



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/2311**

**Re: Property at 25 Lyle Street, Greenock (“the Property”)**

**Parties:**

**Mrs Jocelyn Green, The Garden Flat, 92 Newark Street, Greenock, PA16 7TG (“the Applicant”)**

**Mr Robert Blaikie, Mrs Elizabeth Blaikie, 25 Lyle Street, Greenock (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

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

**1. Background**

- 1. This was a hearing held by teleconference at 10 am on 7<sup>th</sup> April to discuss the application by the Applicant for an order for payment of rent arrears by the Respondents.**
- 2. The following items were lodged with the application, namely:-**
  - a. Short Assured Tenancy Agreement between the Applicant and the Respondent dated 6<sup>th</sup> and 11<sup>th</sup> May 2017.**
  - b. Rent statement from Castle Estates between 1<sup>st</sup> January 2020 and 8<sup>th</sup> September 2020.**
- 3. There have been two prior case management discussion which clarified that the Applicant was seeking £950 although she advised and had lodged a rent statement showing the sum then due to 28<sup>th</sup> February 2021 was £1325. She confirmed that she was prepared to waive the rest of the rent she claimed was not paid, as compensation for issues with the replacement of the living room**

window. The Rent statement however was not clear showing a number of credits of varying amounts referred to as rent refunds and then debits of those credits, which in total amounted to the same sums so cancelled each other out.

4. At the CMDs Mrs Green had elaborated on the statement made in her application advising that the tenants had deliberately withheld rent of £950 as they had claimed a window required to be repaired and replaced at the beginning of 2020 and refused to pay until the window was fixed but that even when the window was finally replaced they then produced a new list of repairs and were still refusing to repay the £950. Mrs Green explained that a complaint had first been made about the (living room) window in the autumn of 2019 when she sent her joiner Mr Ewing to look at it. He carried out a repair and said it was fixed. After Christmas she advised another call about the window was received and an emergency repair was done but the joiner advised it needed replaced. She thought he had confirmed though that it was still wind and watertight although she was not entirely sure. Due to the joiner forgetting to attend to this he did not attend to the ordering of a replacement immediately and advised the Respondents this was his error. He then did order a new window but Mrs Green advised that by this time the nation had gone into a national lockdown; the window company was not working and the joiner could not get scaffolding or anyone to assist him to fix this large window until the lock down ended. Mrs Green thought it was finally fixed and replaced around August 2020 but it was done as soon as all the supplies became available.
5. The Tribunal noted the 2 rent payments that appear to have not been paid in the rent statement lodged are the ones due on 1<sup>st</sup> February 2020 and one due on 1<sup>st</sup> June 2020.
6. Mrs Green advised that since then there has been further rent payments not made and the sum currently outstanding is £1325.
7. Mr Christman advised that his clients' main position is that not all the rent is lawfully due because of ongoing repairs that remain outstanding at the Property. Mr Christman advised that the living room window mentioned by Mrs Green had finally been replaced in August 2020 but had not been wind or watertight since September 2017.
8. He advised at the CMDS and has lodged submissions claiming that there were 5 main other outstanding repairs:-
  - a. A bedroom window used by a daughter of the Respondents was not wind or watertight and had been brought to the letting agent's attention around April –June 2019.
  - b. The rear bedroom window was not wind or watertight. Mr Blaikie advised that this was raised by the joiner who fitted the living room window and who said he would report it to Castle Estates, the landlord's letting agent. Mr Blaikie also said the joiner told him not to open the window under any circumstances.
  - c. The electric fan in the bathroom does not remove moisture and there is mould growing in the bathroom. Mr Christman advised an electrician attended in 2019 to fix a shower and said he would report it to Castle Estates and said it was inadequate.
  - d. There is a draught from a vent in the wall in the downstairs toilet. Mr Christman advised that his firm has been in correspondence with

Castel Estates since August 2020. Mr Blaikie advised they were told to tape over the vent in 2018 but this did not fix the issue.

- e. The final repair issue Mr Christman advised was that the front door is not wind tight and this was first notified by Mrs Blaikie in March 2018, shortly after a lock was fixed but the draught has never been fixed.
9. Mrs Green responded at the CMD to these comments by confirming that she agreed there were some repairs outstanding but these had only been raised after the joiner had fitted the living room window; that they had not been raised before this and that she was unable to pay for repairs until the outstanding rent was paid as this was her main income apart from her state pension.

