



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

**Chamber Ref: FTS/HPC/CV/21/1106**

**Re: Property at Flat 1/2, 110 Rankin Street, Greenock, PA16 7JW (“the Property”)**

**Parties:**

**Mr William Gardiner, 17 Beaumont Drive, Falkirk, FK2 8SN (“the Applicant”)**

**Mr Junior Bladon, Flat 1/2, 110 Rankin Street, Greenock, PA16 7JW (“the Respondent”)**

**Tribunal Members:**

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

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of Three thousand and forty five pounds only be granted.**

**• Background**

1. This was a Hearing scheduled to hear evidence and to consider an application by the Applicant for an order of payment of rent arrears against the Respondent who is the tenant of the Property.
2. There have been two prior case management discussions. Following the latter one on 21<sup>st</sup> July 2021, the following facts were agreed
  - a. The Respondent is the Tenant in the Property which commenced on 9<sup>th</sup> April 2018.
  - b. The Applicant is the Landlord in the tenancy. It is noted that initially the tenant was given a lease that named a Leanne Carling as the Landlord but she was acting on behalf of the Applicant only. The Applicant is the owner of the Property and is in the process of renewing his landlord registration.

- c. The rent is £425 per month and has not been paid by the Respondent since 9<sup>th</sup> January 2021.
  - d. The Respondent is withholding rent due in respect of repairs he feels are outstanding.
  - e. The current rent not paid at the date of the CMD is £2900 and the Applicants have intimated a request to increase the sum claimed to this amount.
3. The following issues were identified as issues that would require to be determined after a hearing namely:-
  - a. Are there ongoing repairing issues with the Property that have been reported and not fixed?
  - b. If so are the repairing issues a breach of the Repairing Standard
  - c. Is the Respondent entitled to withhold rent due to any repairing issues with the Property?
  - d. Is the Respondent entitled to any abatement or reduction of rent and if so how much?
4. The CMD identified that there were 5 main issues the Respondent was claiming required repaired or replaced in the Property;
  - a. the cooker did not function properly due to a poor fitting latch on the oven door;
  - b. the windows which he claimed did not all open and were not all wind and watertight;
  - c. tiles in a bedroom which he claimed were flammable and should be removed,
  - d. taps in the bathroom that needed replaced and
  - e. black mould in the bathroom and one bedroom.
  - f. He also raised other allegations about the landlord not being registered and not receiving the gas or electrical safety certificates or pat tests. The note of the CMD is referred to for the full discussion.
5. A Direction was issued following the CMD and asked for both parties to advise if they were bringing any witnesses to the Hearing; In addition the applicant was asked to lodge
  - a. Details of whether any repairing issues were raised by the Respondent and when and how they were dealt with in relation to the matters set out in the CMD.
  - b. Any receipts or invoices for work carried out
  - c. Any details of any inspections carried out by the Applicant or his agent. The Respondent was asked to provide:-
  - d. Confirmation of what money he has retained in respect of the rent.
  - e. What items he is still awaiting the repair of and whether and how they breach the repairing standard.
  - f. How much rent he believes should be abated (reduced) for any repairs outstanding or completed and why he is entitled to that?
6. The Applicant's letting agent responded by e-mail to the direction on 30<sup>th</sup> August 2021 confirming that some issues were raised in the early weeks of the tenancy and that the washing machine and fridge were both replaced with new ones and the old ones taken away. The Applicant's response goes on to note that the cooker was raised as having problems as the door latch was

temperamental but that they assumed it was still functioning as they had not heard from the tenant for over 18 months. They confirmed that the issue with the cooker was raised again at the inspection in early April 2021 and it was replaced the following week.

