



**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/21/2758**

**Re: Property at 30 Quality Street, Edinburgh, EH4 5BS (“the Property”)**

**Parties:**

**Ms Victoria Cullen, Mavisbank Walled Garden, Lasswade, EH18 1HY (“the Applicant”)**

**Mr Michael David Hughes, 30 Quality Street, Edinburgh, EH4 5BS (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is liable to make payment to the Applicant in the sum of TWENTY ONE THOUSAND SEVEN HUNDRED AND EIGHTY THREE POUNDS AND FIFTY PENCE (£21,783.50) STERLING**

**FINDINGS IN FACT**

1. The Applicant is the landlord, and the Respondent the tenant, of the Property under a Private Residential Tenancy which commenced on 5 July 2019.
2. The contractual monthly rent is £1,395.
3. The Applicant reduced the rent to £900 for each of the months of April, May and June 2020 to provide assistance to the Respondent in the early stages of the Covid-19 pandemic, before rent reverted back to the contractual rate.
4. By email dated 24 July 2020, the Respondent complained of disrepair at the Property to the Applicant’s then letting agents, Connell McFadden.
5. By letter dated 9 October 2020, the Respondent wrote to the Applicant to complain about the same items of disrepair as was referred to in his email of 24 July 2020, together with some additional items of disrepair.

6. In July 2020, the roof of the Property required repair. The said want of repair was intimated to the Applicant's agents. No repair was completed until 31 March 2022.
7. The ceiling in the drawing room is stained from the previous water ingress.
8. In July 2020, the Respondent intimated that the shower seal was not preventing water escaping between the shower screen and the bath. Mr John Weston, on behalf of the Applicant, purchased three separate shower seals to try to remedy the problem. None of the seals have operated to prevent an escape of water. Mr Weston has fitted a shower curtain to abate the issue. The said want of repair was not completed until 31 March 2022.
9. The toilet bowl in the main bathroom is cracked. That crack was more likely than not caused by the Respondent or a member of his household.
10. The Respondent previously complained of an escape of water from the "toilet basin". Mr Weston attended at the Property and understood this to relate to an escape of water from the U-bend under the wash hand basin in the bathroom, which he repaired.
11. There are decorative wooden shutters in one of the bedrooms which is typically used by the Respondent's son. There were pink curtains in the said bedroom. The pink curtains were taken down at the Respondent's request.
12. In July 2020, there were cracked tiles in the kitchen. The said want of repair was intimated to the Applicant's agents. No repair was completed until 31 March 2022.
13. Since 31 March 2022, further tiles have cracked in the kitchen. Those cracks were not intimated to the Applicant prior to the raising of this Application.
14. There are four bar stools in the kitchen. Some of the stools have suffered a failure due to the thread of the screws in the legs being stripped. Mr Weston has repaired the stools from time to time by drilling out the hole and replacing the fixing with a nut and bolt.
15. In May 2020, the Respondent found debris behind the gas fire in the drawing room. The chimney was subsequently cleaned and the gas capped off. The Applicant provided an electric fire to replace the gas fire. The electric fire could have been plugged in to assist in heating the room, notwithstanding the presence of the gas fire.
16. The drawing room is served by two radiators in addition to the fire place.
17. The boiler is in a satisfactory condition commensurate with age. The Applicant has attended to repairs from time to time as required.
18. There is mould on the wall above the cooker in the kitchen. The cause of that mould is a lack of ventilation and a failure to wipe down excessive moisture in that location after cooking.
19. The doorbell does not work, and has not worked since at least July 2020.
20. There is a knocker on the front door that is operational and causes a loud noise when used.
21. The Applicant has consented to the Respondent putting up a roller blind in the kitchen.
22. In July 2020, the external staircase leading to the Property had two treads which were in a dangerous condition. That want of repair was intimated to the Applicant's agents. No repair was completed until 31 March 2022.
23. Since 31 March 2022, cracks have appeared on the same two treads of the external staircase. Those cracks were not intimated to the Applicant prior to the raising of this Application.

24. In July 2020, the front door was in poor condition and in need of repair. That want of repair was intimated to the Applicant's agents. No repair was completed until 31 March 2022.
25. Since 31 March 2022, cracks have reappeared on the front door. Those wants of repair were not intimated to the Applicant until the day before the Hearing.
26. The external lights at the Property do not work. Their complete failure was not intimated to the Applicant prior to the raising of this Application.
27. The armchair in the drawing room is in sufficient repair and condition, and has been throughout the tenancy.
28. There was no carbon monoxide detector in the Property at the commencement of the tenancy. A carbon monoxide detector was not installed until February 2021.
29. In October 2020, the extractor fan in the kitchen stopped working. This want of repair was intimated to the Applicant. No repair was completed until 31 March 2022.
30. Following repair of the extractor fan in the kitchen, the ceiling requires redecoration.
31. At the start of the tenancy there was a shed which served the Property. The shed was in poor condition. It has been demolished. The Respondent has access to other external storage areas, including a garage and an area under the external staircase.
32. A section of boundary fence at the Property blew down in January 2022. The fence is owned in common by the Applicant and a neighbour. Its repair and replacement requires unanimous consent of the co-owners. The Applicant and her neighbour are in dispute regarding repair and replacement of the fence.
33. There is a summer house in the garden of the Property. It is, and has throughout the tenancy been, in poor condition. The Applicant offered at the beginning of the tenancy to either demolish the summer house or fence it off. The Respondent did not wish the Applicant to do either of those things.
34. The Respondent has refused access to the Applicant's contractors to undertake decorative repairs to the Property.