At the conclusion of the second case management discussion the following issues were identified:-

1. The amount of rent due and not paid needs to be established. The Applicant needs to show clearly what rent is due and unpaid and what rent rebate was agreed and credited for which months in 2020. As stated above a clear rent statement needs to be lodged.
2. The parties are in dispute over when and for how long the living room window was not wind and watertight before being fixed in August 2020.
3. The parties are in dispute over whether the two other windows are not wind tight and if so when and for how long this issue has been outstanding, and should an abatement of rent be granted for this.
4. The parties are in dispute about whether the fan is inadequate and whether the vent in the bathroom is not wind tight and whether both of these issues have been brought to the attention of the landlord or her agents and if so whether they are faulty/draughty and whether an abatement of rent should be made for this.
5. Finally there is a dispute over whether the front door is not wind tight and whether this should have been fixed and if not should an abatement of rent be granted for this.

### **The Hearing**

6. The Applicant, Mrs Green was in attendance on the call and Mr Blaikie and Mrs Blaikie the Respondents were both in attendance along with their solicitor Mr Christman of Brown & Co. Both parties confirmed they were not bringing any other witnesses to testify to any of the issues.
7. The Legal Member welcomed everyone to the hearing and made introductions and explained the purpose and order of proceedings.
8. The Tribunal firstly spoke to the applicant to clarify how much rent she believed was outstanding and what she was seeking today. Mrs Green advised that the rent outstanding was as set out in the statement she had lodged on 29th March 2021. She conceded that the rent statement which she had asked her letting agent to prepare was still no clearer regarding the refunds or cancellation of those. The Applicant advised that she had originally wanted to let out the property for £550 but due to the Council Tax being higher than the tenants thought she had agreed to a reduction of £25 and the

rent was then £525. The Respondents did not totally agree with this explanation advising that the council tax had been misadvertised at a lower rate than it actually was and so the agent had agreed a reduction of £25 but they insisted the base rent was always £525 and after 6 months of a £25 reduction it returned to that rate. The Tribunal confirmed with both parties that they accepted the rent was from 2019 forwards was £525 and they both agreed it was.

9. Mrs Green then went on to say that she had agreed to a second reduction of rent in the sum of £25 for the inconvenience of the living room window not, but she was not clear when that was from saying it was possibly August or September 2020. (She went on to confirm she has found the last year difficult with the pandemic and her husband being ill)
10. Mrs Green did however confirm that the rent statement produced by Castle Estates is unintelligible and when it was put to her that the various refunds agreed have been cancelled she did not disagree. The Respondents advised when asked about the refunds that they had been offered firstly £25 refund then £50 but that when they withheld rent in February 2020 they were told the refund was no longer valid.
11. The Respondents also agreed that the amounts shown on the rent statement as having been paid by them are accurate. The Tribunal notes this shows £525 per month paid for the months of January to November 2020 inclusive with the exception of the rent due for February and June 2020 which they had withheld and have not repaid. In December the sum of £300 was paid in two parts, a further £275 paid on 31<sup>st</sup> December and £200 paid on 12<sup>th</sup> January 2021, with a further £575 paid between the 1<sup>st</sup> February and 15<sup>th</sup> February. This means for the final 3 months of the tenancy to 28<sup>th</sup> February 2021, the tenants have paid a total of £1350 a shortfall of £225. Overall this means the Respondents have not paid  $2 \times £525$  and  $£225 = £1275$ .
12. The Applicant confirmed once again that although the arrears had increased she was not seeking any further sums because she was prepared to waive the further sums as compensation for the inconvenience of the issue with the living room window.
13. The Tribunal queried with Mr Christman if all the repair issues should be taken into account including any only raised after this action was raised and the sum of £950 sought and he confirmed that he wished the Tribunal to take into account all the disrepair issues.
14. Both parties agreed that the Respondents have both left the Property and the tenancy has come to an end on 1<sup>st</sup> March 2021.
15. The Tribunal then asked Mr Christman to lead any evidence he wished the tribunal to consider and he confirmed that the issues of disrepair and the sums the Respondents are claiming are laid out in his written submissions as supported by the two inventory of productions that he has lodged. IN addition

he advised he would ask both his clients some questions and he proceeded to do so starting with Mrs Blaikie as she had been the author of some of the e-mails lodged. He asked both Respondents to comment on each item of disrepair that has been referred to in the submissions.

