had become unusable, but attributed this to disrepair. The room was unsafe due to soft flooring caused by leaking water, and electrical faults in the shower facility. He and his wife used the public toilet in the village, which was very close to the Property, and occasionally showered at friends or relatives.

[54] The Respondent did not have enough money for a deposit to obtain alternative accommodation, so he and his wife made do with the unsatisfactory situation whilst saving the money for a deposit.

[55] The Respondent stated that the Property was in serious disrepair due to the refusal by the Applicants to carry out any repairs. An unfixed roof leak had caused the ceiling in an upstairs bedroom to collapse, and the floor in front of the toilet to give way, all as shown in the photographs lodged by the parties. He stated that there was a bad smell of damp permeating the Property, but that this was the result of long-term dampness in the fabric of the building, and was not caused by urine of any source nor faeces. He observed that he and his wife needed to live in the Property, and would not behave in such a disgusting way.

[56] The Respondent denied that he was abusive towards his wife. He posed the question as to why if he behaved in the way the Applicants and their witnesses portrayed towards his wife, whom they knew was a vulnerable person, none of them had ever reported this. He was extremely upset that the Applicants were making such allegations against him, which he said were entirely untrue, in an apparent effort to attack his character and credibility.

[57] He also noted that no mention of such allegations was made until after this application was lodged, and was first alleged by the Applicants on 28th January 2021. He referred to a letter the First Applicant provided to him dated 14th February 2019 giving a landlord's reference for him and his wife as tenants, in which the First Applicant stated that "They are reasonable in their behaviour and live quietly. They have looked after the property and garden area. There have been no incidents involving them and they have not made any unreasonable requests", which was at odds with what the Applicants now said of him. He had lodged that letter also.

[58] The Respondent also produced a letter dated 12th March 2021 from his GP in Kilmun, where he and his wife now lived, which expressed surprise and disbelief that such allegations were being made, as he knew the couple well as their doctor.

[59] The Respondent said that the fifty bags of rubbish he found in the Property after he was let back in to it on 14th November 2019 had not been left there by him. His

supposition was that the Applicants had taken those from the local school bins and scattered them in the Property in an effort to convey the impression when the interior of the Property was photographed by them later that day that the Respondent was abusing the Property and leaving it in poor condition. The Applicants did this, he surmised, as by then they realised he was about to leave, that the Property required substantial repair before it could be let out again, and in an effort to provide a justification for them to seek to recover some of the cost of repair from him.

[60] The Respondent was not notified of Mr Gorman's visit to the Property, and he had complained to the local authority that entry had been taken without his permission. The local authority had apologised, and he referred the Tribunal to the letter of apology which he had lodged.

[61] The Respondent drew the Tribunal's attention to the report from Mr Gorman to the Applicants, which report made no mention of a smell of urine in the Property. Nor did the e-mails the Applicants sent to Mr Gorman, which they had lodged. The Applicants had also lodged a letter dated 14th November 2019 given to the Respondent raising the condition of the Property with him, in which again there was no mention of the smell of urine.

[62] The Respondent stated that the Applicants were "shamlords", who would not leave him in peace. He accepted that he had, in frustration, on one occasion witnessed by Hannah Morley raised his voice to his wife, but denied any other allegations of abusing her in any way.

[63] The Respondent drew the Tribunal's attention to the fact that all of the witnesses of the Applicants who spoke to the smell of urine in the Property used exactly the same words, namely "overwhelming smell of urine", and suggested that this demonstrated collusion by them in their evidence. There was a bad smell, but this was of damp caused by the poor condition of the building and as a result of it not being wind and watertight.

[64] The Respondent directed the Tribunal's attention to the many photographs which he had lodged showing the interior and exterior of the Property. These clearly showed the poor condition of the building with detached and cracked render, extensive moss on the roof slates, and external timber door and window frames bare of the remains of paint. He stated that the rent he paid was low, and that the Applicants realised the large cost they would need to expend to put the Property into tenantable condition after he left. He surmised that this application, and the Applicants' allegations, were intended to recover some of that cost wrongfully from him.

[65] The Respondent produced a letter which he had obtained from Police Scotland dated 22nd April 2021, which confirmed that he had not been the subject of any criminal complaint of domestic violence over the previous 5 years checked.