## **FINDINGS IN FACT AND LAW**

1. A reasonable period of time for the Applicant to undertake the roof repair would have been until the end of September 2020.
2. The failure of the Applicant to complete the roof repair until 31 March 2022 was an unreasonable interference with the Respondent's use and enjoyment of the Property for which he is entitled to an abatement of rent.
3. The Respondent having prevented access for the purpose of undertaking redecoration of the Property, is not entitled to an abatement of rent for the condition of the drawing room ceiling.
4. A reasonable period of time for the Applicant to effectively replace the shower seal would have been until the end of September 2020.
5. The failure of the Applicant to complete the shower seal repair until 31 March 2022 was an unreasonable interference with the Respondent's use and enjoyment of the Property for which he is entitled to an abatement of rent.
6. The Applicant is not liable for the repair to the toilet bowl.

7. The Respondent is not entitled to an abatement of rent for the condition of the toilet bowl.
8. The Respondent is responsible for the replacement of the curtains in the bedroom of the Property.
9. The Respondent is not entitled to an abatement of rent for the lack of curtains in the bedroom of the Property.
10. The Applicant is not liable to put the decorative shutters in the bedroom into good and substantial working condition.
11. The Respondent is not entitled to an abatement of rent by virtue of the shutters in the bedroom not being in working condition.
12. A reasonable period of time for the Applicant to replace the original cracked tiles in the kitchen would have been until the end of September 2020.
13. The failure of the Applicant to complete the tile replacement until 31 March 2022 was an unreasonable interference with the Respondent's use and enjoyment of the Property for which he is entitled to an abatement of rent.
14. The Respondent having failed to intimate the newly cracked tiles as being in need of repair until the day prior to the Hearing, he is not entitled to an abatement of rent therefor.
15. The Applicant has complied with her repairing obligations in relation to the bar stools in the kitchen.
16. The Respondent is not entitled to an abatement of rent in respect of the condition of the bar stools in the kitchen.
17. The lack of a gas fire in the drawing room not having a material effect on the Respondent's use or enjoyment of the Property, the Respondent is not entitled to an abatement of rent therefor.
18. The Applicant has complied with her repairing obligations in relation to the boiler.
19. The Respondent is not entitled to an abatement of rent in respect of the condition of the boiler.
20. The Applicant is not liable for the presence of mould in the kitchen.
21. The Respondent is not entitled to an abatement of rent in respect of the presence of mould in the kitchen.
22. The lack of a functioning doorbell at the Property does not materially affect the Respondent's use or enjoyment of the Property.
23. The Respondent is not entitled to an abatement of rent due to the lack of a functioning doorbell.
24. The Applicant is not liable to supply a roller blind in the kitchen.
25. The Respondent is not entitled to an abatement of rent due to the lack of a roller blind in the kitchen.
26. A reasonable period of time for the Applicant to repair the stair treads would have been until the end of September 2020.
27. The failure of the Applicant to complete the stair tread repair until 31 March 2022 was an unreasonable interference with the Respondent's use and enjoyment of the Property for which he is entitled to an abatement of rent.
28. The Applicant has complied with her repairing obligations in relation to the external staircase in the period since 1 April 2022.
29. The Respondent is not entitled to an abatement of rent due to the condition of the external staircase since 1 April 2022.
30. A reasonable period of time for the Applicant to repair the front door would have been until the end of September 2020.