- a. **The living room window.** Mrs Blaikie confirmed that initially it was her husband and herself living in the Property and from 2018 they had their daughter and she was living there with them. Mrs Blaikie advised there was a gap in the living room window and rain and wind came in and the windows couldn't be opened or closed. She said when the weather was particularly bad the window would blow open and her husband had to sleep in the living room sometimes to prevent it blowing open. She felt that was a security issue. She further advised that they notice it the first winter they stayed in the house, that she had to dry puddles of water and that it cost more to pay for extra heating. She advised it did really cause issues and they were arguing about it. When asked if it was ever repaired she advised that yes people came to look at it and it was adjusted but they were just patch fixes and finally it was screwed shut in summer of 2019. It was not replaced until August 2020.
- b. **Daughter's bedroom window.** Mrs Blaikie advised that her daughter's window was horrendously draughty, there were two holes in the corner of the window and they had to use towels sometimes. It was rotting and getting worse over time. She advised that until they moved their daughter into this room when she was approximately 6/7 months old they had not really noticed the issues as they had not used this room much. Her daughter had moved in around February 2019. When asked if her daughter could sleep there she advised that not when it was bad weather it was too much of a risk and they were worried about damp and the temperature and she would come in and sleep with her Mum. Mrs Blaikie advised that the window was never repaired before they left the Property and that there was a half inch gap between the window and the wall and this had stopped her using the bedroom as much.
- c. **Rear Bedroom window.** Mrs Blaikie advised the rear bedroom window moved any time it was opened. She advised that they notified it to the agents at each inspection but nothing was done and that she had to have extra heat at night when cold to compensate. She confirmed there was just one bedroom on the middle floor where the window worked properly. Although she later confirmed that was used a storeroom and under questions as to why it could not have been used as a bedroom she advised that they had bought and built furniture for the other rooms and it was not easy to move.
- d. **The Electric Fan and the Vent in the Bathroom.** Mrs Blaikie advised the vent in the downstairs toilet went to the outside and was noisy and draughty making a whistling noise. She advised that the whole bottom floor of the house was cold and additional heating was needed. She advised that the letting agent had told her to tape it up and they did that but the vent was an ongoing problem. In 2019 she advised the fan issue was raised. She confirmed it wasn't efficient enough and as a result mould would grow and the shower curtain would need replaced regularly.

- e. **Front Door.** Mrs Blaikie advised that the front door was not wind tight that it would rattle and be noisy and it could be heard round the door frame. She also advised the locking mechanism wasn't good sometimes working sometimes not. She advised that this had left her a bit scared and stressed and added to the cold in the house. She also confirmed that people had come out and made adjustments to the lock but it was never repaired and that no one had looked at it from the wind issue just the locking mechanism.
- f. Mr Blaikie agreed in general with Mrs Blaikie's claims. He confirmed that in relation to the living room window he had to sleep there sometimes if the weather was really bad and he didn't get much sleep and advised that even when they were screwed shut this didn't stop them blowing open.
- g. With regard to his daughter's room he fully agreed it was really draughty He advised the whole thing was falling out and there was damp in the wall. He said they just wanted a warm dry place and this wasn't provided. He also agreed with the rear bedroom window and with the comments about the fan and the vent. He said it made it sub-freezing and was just ridiculous. He advised that there was wind coming from the front door and the vent from the bathroom and that the joiner who came to look at the door said it was cheap and flimsy and the only way to really fix it was install a new door but he just kept adjusting it.
- h. Mr Blaikie explained the house was a town house and the layout was that the downstairs toilet and kitchen were on the ground floor, a rear bedroom and living room were on the first floor and 2 bedrooms his and his wife's and their daughters on the top floor. He went on to confirm that his daughter rarely slept in her room once she was old enough to do so and even when the weather was good she didn't want to sleep there. He said they had brought it up at inspections but nothing was done. He advised that their bedroom was less severe than their daughters and they had not wished to move to the first floor bedroom.
- i. Mr Blaikie in response to some questions about where they spent their time in the house said it was mostly in the living room where it didn't have temperature or draught issues. The window being screwed shut meant the water had stopped and it was less draughty but not totally.