7. The letting agent's response also confirmed other issues were raised at the inspection on 6<sup>th</sup> April namely:- a faulty light switch which was repaired the following week; concerns with ceiling tiles for which a quote was obtained but "no suggestion these are dangerous"; and a number of windows being faulty. With regard to the windows the letting agent advises the Respondent said he had some qualifications in glazing and wanted an inspection done by an organisation he had previously worked for "Windows Manufacturing Ltd" and then goes on to copy some previous e-mails between the letting agent and the Respondent which are not dated but which confirm that the letting agent tried to phone the window company but said it was just ringing out and a response from Mr Bladon which said he would "pop up (to the window company) next week and see if they are still there and let you know once I have.", followed by a final e-mail to the Respondent asking if he had managed to speak to the glazing company about the windows.
8. The Written response from the letting agent goes on to suggest that it was when the boiler was repaired and not replaced that the tenant's attitude changed and he decided not to pay any more rent. They also then requested to increase the amount sought to £3,395 and attach another rent statement showing no rent has been paid from 9<sup>th</sup> January 2021 to 9<sup>th</sup> August 2021.
9. A written response was received from the Respondent on 9<sup>th</sup> September 2021, which primarily confirmed earlier written representations by the Respondent.
  - a. He confirmed that the majority of issues had still to be repaired; that he had only retained 2 months' rent and "no more due to the negligence of the landlord and estate agents". He reiterated that at the meeting with Mr Gibsey he had advised that if the outstanding issues were fixed within a reasonable time period he would commence rent payments and back date the payments. He goes on to say that with regard to the windows these are not fixed and he does not agree that he would resolve this for the landlord but advises that he would speak to individuals at his previous employment to see if a reasonable price could be agreed. He alleged that the windows breach the repairing standard as the property is not wind and watertight and in all other respects reasonably fit to live in. Only three out of the six windows work and two of them had to be forced open. He alleges two let in a draught and one lets in rain and that the issues with windows were brought to the attention of a former employee Derek of the letting agent and was again brought to the attention of the letting agent at the meeting on 6<sup>th</sup> April.
  - b. The Respondent also mentions he is still waiting for the issues with mould and damp to be dealt with in the bathroom and bedroom and that they fail to meet the tolerable standard as the property should not have rising or penetrating damp and there are no extraction fans in the bathroom.
  - c. That the foam tiles in a bedroom were flammable or highly flammable, a quote was obtained to replace them but this has not been actioned.

- d. With regard to the amount of abatement he wishes to claim the Respondent notes that he feels some of these issues have been outstanding for years and not acted upon, namely the cooker which he confirms issues were notified by him on 20<sup>th</sup> April 2018 and only on 7<sup>th</sup> April 2021 was the Respondent advised a new cooker was ordered and finally replaced on 19<sup>th</sup> April 2021. He also mentions a lack of safety certificates being given to him; finding out the landlord was (at least temporarily) not registered; and generally feeling that repairs were not done and that there was no consideration for his welfare adding to his stress and anxiety and that for these reasons no rent should be due or arrears paid back. The Respondent also refers to and provides another copy of his e-mail of 29<sup>th</sup> January in which he raised the various repairing issues to the letting agent.
10. The Hearing proceeded today at 10am by teleconference and Mr Campbell Gibsey of the Homefinders Letting Agent was present representing the Applicant and Mr Bladon the respondent was in attendance in person. The Applicant did not attend himself and there were no other witnesses for the Applicant other than Mr Gibsey. The Respondent had one witness Ms Rebecca Ferguson his girlfriend who was invited to join the call after both parties had given their evidence.
11. The Tribunal first of all asked the Respondent why he had lodged his response to the Tribunal's direction so late. The Respondent apologised and advised he had a problem with his phone so had not accessed his e-mails until recently although he did admit he could have and maybe should have tried to access them earlier.
12. Mr Gibsey confirmed that he had received the documentation crossed over by the Tribunal from the Respondent but had not had long to look at it. The Tribunal noted however that it repeated the Respondent's position that had been set out in previous documentation although with some additional details and photographs. The Tribunal agreed to accept this although late.
13. The Tribunal went on to hear evidence from the Mr Gibsey of the letting agents and Mr Bladon and then after a short break Ms Ferguson.
14. Mr Gibsey advised that the Applicant is now claiming the sum of £3395 as a further month's rent has not been paid in August. The Tribunal noted this had been advised in his written submissions and crossed over to the Respondent so accepted this revision. He advised that the rent now due was in fact £3,800 but the Tribunal noted this increase has not been requested in advance therefore cannot be considered. Mr Gibsey also advised that a notice to leave has been served which is due to expire later this month.
15. The Respondent confirmed at this point that he agrees with the sum of rent that has not been paid so the Tribunal notes the matter in dispute is purely if the rent is due and owing and went on to discuss the items of repair that the Respondent has advised in correspondent and which were set out in the CMD note. The Tribunal asked firstly Mr Gibsey and then Mr Bladon their position on each of the items of repair as follows:-