31. The failure of the Applicant to complete the front door repair until 31 March 2022 was an unreasonable interference with the Respondent's use and enjoyment of the Property for which he is entitled to an abatement of rent.
32. The Applicant has complied with her repairing obligations in relation to the front door in the period since 1 April 2022.
33. The Respondent is not entitled to an abatement of rent due to the condition of the front door since 1 April 2022.
34. The Applicant has complied with her repairing obligations in relation to the external lights at the Property.
35. The lack of external lighting does not materially affect the Respondent's use and enjoyment of the Property.
36. The Respondent is not entitled to an abatement of rent in respect of the condition of the external lighting.
37. The Applicant has complied with her repairing obligations in relation to the armchair in the drawing room.
38. The Respondent is not entitled to an abatement of rent in respect of the condition of the armchair in the drawing room.
39. The Applicant having failed to provide proper means of detecting the presence of carbon monoxide in the Property until February 2021, the Respondent is entitled to an abatement of rent in an amount equal to 5% of the rent for the period September 2020 until February 2021, which is the total sum of £418.50.
40. A reasonable period of time for the Applicant to repair the extractor fan in the kitchen would have been six weeks from 9 October 2020.
41. The failure of the Applicant to complete the extractor fan repair until 31 March 2022 was an unreasonable interference with the Respondent's use and enjoyment of the Property for which he is entitled to an abatement of rent.
42. The Respondent having prevented access for the purpose of undertaking redecoration of the Property, is not entitled to an abatement of rent for the condition of the kitchen ceiling.
43. The decision of the Applicant not to replace the shed does not materially affect the Respondent's use and enjoyment of the Property.
44. The Respondent is not entitled to an abatement of rent for the removal of the shed.
45. The Applicant has complied with her repairing obligations in relation to the boundary fence.
46. The Respondent is not entitled to an abatement of rent for the condition of the boundary fence.
47. The Respondent has waived his right to found upon the condition of the summer house as a basis to demand repair or replacement of the summer house by the Applicant.
48. The Respondent is not entitled to an abatement of rent for the condition of the summer house.
49. In all of the circumstances, an appropriate abatement of rent to reflect the Applicant's breaches of her repairing obligations, other than in respect of the carbon monoxide detector, is an abatement equal to 10% of the monthly rent for the period 1 October 2020 to 31 March 2022, which is the total sum of £2,511.00.
50. Having regard to the abatement of rent that has been allowed, the Respondent is under contractual obligation to make payment to the Applicant

in the sum of £21,783.50 in respect of rent arrears accrued during the period 5 September 2020 until 14 June 2022.

## **STATEMENT OF REASONS**

1. This Application called for its Hearing by teleconference on 14 June 2022. The Applicant was present on the call together with her representative, Mr Wright, solicitor. The Respondent was also present on the call.
2. This Application had previously called for Case Management Discussions on 15 February 2022 and 1 April 2022. The CMD Note for the CMD on 1 April 2022 sets out the matters which were agreed between the parties (see paragraphs 3 and 4 thereof). In short, the Respondent's position is that: (i) the Applicant is and has been in breach of her repairing obligations; (ii) the Respondent is entitled to withhold rent to force the Applicant to comply with her repairing obligations; and (iii) the Respondent is entitled to an abatement of rent for the period of the Applicant's breach of her repairing obligations. The Respondent has specified twenty one separate items of disrepair upon which he founds. Those items, and the Applicant's responses thereto, are set out in the undernote to the CMD Note of 1 April 2022.
3. There were two preliminary matters to deal with prior to the Hearing commencing. The first was the Applicant's application to increase the sum sued for from £20,528 to £24,713 to reflect additional arrears said to be due. The Respondent consented to the application to amend, and the Application was accordingly amended.
4. The second preliminary matter was the Respondent's application to lodge documents although late. Those documents fell under two headings: (i) photographs taken by the Respondent on either 10 or 11 June 2022; and (ii) an email from the Respondent to the Applicant and her then letting agent dated 24 July 2020. In respect of the photographs, there was no opposition to those being allowed although late, and they were accordingly allowed to be lodged. In respect of the email, it was identified that this had already previously been lodged timeously by the Respondent, and no further consideration of whether it should be allowed although late was required.
5. Thereafter, the Tribunal heard evidence from each of the Respondent, the Applicant and Mr John Weston. The Tribunal had previously determined, at the CMD on 1 April 2022, that the Respondent should lead, given that it was for him to prove that there existed disrepair that entitled him to withhold rent and/or an abatement of rent.