Janice McLaren

[66] Mrs McLaren is the mother of the Respondent's wife. She confirmed that she was not aware of, nor did she believe, that the Respondent would abuse her daughter. She

stated that she had visited the Property occasionally, the last visit being in 2016. She also stated that her daughter was not the tidiest, but was well brought up and would not urinate or defecate on the floor.

[67] She noted that there was a damp problem in the Property, along with electrical faults causing safety issues with the cooker. It was obvious to her that the Property was not fit for purpose over a prolonged period.

Brenda Vaughan

[68] Mrs Vaughan is the Respondent's mother. She stated that she had visited him over the years in various properties he had lived in, and that he had never caused any damage to any of them.

[69] She had helped the Respondent move out of his previous flat and into the Property. She stayed for the first week he lived there and noticed staining on the ceilings and water damage to the Property. She visited on three further occasions, and noted an increasing musty smell which she recognised as being damp as she had had a damp problem in her own current property.

[70] Over succeeding years, she had received packages of presents from her son and daughter-in-law, and again noticed an increasing level of a musty smell on the packaging and contents. Such smells ceased on further presents sent after the Respondent quit the Property.

[71] She described the Respondent and his wife as a happy couple. She did not believe that the Respondent would abuse his wife. He would also not urinate or defecate in his own home – he was too well brought up to do that.

Michael Hayes

[72] Mr Hayes is the father of the Respondent. He stated that he had visited all his son's various homes, and that his son treated them all with respect.

[73] He visited the Property in 2015 and 2019. On the first visit he noticed the smell of damp, but that it was not overpowering. He noticed a crack in the bathroom sink and his son asked him not to use that sink due to the crack.

[74] The Respondent and his wife were clearly in love and got on well with each other and with him.

[75] He visited the Property again on 8th May 2019 and stayed overnight there. He noticed a terrible smell, and insisted on looking round the Property to inspect it due to his concern about its condition. What he observed made him furious, and he challenged his son about what he had done to resolve the problems. His son told him he had raised the problems with the landlord, but that the landlord refused to deal with them.

[76] Mr Hayes offered to go and talk to the landlord, and suggested his son should raise court action, but the Respondent appeased him and asked him not to do so.

[77] Mr Hayes then related his detailed inspection of the Property which he had undertaken at that time and of which inspection he had made contemporaneous notes. He explained that in his work before he retired, he was involved in governmental investigations and the questioning of people, and was experienced in noting and recording information.

[78] In summary, that inspection revealed a strong smell of damp in the Property and evidence of substantial internal water damage. The bathroom, in particular, had badly deteriorated since his last visit. The basin had large cracks and was dripping water on the floor and was clearly unusable. The flooring around the toilet was soft and using the toilet would clearly be dangerous. When he switched on the shower, all the fuses blew, and had to be reset.

[79] He noted a large number of boxes in the Property, which seemed to be being packed in anticipation of the Respondent moving.

[80] Mr Hayes told his son that he was paying rent to live in a slum and that he should take legal action which Mr Hayes offered to fund. Mr Hayes' evidence was that in 2019, the Property was, in his view, unfit for human habitation.

[81] Mr Hayes confirmed that he had never seen anything to suggest his son domestically abused his wife. He also did not ever smell urine in the Property, but only the smell of damp. He observed that his son would not behave in such a disgusting manner.

[82] When challenged in cross-examination about how he could tell if a smell was of urine or not, Mr Hayes noted that he was 72 years old and had urinated every day of his life, and as a result he was well aware of what urine smelt like.

Submission on behalf of the Applicants

[83] The Applicants submitted that the Respondent was liable for the cost of repair to the Property, because he had caused the damage by saturating it with urine over a prolonged period.

Submission on behalf of the Respondent

[84] The Respondent submitted that he was not responsible for the poor condition of the Property, which had been caused by the prolonged negligence and neglect of the Applicants in maintaining it properly and in a wind and watertight condition. The damage to the Property which he accepted was present was the responsibility of the landlord, and not him as the tenant.

Statement of Reasons

[85] Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

[86] Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicants) for payment of damages against a tenant (such as the Respondent) under a short assured tenancy such as this.

[87] The Tribunal would note the unusual level of bitterness and antagonism between the parties, which was particularly exhibited by the First Applicant to the Respondent. The relationship between the parties has clearly entirely broken down, and each party clearly feels strongly aggrieved by the actions of the other.

[88] That said, and setting aside the many allegations and counter-allegations of the parties, the critical question for the Tribunal is who is responsible for the poor condition of the Property, and who is responsible for the cost of remedial work.