#### **THE COOKER**

16. Mr Gibsey advised that a new cooker had been provided and fitted in April 2021. When asked about the tenant's complaint that the latch on the oven

door of the cooker had never worked he said that he had checked the notes of his colleague Derek who was the previous letting agent who has now left the company. He advised that the notes said the latch was temperamental and although the landlord had agreed to replace the fridge and washing machine which had also been complained of in 2018, "we didn't do anything about the cooker". Mr Gibsey thought his colleague may have advised the tenant to keep an eye on it and let us know if it needs replaced but he agreed this was supposition on his part. He went on to confirm they didn't hear anything further from the Respondent until January 2021 but also confirmed that the letting agent had not carried out any further inspections since that initial 6 month inspection by his colleague Derek. Mr Gibsey could not offer an explanation for this lack of inspections between 2018 and March 2020 although he did confirm the firm did no inspections during 2020 because of Covid 19. Later on in the hearing Mr Gibsey advised that the replacement cooker was actually paid for by himself.

### **The Windows**

17. Mr Gibsey advised that the first time he was aware of an issue with the windows was at his meeting with the Respondent on 6<sup>th</sup> April 2021. He advised he could not find any notes or correspondence about complaints about the windows. He said that the meeting was an attempt to do an inspection and deal with the issues raised in the tenant's email of January 2021. Mr Gibsey also confirmed that the Respondent had indicated that he wished him to use a previous employer of the Respondent to repair or replace the windows, but despite trying he did not manage to contact them and he advised that the Respondent said that he would try and contact them. Mr Gibsey then advised he chased the Respondent up about this but did not receive a reply although he admitted he had not chased him up after May 2021, stating that he thought the Respondent was just looking for a reason not to pay rent. When asked about the condition of the windows Mr Gibsey advised that we wanted to get a report done and as the Respondent insisted on getting e-mails if there were visits to be arranged, he felt it would be easier for the Respondent to arrange a visit directly with the window company he knew. Mr Gibsey confirmed that there was however no particular reason he had not chased the Respondent since then. He also admitted that he thought there was some water on the window sill of the living room window but was not sure if this was from the windows being open or closed, that there was no central heating in the living room only a plug in radiator and that he thought some of the handles of the windows were working fine although the windows were dated.

### **The Boiler**

18. Mr Gibsey advised that he believed that the complaint about the boiler was made in December he remembers a phone call to a gas engineer but he could not give a precise date. He agreed the original report recommended a replacement but that the Landlord wanted and obtained a second opinion which advised it could be repaired and he instructed the repair. Mr Gibsey could not say exactly how long it was not working for how. He thought it was repaired in early January. However he did confirm that he believes it has been working since then and is working now.

### **Dampness and Mould in bathroom**

19. Mr Gibsey advised that in his view the appearance of mould has been caused by a lot of condensation and that the window needs to be opened more often. He advised there was certainly evidence of mould above the window when he inspected it in April but he also said he took pictures of the outside of the property and did not see any issues where dampness would be getting in. Mr Gibsey mentioned that he is aware that Mr Bladon does not spend a lot of time in the property and mentioned that this may mean the windows are not opened regularly.

### **Taps**

20. With regard to the taps Mr Gibsey advised that he didn't notice the taps and hasn't done anything about that confirming that his main concern in the inspection had been to check the oven and the boiler and to make sure the house was compliant. He advised the inspection was around 45 minutes and thereafter he emailed the gas safety, electrical condition certificate and EPC to the Respondent.
21. The Tribunal then heard from the Respondent regarding his position on these items and his claim for withholding rent and abatement of rent.

### **22. The Cooker**

- a. The Respondent advised that the latch did not work on the oven door from when he first moved into the Property. He advised he reported this to Derek at the letting agents, telling him this on a telephone call and then showing him at the 6 month inspection. He advised that he initially chased to get this fixed but was told it was with the landlord and he eventually stopped chasing. The Respondent advised however that cooking any food took longer because the oven didn't latch properly and he started using the microwave more. He advised that he was able to use it for a while but it got worse and by the time the boiler had become an issue he was using it rarely and gave up altogether this year.
- b. **The Windows.** With regard to the windows, the Respondent again stated he originally reported issues to Derek showing how he had to force open the bedroom and living room windows and that Derek said he would get back to him. The Respondent then advised he left it and gave up until January 2021 when he complained about them again. He advised that by then the front facing windows namely the living room and bedroom ones were windy and that he would find a small pool of water on one. He confirmed that the leak had only been there since October last year as the windows had gradually got worse. He said there were no problems with the other windows. The Respondent in response to questions admitted he works away regularly and can be away for weeks at a time, spending around 5 days a month at the Property when he has access to his son. When he is away he confirmed his partner visits the Property for him. He advised that he did not know why there had been no inspections for 3 years until the one in April this year. With regard to the allegation that he wished to have the report on the windows done by a window company he had previously worked for, he advised that he could have got a discount for the Applicant if he wanted to replace the windows but he wasn't willing to

waste their time and given the fact the landlord had not come back regarding the tiles he didn't think he was going to respond re the windows. The Respondent confirmed that he did not think it was for him to chase friends at a window company when he had raised this issue at the start of the tenancy.