### The Evidence

*David Michael Hughes*

6. The Respondent gave evidence first. He spoke to each of the items of disrepair noted in the CMD Note of 1 April 2022.

- a. The roof repair issue was admitted by the Applicant. A certificate of compliance following a Repairing Standards Enforcement Order had been issued confirming that the Applicant had completed the necessary repair. The Respondent referred to a photograph of the ceiling in the drawing room of the Property (p21 of the late bundle). He identified a damp patch in the corner of the ceiling as shown in the photograph. He said that this damp patch was getting worse. His view was that this tended to suggest that the roof repair had failed. He accepted that the worsening dampness was a new issue which had only been reported on 13 June 2022. His concern was that he had quite expensive paintings on the wall in the drawing room. He said that there was a risk of further damage if the roof issue was not addressed.
- b. The drawing room ceiling had still not been redecorated by the Applicant. The Respondent's position was that the ceiling was not aesthetically as it had been when the Property was first let. He said that no attempts had been made by the Applicant to arrange access for decorative repair. He complained of discoloration of the ceiling and, separately, to a damp smell in the attic space.
- c. The Respondent spoke to Mr Weston having attended at the Property and installed a shower curtain on an extendable pole which stayed in place by way of a pressure fitting, by which it was explained the pole was extended until it fit tightly between two walls and the central fitting was then tightened. The Respondent complained that water was still escaping, which caused pooling on the bathroom floor. He said that this caused a risk of slipping. He confirmed that the Tribunal had previously issued a certificate confirming that the related RSEO repair had been completed.
- d. The Respondent spoke to the toilet bowl being cracked through. He said that the crack was above the water line in the toilet, but that flushing caused water to seep through the crack. He said that this did not result in heavy flooding, and that the volume of water escaping depended on usage. He said that the Applicant had taken no steps to address this. Reference was made to a photograph produced (page 9 of the late bundle). He recalled tradesmen having undertaken a repair to the extractor fan in the bathroom early in the tenancy, and speculated that one of them may have dropped something in the toilet pan.
- e. The Respondent spoke to the wooden shutters. He said that these were in his 15 year old son's bedroom. They are the only window coverings. There are no blinds or curtains. He had previously repaired them himself by putting in screws, but that was not satisfactory. He referred to a photograph produced (page 12 of the late bundle).
- f. The Respondent said that there were cracked tiles in the kitchen. He does not know how they cracked. He said that he had not dropped

anything on the kitchen floor, but could not discount the possibility that one of his children may have done so. He could not recall when the currently cracked tiles were first reported to the Applicant. Previously cracked tiles were repaired in accordance with the RSEO. The cracked tiles had not stopped the Respondent using the kitchen.

- g. The Respondent spoke of metal bar stools in the kitchen. He said that there were four, which were supplied by the Applicant. He said that three had an issue where the screws came out of the legs causing the legs to splay and the stool to collapse. He said that the kitchen had a bar style table, and that the stools were required to sit at the table. They were required every day. Only one stool is safe to use.
- h. The Respondent spoke to discovering debris behind the gas fire. He complained that this was a fire hazard. He spoke to the Property being without the use of the gas fire whilst the gas was capped off, including the whole of winter 2021/22. He spoke of the gas fire being replaced with an electric fire which was not as aesthetically pleasing. He confirmed that the drawing room, in addition to the fire, had two radiators in it during that time. He described them as functioning sporadically, under reference to issues he alleges were experienced with the boiler in the Property.
- i. The Respondent spoke to having experienced issues previously with the boiler. He said that the boiler was prone to lose pressure, and it was previously difficult to top up. He described the topping up process as requiring to get under the boiler to do so. A tap had been installed beneath the boiler which made topping up the pressure easier now. He spoke to the boiler also requiring a part that was replaced. He said that the boiler made a whirring noise, and that he believed it was not functioning efficiently during that time, though it was still heating water. He spoke of his bills being quite expensive. However, he confirmed that the boiler was serviced annually and passed as safe.
- j. The Respondent spoke to mould and damp in the recess in the kitchen where the gas cooker is located. He said that this had been ongoing for some time and was first reported in October 2020. Reference was made to photographs of the area (pages 4 and 5 of the late bundle). The Respondent spoke to external pointing requiring attention and of the Tribunal surveyor having previously suggested that there was ingress through the stone. No specialist contractor had prepared a report as to the cause of the issue. The Respondent confirmed that there was no cooker hood over the cooker.
- k. The Respondent said that the doorbell was not working. It is battery operated. He described this as a minor inconvenience.
- l. The Respondent said that there was no roller blind in the kitchen. He said that there were fixings for such a blind, but no blind. He said that



the Applicant had promised to supply a blind for the kitchen shortly after the start of the tenancy, but none was supplied. He said that the kitchen window faces west and the sun shines into it. He had initially assumed that a blind would be supplied.

- m. The Respondent spoke to cracking appearing on the treads of the external staircase. The treads had previously been repaired in accordance with the RSEO. The cracking was new, and he could not recall if it had previously been referred to in correspondence.
- n. The Respondent spoke to the front door having cracks in it again. This had previously been repaired under the RSEO. The repair had since failed, though he did not know why. The new cracks were reported on 13 June 2022. The Respondent confirmed that this door led to a porch, and that there was a further internal door that was mostly glazed. Reference was made to a photograph (page 8 of the late bundle).
- o. The Respondent spoke to a number of external spotlights not working. He said this was dangerous, particularly in winter when it is icy. He said that this was reported to the landlord in October 2020.
- p. The Respondent spoke of an old armchair in the drawing room, which had been provided by the Applicant, requiring to be replaced or, at least, reupholstered. He suggested that one of the feet was broken. This chair is one of two armchairs in the drawing room. There is also a sofa.
- q. The Respondent advised that there was no carbon monoxide detector in the Property when he took access. One was fitted in February 2021.
- r. The Respondent spoke to the extractor fan in the kitchen having been faulty and replaced after the RSEO was issued. The replacement has been fitted in an offset position, with the screw holes of the previous fan exposed. The Respondent complained that this was not aesthetically pleasing.
- s. The Respondent spoke to a shed having been in a dilapidated condition at the commencement of the tenancy. The shed has been demolished but not replaced. A photograph showing part of the demolished shed is produced (page 15 of the late bundle).
- t. The Respondent spoke to a fence having been blown down earlier this year. A photograph of the fence is produced (page 16 of the late bundle). The Respondent was unable to comment on the extent of any dispute with a neighbouring proprietor regarding the replacement of the fence.