[89] Both parties and their witnesses were clearly in substantial disagreement as to the facts in this application. It falls to the Tribunal to decide which evidence it accepts, which evidence it rejects, and its reasons for doing so.

[90] Much of the evidence the Tribunal heard was background in nature, and much of it was irrelevant to the issue which the Tribunal must decide. On the key issues, the Tribunal accepted the account given by the Respondent and his witnesses, and rejected the evidence of the Applicants and their witnesses.

[91] The onus is upon the Applicants to prove their case. The Tribunal is not satisfied that they have done so, for the following reasons.

[92] The key issue in dispute was whether the disrepair of the Property was due to the Respondent and his wife saturating the internal floors and walls with urine over a prolonged period and thereby causing extensive structural damage as the Applicants contended, or alternatively, that the extensive structural damage was the result of the

poor structural condition of the Property as a result of the neglect of maintenance by the Applicants as the Respondent contended.

[93] Clause 4.8 of the lease agreement provides that the landlord is obliged to effect repairs and maintenance work as timeously as possible. A landlord is also subject to the obligation to comply with the statutory repairing standard, and with the common law obligation on a landlord of a residential tenancy to provide subjects reasonably fit for the purpose for which they are let and which are in a habitable and tenantable condition (see *Rennie – Leases (SULI)* at paras 14-07 and 21-22).

[94] Clause 3.24 of the lease agreement obliges the tenant to pay the landlord the agreed cost of dilapidations after taking into account for fair wear and tear.

[95] Thus, the cause of the damage to the Property, which both parties accept occurred, is critical to determining who bears the cost of repair. If the cause of the damage was saturation of the internal floors and walls with urine and faeces by the Respondent and his wife, then that would clearly be damage caused by the tenant, and for which the Respondent is liable. If the cause of the damage was the poor structural condition of the Property caused by the neglect of the Applicants in maintaining it adequately and maintaining it as wind and watertight and in a habitable and tenantable condition which is fit for purpose, then the cost of repair would fall on them as the landlord.

[96] In order to determine this matter, the Tribunal required to look to the surrounding evidence produced by the parties, to identify whether or not it supported their respective positions. Having done so, the Tribunal was not satisfied with the Applicants' witnesses' evidence on this matter for the following reasons.

[97] The Applicants and their witnesses were all keen to assert for a variety of different reasons that they had sufficient expertise and experience to identify and discriminate whether the smell in the Property was caused by human urine or not. The Tribunal was not satisfied that any of them, in reality, had such expertise or experience.

[98] On such a crucial issue, which is the foundation of the Applicants' case, it is extremely surprising that the Applicants did not seek to obtain any evidence of their claims in that regard from someone qualified to give it. The Applicants produced a brief report from an environmental health officer, Mr Gorman, provided to them on 20th November 2019, but he was not called as a witness, nor did the Applicants produce any supplementary report or correspondence from him with his evidence on their claims.

[99] However, Mr Gorman's report, contained in an e-mail to the Applicants dated 20th November 2019, which was lodged by the Applicants, states the following:

"Dear Dawn and Paul – following my visit today I can confirm the filthy conditions seen in Workshop Cottage with accumulations of food, waste items, dirt and debris in all rooms. It was also noted that access to the bathroom facilities and the sink in the kitchen was very much restricted and it appeared that neither were being used. This would present a risk to the health of persons living in the property... I will pass on my concerns for your tenants to the local agencies in the next day or so."

[100] Mr Gorman inspected the Property at a time when, according to the Applicants and their witnesses, there was an overpowering stench of urine within it. As a trained environmental health officer, it is quite remarkable if that is true that Mr Gorman failed to make any mention of it in his report, especially having specifically noted that there was restricted access to the bathroom facilities, and where his professional role was to identify health hazards, which a urine saturated property undoubtedly would be.

[101] Further, the First Applicant left a letter at the Property for the Respondent after he entered the Property on 14th November 2019 and noted its condition, which the Applicants have produced and rely upon. The letter is dated 14th November 2019, and is lengthy in content. It purports to serve notice on the Respondent to leave the premises, and narrates that the Applicants gained access to the Property on 13th November 2019 “as it was an emergency” and noted the issues as follows:

“Fire Hazard – The house is full with rubbish and possessions piled as high as the ceilings. All rooms and access to rooms are blocked. The stairs are blocked. The kitchen and shower room are inaccessible. Subsequently on 15th November I could smell someone smoking in there amongst this mountain of rubbish. A cigarette end was found just outside the entrance door. Smoking or naked lights in this house is now strictly banned.