16. The Applicant was invited to respond to this evidence of disrepair and advised as follows:-

- a. **Living room window** – the Applicant advised two joiners had gone out during 2019 to check the window and both advised it was wind and watertight although they agreed it would have to eventually be repaired. She advised that as she had been told it was wind and water tight she was relieved. When the window blew open in December 2019 I told Gordon (her joiner) to replace it and asked when it could be done. By February 2020 he admitted he had forgotten about it and he measured it and instructed a replacement in February 2020, however then lockdown meant that all factories and building work stopped and she couldn't get him to finish this or get scaffolding. She advised that later her joiner told her the frame had been thrown out by accident and

another had to be made. It is noted the parties all agreed the living room window was replaced in August 2020 and the Applicant has lodged an invoice from Gordon Joiner to confirm this.

- b. **Daughter's bedroom window.** The Applicant advised that in her opinion comments made about this window are "a lie", that she believed there was only a small gap between the window and the wall and she has been to the Property on 8<sup>th</sup> March 2021 which she advised was a windy day and so no sign of dampness. She feels the tenants are "overregging it".
- c. **Fan and Vent in Bathroom.** With regard to the vent the Applicant commented that this was part of the building and a requirement because there are no windows. This is not she feels a fault but something that is required for health and safety so it is not faulty. She is aware many people cover it over. With regard to the fan she advised that she is aware a lot of fans can be noisy but denied it wasn't working properly stating that she had seen no mould or marks on the ceiling when she visited the property after the tenants had left. Again she does not believe the Respondents had to wipe it down or buy multiple shower curtains.
- d. **Rear Bedroom Window-** the Respondent does not see any issues with the window but agreed it lacked sealant and that there was a draught coming from sill to wall. She also stated she opened the windows easily.
- e. **Front Door.** The Applicant advised that she finds it difficult to believe there were major issues with the front door as it was replaced just before the tenants moved in due to it being kicked in. she advised that the joiner had attended to fix the lock and had not mentioned any issue with wind. She went to say that it summed up how they lived and that she thought their claim was spurious.
- f. **Mr Christman made 4 comments in response.**
  - i. That any mention by Mrs Green of a report by a surveyor should not be taken into account as there is no copy of any report lodged and any account would be hearsay and the Tribunal should give it little weight.
  - ii. The Condition of the Property at the end of the tenancy is irrelevant for purposes of this claim. (this is in connection with a last minute statement and productions lodged by the applicant which she claims show issues since the tenants left the Property.)
  - iii. That Mrs Green's claim that allegations about the daughter's bedroom are a complete lie were in fact contradicted by her own evidence about there being a small gap in the window and the fact her own joiner reported in September 2020 that the window needed replaced.
  - iv. That the ventilation fan in the bathroom was commented on in a 2019 inspection report. Mrs Green's response to this was that this occurred because a tradesman sent to fix the shower had made this comment in an overzealous quest for work.
- g. Mr Christman has lodged submissions claiming if each repair is accepted that a valuation should be based on the length of time it was

outstanding multiplied by the rent due for that room or area. He acknowledged however that there is limited legal authority for the valuation of abatement and referred to the Tribunal case of FTS/CV/20/2311.

### **17. Findings in Fact**

18. That the Respondents tenanted the Property from the Applicant from May 2017 to March 2021.
19. That the Rent due each month was £525.
20. The Rent due from 1<sup>st</sup> January 2020 to 28<sup>th</sup> February 2021 is 14 months and £7350
21. The rent paid by the Respondents from 1<sup>st</sup> January 2020 to 28<sup>th</sup> February 2021 is £6,075
22. That the Applicant agreed a reduction of £25 per month for the issues with the living room window from August 2019 until August 2020 when it was replaced and this has not been deducted.
23. The Applicant is waiving her right to claim any under payment of rent from October to February in respect of issues with the Property.
24. That the living room window was not wind and watertight for part of the tenancy and when screwed shut was probably watertight but was not capable of opening and was still draughty. That attempts were made to fix it prior to this.
25. That the bedroom on the top floor occupied by the Respondents daughter was not wind tight. That this was intimated to the Applicant's agent in February 2020 but was never fixed.
26. That the Respondent's bedroom on the top floor was not wind tight but this was not fixed.
27. That the vent in the bath room was not faulty or inappropriately placed.
28. That the fan in the bathroom was functioning.
29. That the front door was functioning after the locking mechanism was fixed.
30. That the respondents were inconvenienced by the windows not being wind tight.