- u. The Respondent spoke about the condition of the summer house. His view was that it was in a state of disrepair and it was the Applicant's obligation to replace it.
7. Under cross-examination, the Respondent confirmed that although he claimed to have been withholding rent, he had not retained the unpaid rent. Instead, he had applied his rent monies to other things. At present, he has about £10,000 in his savings account but no other funds. He would be unable to pay the full sum of arrears if the Tribunal ordered him to do so. He said did not appreciate that the Tribunal was able to order payment of a lump sum. In respect of the RSEO action, he accepted that the RSEO related to only some of the twenty-one items under consideration in this action, being items 1, 2, 6, 9, 13 and 21 as noted in the CMD Note of 1 April 2022. He accepted that the repairs required to those items were completed as at 31 March 2022 when the Tribunal issued a certificate of completion.
  8. The Respondent accepted that he had made an application for a rent relief order to the Tribunal but that this had been refused. He did not consider that to have a bearing on his application. In terms of completing repairs, he accepted that some delays had been caused by the pandemic, but not that the Respondent had contributed to that delay by refusing access for works due to covid concerns.
  9. The Respondent accepted that there was a knocker on the door. He confirmed that the shed had been used previously for storing a lawn mower, some tools, old paint, insecticide and so forth. He confirmed that he had access to a garage and a storage area under the external staircase for storing such items now.
  10. The Respondent confirmed that the Applicant had offered to demolish or fence off the summer house, but that the Respondent had asked the Applicant to leave it standing.
  11. The Respondent was asked whether he thought that the mould in the kitchen would be an issue if the kitchen was cleaned and ventilated properly. The Respondent said that he was not a mould specialist, but asserted in any event that he did wipe down the area in question and that the Property was generally kept tidy and clean.
  12. Regarding the armchair, the Respondent confirmed that he still sat in the chair from time to time.

*Victoria Cullen*

13. The Applicant confirmed that she is retired and in receipt of state pension of £640 per month. She said that she had no other income other than income from rent for the Property, which she had not received for about two years. She said that she had no experience of using a letting agent prior to letting the

Property. She did not have a property portfolio, and only let the one flat. It had been her only or principal home for approximately eight years, before she moved in with her partner, Mr John Harley Weston. At that time she decided, in consultation with Mr Weston, to let the Property rather than sell it. She instructed agents, Connell & McFadyen, to assist her in order to get everything right. Connell & McFadyen found the Respondent to be her tenant.

14. The Applicant said that Connell & McFadyen acted as her letting agent for six to ninth months or thereabouts. In or around August 2020, Connell & McFadyen asked the Applicant to find an alternative letting agent. They said that they were unable to continue to deal with the Respondent, who they described as difficult and intimidating. She then appointed new letting agents, Umega Lettings.
15. The Applicant said that she has spent about £20,000 on the Property since 2019. She accepted that repairs had been required under a RSEO, but said that those had been completed. She also made the following specific comments on issues raised by the Respondent, beyond her responses noted in the CMD Note of 1 April 2022:-
  - a. She was unaware of any issues with the toilet bowl. The inventory which she had seen for the commencement of tenancy (not lodged with the Tribunal) said that the toilet bowl was “clear of cracks or chips”.
  - b. She had not been asked to repair the wooden shutters. Previously there were pink curtains in the said bedroom, and those were taken down at the Respondent’s request. The Applicant said that she believed that the curtains were still in the attic.
  - c. The wall behind the cooker requires to be cleaned regularly to prevent mould. Her view was that the Respondent was failing to do so.
  - d. There is a knocker on the door that makes a loud noise.
  - e. There is no blind in the kitchen. The Applicant never gave an undertaking to provide one. The Applicant previously told the Respondent that he could install a blind in the kitchen if he wished.
  - f. The chair in the drawing room was previously sprayed with a fire proofing spray. Beyond that the chair is in sufficient condition to be used in accordance with its purpose. It had previously been used by the Applicant when she lived in the Property.
  - g. The fence is an ongoing issue. It is a mutual fence and repair requires unanimous agreement with the neighbouring proprietor. The neighbour wants a wire fence. The Applicant wants a replacement panel fence, like what was there previously. Solicitors have been instructed on both sides.

- h. The summer house was previously used as a playroom for children and storage. It is a nice feature in the garden, albeit not in great condition.
16. Under cross examination, the Applicant was asked why it took so long for her to attend to the disrepair at the Property. Her response, in short, was that she had thought that her letting agent would deal with the issues. She could not recall whether she had expressly instructed her letting agent to do so.