- c. **Boiler.** With regard to the Boiler the Respondent advised that he thought he reported this around October/November 2020. He explained that when he turned it on the pressure would jump and it would make a banging noise. He confirmed he let the letting agent know and was advised it was to be replaced but when he came back (from working away) it had not been replaced and when he enquired about it was told another company would come to look at it to see about fixing it. The Respondent confirmed he heard directly from the second company and it has been fixed. He thought it had been fixed in the New Year (2021) but could not find the exact date. He confirmed it is still working but that he probably had no heating for about 6/8 weeks.
- d. **Tiles.** The Respondent advised that a builder friend had told him the tiles in the bedroom were flammable and should be replaced when he showed him these on a video call. He reported this to the letting agent and advised someone came out to look at them who also said they were flammable and he understood that the landlord had got a quote to replace them. From what was said at the last CMD the Respondent understands that the landlord won't fix them until he pays rent. He confirmed nothing has happened and the tiles have not been replaced he still believes these should be as he believes they are unsafe. In response to questions the Respondent confirmed there are 3 smoke alarms in the Property and they all work.
- e. **Damp and mould.** The Respondent advised that he became aware of dampness after 2 years and in particular after the boiler had not been working. He explained that the black mould appeared in the bathroom and is now spreading to the room next door. He advised that he complained of it but has never been told that he should wipe it away. The Respondent believes there should be no dampness in the Property and this matter is still outstanding. He also advised under questions that he did use the window in the bathroom when he was there and that he used the heating but admitted he did not use the timer on the heating when he was not present in the Property, although he confirmed his partner would visit the Property for him when he was away.
- f. **Taps.** The Respondent finally explained that the tap would turn itself on and he had to wedge it shut to stop it. He advised that the taps were not a big issue but it was the fact there were several issues over 2 years that frustrated him.
- g. The respondent ended his evidence by stating that he may have been quite stubborn over this and he would accept whatever the decision of the Tribunal was. He also advised he would be moving out of the Property soon and that he would struggle as he had not wanted to leave, he just wanted the issues resolved.

23. The Tribunal then had a short adjournment to allow the clerk to call the Respondent's witness Ms Rebecca Ferguson.
24. Ms Ferguson joined the hearing by telephone and confirmed her name was Rebecca Ferguson, that she is 26 years old and lives in Helensburgh. She confirmed that she is the Respondent's partner and would visit the Property 3 – 4 times a month when the Respondent was away. She would check it, air it and sometimes she stayed over. She advised it could be for 1 – 3 days. When asked if she was aware of any issues with the Property she advised that:-
  - a. There was mould in the bathroom and that there was no ventilation fan there and so she wasn't sure if that contributed to it.
  - b. That she had been told the tiles in the bedroom were flammable or highly flammable.
  - c. That the cooker didn't work properly and hadn't for years.
  - d. That the bathroom tap was leaking and not closing properly.
25. She also advised that she was aware the landlord hadn't been registered and that he was then getting his registration renewed. She confirmed that she had been in the Property when Mr Gibsey had attended in April 2021 and confirmed Mr Gibsey had said he would take over the problems in the flat. With regard to the windows she advised that Junior said he would speak to people but didn't say he would fix the windows. She also confirmed that one of the windows leaked and that this has been happening since she has been visiting the Property which is from last October.
26. With regard to the mould in the bathroom she confirmed that she would leave the window open there for a good couple of hours, that the mould has now spread to the bedroom next door and that Mr Gibsey took photos of it and said he would look into it but nothing has happened. She also confirmed that the tap is not working and has got worse over the year.
27. Ms Ferguson also confirmed that with regard to the tiles in the bedroom she thought the person who had come out to see them stated they were flammable but nothing has happened.
28. Ms Ferguson was then asked if she had used the cooker and confirmed that she had but advised the latch had to be propped up or the door would fall off and when cooking the time took a lot longer. She advised because of the length of time it would take they did not often use the cooker. She also advised that two of the rings did not work.
29. With regard to the windows she advised that only 3 windows opened and the living room one leaked when it was raining. She confirmed this had been reported in the Respondent's e-mail in January and again at the visit by Mr Gibsey in April. She said that she has seen water on the window sill and on the carpet. She also advised there is no heating in the living room.
30. Ms Ferguson also confirmed that she was aware the boiler had not been working and that she believed it was originally to have been replaced but it was finally fixed. She confirmed that it was very cold when it was broken and that her partner the Respondent had bought two heaters for the Property and that since the second repair it has been working.