### **31. Reasons for Decision**

32. The first matter that the Tribunal has to make a decision on is exactly what rent was charged and not paid. From the evidence provided by the Applicant and the Respondents it appears that the refund agreed for the issue with the council tax being more than the tenants expected was granted but for a short period and the rent charged thereafter and at least from 1<sup>st</sup> January 2020 which is the first date on the Applicant's rent statement, was £525. The Applicant agreed this was the rent charged.
33. There was then some disagreement over what refund if any was agreed by the landlord thereafter. The Applicant thought and said several times she had agreed the sum of £25 per month in compensation for the issue with the living room window. Mr Blaikie advised that he had been told by the letting agent that it would be £25 and then £50. However when from the statement lodged it is clear that any refund credited (which appears to vary from £25 to £50) has then been debited leading to the net result that no refund has been credited to



the rent charged in the letting agents statement. The Applicant may have agreed a refund but it has not been implemented.

34. It is also clear and the Respondents agreed that they had not paid the rent charged for February and June 2020 in protest at the issues with the windows. In addition the payments made between December 2020 and 28<sup>th</sup> February 2021 are made up of variable payments as the Respondents advised they had by then separated and were separately paying their share of the rent. The total paid for those months are £1350 which is a shortfall of £225. This added to the 2 months they did not pay gives a total not paid of £1275. The sums paid by the Respondents in total are £6,075 the rent charged at £525 per calendar month for January 2020 to 28<sup>th</sup> February 2021 is 14 months at £525 which is £7,350. The Rental statement confirms there was no balance due or outstanding prior to January 2020. The difference in rent that is not paid is therefore £1275 which matches the amount not paid by the tenants. The Tribunal therefore notes that is the sum due and not paid and notes this is less than that stated in the rent statement which even the Applicant agreed she could not follow saying she had “never seen bookkeeping like it” .
35. The question for the Tribunal thereafter is the Respondents are entitled to an abatement of rent worth more than the £950 which the Landlord is seeking.
36. The Applicant has not challenged the right of the Respondents to seek an abatement of rent which if granted would reduce the amount of rent due and owing. The Tribunal notes that the Respondent has lodged and referred the Tribunal to two authorities that confirm an abatement of rent is a permitted defence to an action for an order of payment of rent arrears. He has referred to *Renfrew District Council V Gray 1987 SLT (Sh CT) 70* which is an authority for the proposition that a tenant should not be required to pay the contractual rent for a property that does not meet the repairing standard. In addition Mr Christman also referred to Tribunal case under Rule 111, *Key-Lets against David Hunter 23 Dunure Drive Kilmarnock FTS/HPC/CV/18/0449* where an abatement was permitted in an action for payment of rent arrears and other costs. The Tribunal notes that a defence of abatement is also recognised by recognised authors on this subject. Adrian Stalker in his 2<sup>nd</sup> Edition of *Evictions in Scotland* notes on Page 131 “*Clearly there will be cases in which it will be appropriate for the defender to combine the withholding of rent with a claim for abatement in respect of the period during which it is withheld, presumably due to a delay in the repairs being carried out. If the court finds in his favour the rent is not lawfully due and the tenant will be allowed to keep the retained payments.*” For those reasons the Tribunal accepts that a defence of abatement is a permitted defence to a claim for payment of rent arrears. The question for the Tribunal is where there were repairs required that were not attended to timeously and if so what an appropriate abatement is.
37. In the case of *Renfrew District Council v Gray* it was noted that despite the fact the tenants carried on living in the property it was effectively uninhabitable which led to a complete defence to payment of rent. Sheriff Principal Caplan described abatement as “an equitable right and is essentially based on partial failure of consideration. That is to say if the tenant does not get what he bargained to pay rent for it is inequitable that he should be contractually bound to pay such rent.”