*John Harley Weston*

17. Mr Weston is the partner of the Applicant. He spoke to having been involved in looking after the Property in order to help the Applicant. He had also helped the Applicant financially from time to time. In relation to the specific items founded upon by the Respondent, he made the following comments:-
- a. He was aware of the roof requiring repair, and that a roof survey was done. He was aware that the roof was repaired, but he was not involved in the repair or instructing any tradesperson. He was there when the Tribunal surveyor re-inspected the property to check for compliance with the RSEO. He recalled a damp meter showing that a couple of areas of the ceiling were still damp, but it was thought that those would dry out. He was not aware that there was any further issue before the hearing.
  - b. He had tried to arrange access on a couple of occasions to attend to redecoration of the drawing room ceiling, but had been refused access by the Respondent. He remained willing to attend to that. He was not aware of any ongoing damp issues.
  - c. He had purchased a seal for the shower online but it was the wrong one. He then purchased a further two, one of which fitted. When this did not fully address the water escape issue he applied silicone to provide a further seal. This did not resolve the issue. He then put up a shower curtain with a pressure fitting. He thought that this had fixed the issue. He was unaware of any further complaint about the shower area until the hearing.
  - d. He was not aware of any damage to the toilet bowl. There had been a previous complaint of water escaping at a wash hand basin in the toilet, which resulted in him changing the u-bend.
  - e. He was not aware of any issue with the window shutters.
  - f. He was not aware of any cracked tiles beyond those referred to in the RSEO.
  - g. To his knowledge, his repair of the bar stools had worked. He had taken two of the stools away, drilled out the holes and replaced the

bolts with a bolt and a nut. The issue was that the thread had stripped on the original bolt.

- h. When the gas fire was capped, he had supplied an electric fire to replace it. It was stored in the garage pending removal of the gas fire. Had it been required, the electric fire could have been plugged in by the Respondent and turned on. It would have sat in front of the gas fire.
- i. The pressure vessel in the gas boiler had previously had a slight leak. This was replaced. The gas engineer had shown the Respondent how to re-pressurise the boiler. To the best of Mr Weston's knowledge, the boiler was in working order throughout the tenancy. Mr Weston recalled re-pressurising the boiler for the Respondent on one occasion. He said that on the 6-10 times that he had visited the Property, he might have checked the boiler pressure but did not top it up every time.
- j. He was not aware of any mould in the kitchen.
- k. He had not tried to fix the doorbell. There was a knocker on the front door that made adequate noise.
- l. He was not aware of any discussion or agreement regarding a roller blind for the kitchen.
- m. He was aware of an issue with the external staircase. The Tribunal's Surveyor had noted that two treads were in need of repair, and they were repaired.
- n. The front door had been repaired to the Tribunal's satisfaction. Mr Weston had scraped the old paint off, applied silicone sealant around the panels, allowed the silicone to cure and then applied two coats of paint. He was not aware that the repair had since failed, or why it had failed.
- o. He had not inspected any external spotlights.
- p. He had sprayed the armchair in the drawing room with a fire retardant spray in accordance with the instructions on the can.
- q. He was not aware of any issue with a carbon monoxide detector.
- r. He was aware of an older issue with the extractor fan in the kitchen. This had been attended to by the letting agent.
- s. The shed had been old and was not in great repair when the tenancy started. The Respondent had agreed that it would be demolished. Mr Weston demolished the shed and laid its pieces flat in its place.

- t. He had obtained quotes for the Applicant to replace the fence, but there was an ongoing dispute with the neighbouring proprietor about the fence.
  - u. The summer house had not been in good condition at any point during the tenancy. Mr Weston had done some work on it. It was a storage space really, but you could sit in it. There had been a proposal to fence it off or demolish it at one stage, but the Respondent wanted it left.
18. Under cross-examination, Mr Weston advised that he was a landscaping contractor. He had no formal trade qualifications, but described himself as “practically minded”. He said that he had previously built a house.

### *Assessment*

19. In truth, very little evidence was in dispute between the parties. However, where their evidence diverged, the Tribunal preferred the evidence of the Applicant and Mr Weston to that of the Respondent. The Respondent’s evidence appeared rehearsed. He sought to confuse matters by referring to new items of disrepair as if they were pre-existing issues. He was argumentative with the Applicant’s representative and initially refused to answer questions properly put to him. Finally, his revelation that he had used the money allegedly withheld as rent on other items of expenditure tended to suggest that his position was not adopted in good faith. Against that background, the Tribunal did not consider him to be credible or reliable.

### Submissions

20. The Respondent’s submission was straightforward. He invited the Tribunal to determine that he had been entitled to withhold rent to force the Applicant to undertake repairs, and that he was in any event entitled to an abatement of rent for the period during which he had to live with the various items of disrepair. The Respondent submitted that an abatement of 75% was appropriate.
21. The Applicant’s submission was that the items of disrepair complained of by the Respondent were so minor in nature that they did not merit abatement. Alternatively, insofar as abatement was appropriate, the sum to be abated ought to be low in value to reflect the minor nature of the disrepair.