Health Hazard – The toilet is inaccessible, but functioning. It is unknown what you are doing for toilet facilities. The house is filthy throughout with food waste present, food wrappings and general debris.

Vermin Hazard – As above.”

[102] Any reference to the overpowering stench of urine throughout the Property which the Applicants now assert was present at that time is conspicuous by its absence in a letter written by the First Applicant to the Respondent contemporaneously, and for the purpose of identifying at length the problems in the Property.

[103] Notably, the only reference that the First Applicant makes to smell in the letter is to that of cigarettes, which he said he noted on 15th November. It also noteworthy that he states in connection with the inaccessibility of the toilet that it is unknown what the Respondent is doing for toilet facilities. If the overwhelming smell of urine had been present on 13th to 15th November, it would have been very obvious what the Respondent had been doing for toilet facilities, and inexplicable that the First Applicant did not mention that in the letter.

[104] The absence of any reference to what the Applicants’ witnesses described as an overwhelming smell of urine in any contemporaneous documentation simply cannot be explained if it was truly present.

[105] Further, the Tribunal found the evidence of the Respondent and his witnesses credible and reliable on this point. Their explanation of the condition of the property and that over time there was an increasingly strong and unpleasant odour of damp was consistent with the photographs produced showing the condition of the Property. The poor condition of the external fabric of the Property was patent. The photographs clearly showed the poor condition of the building with detached and cracked render,

extensive moss on the roof slates, and external timber door and window frames bare of the remains of paint. When the Tribunal put this point to the First Applicant for his comment, he stated simply in response that he considered the condition of the Property to be satisfactory. It was notable in that regard how few inspections of the Property the Applicants had carried out over the period of the tenancy.

[106] The Tribunal also noted that most of the Applicants' witnesses indicated that they had prepared a statement, which each proceeded to read out to the Tribunal. It was notable that the wording used by each to describe the smell in the Property was near identical, and suggestive of the witnesses discussing the issue amongst themselves in advance of giving evidence.

[107] It was also notable the extensive evidence which the Applicants led apparently simply for the purpose of attacking the Respondent's character. Though it is, of course, quite appropriate to lead evidence to challenge the credibility of a party, it was remarkable the sheer volume, seriousness, and intensity of accusations which were levelled at the Respondent, which appeared to the Tribunal to be excessive and disproportionate for the purpose of challenging his credibility. That evidence also conflicted with the terms of the Landlord's reference dated 14th February 2019, the contents of which contradicts the assertions of unreasonable behaviour by the Respondent over a long period.

[108] The Tribunal also noted with surprise the reaction of the First Applicant when the Respondent sought to lodge a map of the immediate vicinity of the Property in response to the evidence of Ewan Morley. He became verbally aggressive and defensive when asked about the map by the Tribunal. After the Tribunal allowed it to be received and lodged, it became apparent that the map demonstrated that Ewan Morley could easily have parked on the road outside his parents' house on the evening of the 14th November 2019, or to pull into the driveway from the main street.

[109] The map appeared to demonstrate that it made no sense for him, if as he stated, he drove immediately to his parents' house at the request of his father because the latter was being abused there by the Respondent, for him to park outside the office of the family business and beside the Property rather than going to his parents' house itself.

[110] This issue added to the Tribunal's doubts regarding the credibility of the Applicants' and their son's evidence concerning the overwhelming smell of urine they asserted was present in the Property, combined with the fact that most supporting evidence came from business associates and friends of the Applicants who all read from prepared statements and used remarkably similar wording in their descriptions.

[111] For all these reasons, the Tribunal did not find the Applicants' evidence on the issue of saturation of the Property with urine credible or reliable, and accordingly the Tribunal found that the Respondent did not cause the damage to the Property, the cost of which the Applicants seek to recover in this application.

[112] Standing the Tribunal's conclusion on liability, it was unnecessary for it to consider the reasonableness or otherwise of the vouching produced in support of the sum sought in this application, and it did not do so.

Decision

[113] For the above reasons, the Tribunal will dismiss this application.

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.

Neil Kinnear

11 May 2021

Legal Member/Chair

Date