38. The Tribunal then considered what repair issues were intimated, when they were intimated and did they amount to a breach of the contractual and legal obligations of a landlord and if so what was an appropriate abatement. Firstly the Tribunal considered the issues with the living room window. The Respondent has advised of issues with the window since the start of the tenancy. They refer in their submissions to from the Respondent to the Landlord's agent and also to a tenancy inspection report dated September 2017 which states that water is coming in the living room window and e-mail from the agents to the landlord saying "the tenant is having issues with the lounge window, there is movement and they are quite concerned about it." A further e-mail is sent on 24<sup>th</sup> September 2019 from Mrs Blaikie to Paula Hepburn of the landlord's letting agent saying "An update on the window it's been blowing open all night and Rab (Mr Blaikie) has had to sleep downstairs to keep an eye on it, it will need properly fixed today as our house is now freezing which as I'm sure you can appreciate isn't good especially for a 1 year old." The agent then replied at 15.02 on 24<sup>th</sup> September asking how the window was now and Mrs Blaikie replied saying "**It's secure for now** .The guy himself said again it's not going to last because the windows are too worn. " Paula then replies I have spoken to the landlord and let her know it is secure but possibly in the future we may have more issues. Mrs Blaikie then notes that all the guys who have come out say the same thing and agree it needs replaced. The Applicant gave evidence confirming that she had arranged for a joiner to go out in September and that she was assured it was wind and watertight at that point. This e-mail correspondence does corroborate that and confirms that tradesmen have been out to look at the windows but that they agree they do need replaced.
39. The next e-mail lodged by the Respondents is one dated 10<sup>th</sup> December 2019 where Paula notes that the tenant has advised they are getting water in the lounge window. Mrs Blaikie notes that the joiner has been out and put on more sealant but that the windows need replaced and complains this has been going on for two years now.
40. A further e-mail is lodged from Mrs Blaikie confirming that on 3<sup>rd</sup> February the tenants were withholding rent payments until such times as the windows have been replaced. This is followed by another dated 14<sup>th</sup> February stating that the windows in the living room are away again, wind had blown them in and although they had jammed them shut there was a gap in the right hand corner where they had to stuff a towel in to keep the wind and water out. Finally the Respondents have lodged a copy letter from their solicitor to Castle Estates Glasgow Ltd formally intimating by recorded delivery that there are disrepair issues at the property and calling on the landlord to provide proposals to repair these by 28<sup>th</sup> February failing which they may apply to the Tribunal for a repairing standard enforcement order. The two issues narrated in this formal letter are
- a. that the living room window is in poor condition and does not open correctly and
  - b. the window in our client's daughter's bedroom is draughty.
41. The Respondents advised that they did not seek a repairing standard enforcement order and mentioned that they were not aware of that possibility although their solicitor clearly was as it is mentioned in his letter of 20<sup>th</sup>

February. However they were clearly concerned enough to engage a solicitor who wrote to the Agents about two of these matters on 20<sup>th</sup> February.

42. The Applicant has confirmed that she is aware of the issue with the window in the living room and advised that although she instructed a new one to be commissioned and fitted firstly the joiner admitted that he forgot about the order and had not placed it and secondly that when he did place the order, the national lockdown came into place shortly after and no windows were being manufactured; scaffolding to arrange for it to be fitted could not be hired and so no work on this could take place. The Respondents confirmed that during this period the windows appear to have been screwed shut thus not allowing them to open them. Both the Applicant and Respondent agree this window was replaced with a new window in August 2020.
43. The Respondents are also claiming that there was a draught in their daughter's bedroom; their solicitor submits this was first brought to the landlord's attention in his letter of 20<sup>th</sup> February and that this window has never been repaired. Mr and Mrs Blaikie advise that they first noticed it when their daughter was old enough to sleep by herself in this room which is on the top floor beside their bedroom and that if the weather was bad it would keep their daughter awake and she would then come in and sleep with her mother.
44. Finally regarding the windows the Respondents submit that there was a draught in their bedroom window and refer to the joiner's report dated 16<sup>th</sup> September 2020 that confirms this. The Applicant refutes this as set out above however it is noted that the report from the Applicant's joiner dated 16<sup>th</sup> September does confirm that a new window is required for the front bedroom window and back bedroom window and a hall window (although the Respondents have not indicated any issues with a hall window). The Applicant has advised that on her visit to the Property on 8<sup>th</sup> March 2021 with another person that other tradesman did not advise that new windows were required but we do not have report from that tradesman. We do have credible reports backed up by e-mails, inspection reports and testimony from the Respondents that there was draughts coming in the windows in their bedroom and their daughter's bedroom as well as in the living room until it was screwed shut.
45. The Tribunal finds on balance that there is evidence that the living room window was in disrepair, not fully wind and watertight since at least August 2019 and that it had issues before then but that joiners had attended the Property and temporarily fixed the issues. The Tribunal finds that the daughter's bedroom window had gaps around it allowing draughts to come in but that this was only formally reported in February 2020 and then lockdown happened so there was a delay in being able to get a tradesman to look at and fix this issue. It is noted this was never fixed. Finally the Tribunal accepts that there were some issues with draughts in the Respondents bedroom although as they themselves confirmed these issues were not as great as in the daughter's bedroom and it is noted this is not mentioned in their solicitor's letter of 20<sup>th</sup> February just in the letter of September 2021.
46. With regard to the other disrepair issues the Respondent alleges; with regard to the bathroom the Tribunal notes firstly that the vent may have let wind through but agrees with the Applicant that it is the purpose of a vent to allow air to circulate and that this is neither a fault or a defect but part of the design. It notes the Respondents taped this up themselves to reduce any draughts.