### Decision

22. The Respondent’s principal claim is that he was entitled to withhold rent. The right of a tenant to withhold rent is a common law remedy which a tenant is entitled to utilise “if and so long as the landlord fails to put or maintain him in possession of a material part of the subjects let” (Rankine, *Leases*, 3<sup>rd</sup> Ed., at p329). In reality, the right to withhold performance of an obligation (e.g. payment of rent) under a contract of lease until the other party performs his obligation (e.g. repair) is a statement of the principle of mutuality of contract,

which is that a party in breach of a contract cannot compel the full performance by another of his obligations under that same contract.

23. In this case, the Respondent's complaints of disrepair generally fall under three categories: (i) items of disrepair that have been repaired; (ii) items where, for different reasons, the Applicant was not under an obligation to repair; and (iii) new items of disrepair which have only recently been reported to the Applicant. In respect of those items under heading (i), the Tribunal concludes that the Respondent was entitled to withhold rent up to the point where the Applicant completed the necessary repairs. In respect of those items under heading (ii), the Tribunal concludes that the Respondent was not and is not entitled to withhold rent. In short, the Applicant cannot be said to be in breach of contract for failing to carry out repairs she did not have an obligation to carry out. In respect of those items under heading (iii), the Tribunal concludes that the Respondent was not and is not entitled to withhold rent. The Applicant is not yet in breach of her obligations under the Tenancy Agreement because she has not yet had a reasonable period of time to undertake repairs.
24. It follows that, whilst the Respondent may previously have been entitled to withhold rent up to a certain point in time, he has no current right to do so.
25. The next question for the Tribunal is whether, and to what extent, the Respondent should be entitled to an abatement of rent. A claim for abatement is not the same as a claim for damages flowing from a breach of contract. In *Renfrew District Council v Gray*, 1987 S.L.T. (Sh. Ct.) 70, at page 72F, Sheriff Principal Caplan described abatement of rent as a remedy available to a tenant in the following terms:  
  
*"Abatement of rent as illustrated by the authorities is 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."*
26. It follows then that the exercise for the Tribunal is to have regard to the items of disrepair founded upon by the Respondent, assess the impact that the items had on the Respondent's use and enjoyment of the Property, and determine what, if any, reduction in rent would be fair and reasonable in all of the circumstances. It must be remembered that the Tribunal is being asked to abate the rent sued for. As such, the Tribunal may only consider whether the rent should be abated in respect of the period 5 September 2020 until 14 June 2022, being the period during which the alleged arrears have accrued.
27. In addressing that question, it is helpful to have regard to each of the specified items of disrepair referred to by the Respondent.
  - a. The roof repair issue is admitted. The Property was suffering from water ingress, which means that it was not watertight. However, notwithstanding the water ingress, the evidence was that this did not

result in the Respondent losing the use of any part of the Property whilst repair was awaited. The repair was first intimated to the Applicant in July 2020. It is well known that the Covid-19 pandemic resulted in national restrictions on movement from March 2020 onwards, with restrictions in particular preventing access to peoples' homes for any purpose other than essential repairs. It is also well known that although those particular restrictions were eased in late Summer 2020, many building contractors were operating a substantial backlog that resulted in extraordinary delays in works being completed. For those reasons, the Tribunal considers that it would have been reasonable for the Applicant to have had the necessary repairs to the roof completed by the end of September 2020. In fact, the roof repairs were not completed until 31 March 2022. That was not a reasonable period of time for the Respondent to wait. In the circumstances, the Respondent is entitled to an abatement of rent for the period from 1 October 2020 to 31 March 2022.

- b. The drawing room ceiling requires redecoration. The Tribunal accepted the Applicant's evidence that attempts had been made to undertake those decoration works but that the Respondent did not permit access for them to be completed. For that reason, the Respondent is not entitled to an abatement of rent.
- c. The shower seal is a minor issue of disrepair. The Respondent accepted that this did not prevent the shower from being used. Whilst it was certainly an inconvenience to have water escape under the shower seal, it could readily have been addressed by placing down of towels and the like. That being said, a different Tribunal obviously considered the disrepair to be sufficiently important as to merit the making of a RSEO that included reference to it. That being so, and having regard to the impact that the pandemic had on the effecting of repairs during 2020, the Tribunal is satisfied that the Respondent is entitled to an abatement of rent for the period from 1 October 2020 to 31 March 2022.
- d. The toilet bowl is cracked. What is unclear is how it came to be cracked. The Respondent speculated that it may have been caused by contractors instructed by the Applicant early in the tenancy. However, if that were the case, the Tribunal would have expected reference to have been made to the said crack much earlier. It seems rather more likely that the Respondent, or someone in his household, has caused the crack. For that reason, the Tribunal is satisfied that the Applicant is not responsible for that repair. Even if she were, the Respondent did not give notice to the Applicant of a need for repair until after these proceedings commenced. Whilst there is reference in his email of 24 July 2020 to "the toilet basin", the Tribunal accepted the evidence of Mr Weston that this related to a leak beneath the wash hand basin in the bathroom. The Respondent is not entitled to an abatement of rent.