### **Findings in Fact**

31. The Respondent is the Tenant in the Property which commenced on 9<sup>th</sup> April 2018.



32. The Applicant is the Landlord in the tenancy. The Applicant is the owner of the Property and is in the process of renewing his landlord registration.
33. The rent is £425 per month and has not been paid by the Respondent since 9<sup>th</sup> January 2021.
34. The Respondent is withholding rent due in respect of repairs he feels are outstanding.
35. The rent not paid as at 9<sup>th</sup> August 2021 is £3,395 and the Applicants have intimated a timeous request to increase the sum claimed to this amount.
36. The Respondent is still renting the Property although the Applicant has served a notice to leave and the Respondent intends to leave soon.
37. The Respondent first complained that the latch on the cooker did not work on 16<sup>th</sup> April 2016. He was able to use the oven but the cooking time was much longer as a result of the fault and this led to him ceasing to use it.
38. The cooker was replaced around April 2021.
39. The Respondent complained about the windows not opening at the start of the tenancy. On 29<sup>th</sup> January in an e-mail to the letting agent he asked for all the windows to be assessed to see if they were up to standard.
40. The Window in the living room has a leak and is not wind or water tight.
41. The mould in the bathroom and bedroom is caused by lack of ventilation and heating.
42. The tap does not work properly in the bathroom
43. The boiler did not work for a period of weeks around November/December 2020 to January 2021 but is currently working.
44. The electrical and gas certificates are up to date and have been sent to the Respondent.

### **Reasons for Decision**

45. The parties both agree that rent from January 2021 has not been paid. This is not in dispute. The current sum sought by the Applicant and intimated by e-mail to the Tribunal who crossed this over to the Respondent is £3395 representing the rent due up to and including 9<sup>th</sup> August 2021. The Respondent's position is that he is withholding rent as he believes repairs are outstanding and some issues have not been attended to since he moved into the Property. He is frustrated with the number and length of time it has taken to have repairs dealt with and some are still outstanding. He wishes to claim for the inconvenience and stress of that.
46. He submits that the outstanding repairs and issues means the house does not meet the repairing standard. He also notes he wishes to counterclaim for time lost and financial loss sustained in waiting for repairs to be carried out, anxiety and stress. The Respondent has not submitted any evidence of financial loss or evidence to support a claim for anxiety or stress but the Tribunal does accept that withholding rent or claiming rent should be reduced because of repair issues can be a defence to a claim for rent arrears.
47. 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 *Renfrew District Council V Gray 1987 SLT (Sh CT) 70* 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. 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 were there or are there repairs required that were not attended to timeously and if so what an appropriate abatement is.