47. With regard to the fan this is not highlighted by the Respondents as an issue in any e-mails they have lodged nor in their solicitor's letters. They advise that it was raised by the Applicant's agent in their own inspection report. The Applicant has advised that the reason it was raised was that a plumber engaged to fix the shower made a comment about it and it is her opinion that he was looking for work. The Tribunal notes the comment is that the fan is not sufficient. There was no claim it was not working at all and so in the absence of any clear or pictorial evidence of mould or other dampness the tribunal does not find that it has been proved this was a repair issue amounting to a breach of contract or breach of the repairing standard entitling any reduction in rent.
48. In relation to the front door the Tribunal notes the e-mail referred to by Mr Christman as confirming that this was an issue relates to the locking mechanism and not wind penetration. Although the Respondents spoke of this they have not shown any evidence that this was reported formally to the landlords agents as it does not appear on their solicitors letter until September 2020. In addition the Applicant advised that the door had been replaced prior to the tenancy beginning and she advised it would be surprising if it was not fit for purpose so short a time after. From the evidence presented the Tribunal is not convinced that there was a serious issue with the door being draughty such as to merit an abatement or reduction in rent.
49. The Tribunal has carefully considered what valuation should be awarded as abatement for the issues with the windows. It is noted that the issue with the living room window has gone on for some time, that the Applicant has offered to make a reduction in rent for this issue although it has not been given effect to in the statement the Tribunal has before it, but that she has also had tradesmen attend to try and fix it. It would appear that a new window has been needed for approximately a year as it was screwed shut in August 2019. Mr Blaikie in his evidence also commented that the "most of their time was spent in the living room where it didn't have temperature or draught issues –the window when screwed shut stopped water and was less draughty but not totally". Mr Blaikie thought that the issues with draughts in his daughter's room were worse leading to her not sleeping there most of the time even when the weather was fine. It is noted that under questioning there was a third bedroom that had no draught issues and was used as a storeroom, but the Respondents felt it would be too much trouble to move their or their daughter's furniture into that room to use it instead as a bedroom. The Respondents also acknowledged that the draughts were "less severe in their bedroom".
50. Mr Christman has suggested that an appropriate valuation would be to allow a deduction of a one seventh of the rent due for the period the window was not wind or watertight in respect of the living room window and similar allowances of one seventh for each of the bedrooms affected by draughts. With respect the Tribunal does not accept that an abatement of the value of a one seventh which reflects the rent due for that particular room on a simple division of rooms in the Property is appropriate for a breach of contract that does not involve the total inability of the Respondents to utilise the rooms in question. The Respondents have continued to use all 3 rooms. They have not found it worth moving into another bedroom that was available. The Tribunal accepts there has been inconvenience and draughts caused by the failure to repair

these issues timeously. The Tribunal also notes that the Applicant instructed the window for the living room in December but due to the pandemic there were further delays in its construction and fitting. Overall the Tribunal is satisfied that the sum of £360 for the delay in attending to the living room window given the issues the tenant has had with this which were made clear from August/September 2019 and £300 for the non- replacement of the other two windows is a fair and appropriate abatement and taking account the fact that once reported the Applicant has to be given a reasonable time to fix the issue.

51. That amount has to be deducted from the full rent due by the Respondents at the end of February 2021 as the Tribunal has, as requested by the Respondents, taken into account the whole period of the rent due and the fact that complaints relating to the daughter's bedroom window were only made in February 2020 and in relation to their bedroom in September 2020. The Applicant has also acknowledged she was not pursuing any of the further arrears accrued from December to February in recognition of the delays and issues with the windows so it is appropriate for the Tribunal to take into account the full rent due to the end of the lease. As the rental sum due and not paid as set out above is £1275 then after the abatement is deducted it finds the sum of £615 is due and owing.

## **52. Decision**

The Tribunal grants an order for payment of £615.

## **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.**

**Jan Todd**

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**Legal Member/Chair**

**11<sup>th</sup> April 2021**  
**Date**