48. The Respondent has made 6 particular claims regarding repairs he feels were either conducted late or have not been repaired at all. The Tribunal accepts from the evidence presented by the Respondent and his girlfriend that there was an issue with the cooker which dates back to the beginning of the tenancy namely that the latch was never in good working order and progressively got worse over time. There is clear documentary evidence that this issue was raised with the letting agent in 2018 by the Respondent. It is not clear whether the respondent was advised to let the landlord know if problems continued although both parties accept the Respondent did not chase this up until January 2021. However neither did the landlord arrange via the letting agent for any further inspection after the initial 6 month inspection. It is also agreed that the cooker was replaced on 19<sup>th</sup> April shortly after the inspection by Mr Gibsey on 6<sup>th</sup> April and indeed Mr Gibsey advised he arrange to pay for the replacement himself.
49. The Tribunal accepts from the evidence given that there was an issue with the latch on the cooker from the beginning of the tenancy. It is not clear what was agreed after the initial 6 month inspection but it is clear this has got progressively worse; that it did affect the Respondent's ability to use the appliance and that it was not fit for purpose. The cooker should have been replaced or fixed long before April 2021. The Tribunal finds that a reasonable abatement for restricted use of the cooker for the period of the lease is £200.
50. **The Windows.** The Respondent has reported that the windows did not all fully open at the beginning of the tenancy however he admits there is no written record of any complaint about this. He has advised and it is supported by the witness that around October last year water started to come through the living room window. The Tribunal notes however that the tenant only says in his e-mail of 29<sup>th</sup> January that "I also require the windows to be assessed to see if they are up to Standard from the Property (bear in mind I have a NVQ level 2 in Glazing and spent 16 years in the industry) but this is why I need an independent company to come out and assess and I want them brought up to standard." Mr Gibsey admits that the Respondent raised issues with the windows on his inspection in April 2021 and there was water on the living room window sill. Mr Gibsey has lodged an e-mail showing he attempted to contact the window company recommended by the Respondent but as their number was ringing out he advised the respondent of this and the Respondent replied saying "Thanks for coming round and attaching the electrical and gas certificates. That's great if you could just let me know when you know about the cooker also with that is there someone who will take the old one away as well please. Yes that is the correct window company I'll pop up there sometime next week to see if they are still there and will let you know

once I have.” Mr Gibsey has admitted he did not chase this up and although the Respondent did offer to check if the company was still there and operating the tribunal accepts that it is the responsibility of the Landlord to ensure the windows are wind and watertight and it accepts the evidence of the Respondent and his witness that the window has not been watertight since October last year. However the Respondent did not make his complaint clear until at least the inspection in April 2021 and then offered to initially at least contact the window company. However the fact is the window is still not watertight and so the Tribunal accepts that a modest abatement is reasonable for having a leaky livingroom window that has not been attended to by the landlord since being asked to deal with it in April 2021. The Tribunal considers that the sum of £150 is a reasonable sum for this breach of contract.

51. **The Boiler.** It is accepted the boiler was originally recommended for replacement but a second opinion was sought by the landlord and it was fixed. Neither party was very clear on the dates during which the boiler was not working although the Respondent thinks it could have been 6/8 weeks. The letting agent thought the first complaint was around December 2020 with it being fixed in January 2021. The Respondent advised he was happy with the way the letting agent was dealing with it although he expected it to be replaced he is now content it is working despite being repaired and not replaced. The Tribunal finds on balance that there has been no breach of the repairing standard it was not working properly but has been fixed and is currently working. There is not enough evidence to show this caused undue inconvenience to the Respondent who admits he is not in the property more than a few days a month and asks his girlfriend to check on it for him.

#### **52. The Tiles in the Bedroom**

53. The Respondent claims he showed this to a builder friend who advised they should be replaced and that a quote has been obtained but has not been actioned. Whilst the Tribunal accepts this is no doubt what has happened there is no obligation on a landlord not to use these tiles. They do not appear to be made of asbestos or hanging off or in dangerous state. Although he may wish them replaced he has shown no evidence that the landlord requires to do so. It is noted there are 3 working smoke alarms in the Property.

54. **The taps in the bathroom.** The Respondent raised the issue of the tap not working properly in his e-mail of 29<sup>th</sup> January 2021 but admitted in the hearing this was not a major issue. The Tribunal does not find that this merits withholding rent or an abatement of rent.

#### **55. The Mould**

56. The Respondent has shown pictures of mould within the bathroom and bedroom. The Tribunal accepts this is there but the letting agent confirmed he felt it was caused by condensation in the Property and could be wiped away. The Tribunal having considered the evidence, noting the lack of heating while no one was in the Property which was regularly the case, agrees this is most likely caused by condensation and is not rising or penetrating damp. Whilst it is unfortunate that the Respondent was not advised by the Applicant to try and wipe it or the letting agent did not attempt this themselves it does not appear to the Tribunal to be a breach of the repairing standard and therefore not a reason for reduction of rent. The Tribunal does not have the benefit of an inspection which would happen in a repairing standard case was brought

by a tenant but has to make a decision on the basis of evidence presented to them and their own expert knowledge. Weighting up the evidence the Tribunal finds it is most likely caused by lack of ventilation and heating regularly.

Decision

**57. An abatement of rent in the sum of £350 is due. Deducting that from the sum owed means an order is granted in favour of the Applicant against the Respondent for £3,045.**

### **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.**

\_\_\_\_\_  
Legal Member/Chair

21<sup>st</sup> September 2021  
Date