- e. The wooden shutters are currently the only window covering in the said bedroom. The Tribunal accepted the Applicant's evidence that there were curtains in the bedroom, but that these were taken down at the Respondent's request. The Tribunal considered that the responsibility for replacing the curtains rested with the Respondent. It follows that the Applicant is not responsible for the repair of the shutters, and the Respondent is not entitled to an abatement of rent.
- f. There have been various cracked tiles in the kitchen. In respect of the ones that the Tribunal ordered be repaired under the RSEO, the Respondent is entitled to an abatement of rent for the period 1 October 2020 to 31 March 2022, having regard to the difficulties presented by the pandemic as previously referred to. In respect of the tiles which are currently cracked, these are new items of disrepair and the Respondent is not entitled to an abatement of rent for those.
- g. In respect of the bar stools, the Tribunal is satisfied that these have been repaired from time to time as required. The Applicant has not breached any obligation under the tenancy agreement insofar as the bar stools are concerned. The Respondent is not entitled to an abatement of rent.
- h. In respect of the gas fire, the Applicant ought to have acted more quickly to address the issues raised by the Respondent. That being said, the drawing room is served by two radiators. In addition, by the winter, the Applicant had supplied an electric fire to the Respondent that could have been plugged in whilst arrangements were made to remove the gas fire. The Tribunal considers this matter to be trivial. The Respondent is not entitled to abatement of rent.
- i. In respect of the boiler, the Tribunal is satisfied that it is, and has been, in a reasonable state of repair commensurate with age, and that the Applicant has attended to necessary repairs as they arose within a reasonable period of time. Insofar as the boiler loses pressure from time to time, the Respondent has been able to top up that pressure as the need arises. That being the case, the Respondent is not entitled to an abatement.
- j. In respect of the mould in the kitchen, absent any evidence to suggest that the cause of the mould was damp penetrating the stone wall, the Tribunal prefers the Applicant's evidence that the cause of the damp is a combination of (i) a lack of ventilation, and (ii) a failure to wipe down excessive moisture. That being the case, the Applicant is not in breach of her repairing obligations. The Respondent is not entitled to an abatement of rent.
- k. In respect of the doorbell, this does not interfere with the Respondent's use or enjoyment of the Property. There are other methods by which

callers can announce their arrival at the door; in particular, the knocker. The Respondent is not entitled to an abatement of rent.

- l. In respect of the roller blind, the Tribunal prefers the Applicant's evidence that she did not undertake to provide a roller blind. That is particularly so because the Respondent's evidence that the Applicant provided such an undertaking at an early stage of the tenancy is contradicted by the terms of his email to Connell McFadden of 24 July 2020, where he states "A blind for the kitchen window would be appreciated". This appears to be a new request, which was inconsistent with his evidence. In any event, the lack of a blind cannot be said to interfere with his use or enjoyment of the Property. The Respondent is not entitled to an abatement of rent.
- m. With regards to the cracking in the external staircase treads, it is a matter of admission that the said cracks required repair and that those repairs were undertaken as part of the RSEO works. In that respect, for the reasons outlined above, the Tribunal is satisfied that the Respondent is entitled to an abatement of rent for the period 1 October 2020 to 31 March 2022. In respect of the current cracking in the treads, that is new cracking that has only recently been reported to the Applicant. She cannot be said to be in breach of her repairing obligations in that respect. The Respondent is not entitled to an abatement of rent in respect of the new cracking.
- n. With regards to the front door, it is a matter of admission that the front door required repair and that those repairs were undertaken as part of the RSEO works. In that respect, for the reasons outlined above, the Tribunal is satisfied that the Respondent is entitled to an abatement of rent for the period 1 October 2020 to 31 March 2022. In respect of the current cracking in the door, that is new cracking that has only recently been reported to the Applicant. She cannot be said to be in breach of her repairing obligations in that respect. The Respondent is not entitled to an abatement of rent in respect of the new cracking.
- o. With regards to the external lighting, the previous intimation of an alleged need for repair was that the external lighting was "unpredictable", which intimation was contained in the Respondent's letter to the Applicant dated 9 October 2020. The Tribunal considered that this was a suggestion that the lights worked intermittently. The Tribunal has not seen any evidence of a further report that they had ceased to work at all. In any event, the failure of external lights did not, in the Tribunal's view, affect the Respondent's use or enjoyment of the Property. The Respondent is not entitled to abatement of rent.
- p. With regards to the armchair, the Tribunal determined that the armchair is in sufficient repair and condition. The Respondent admitted to sitting in the armchair, which tends to suggest that his complaint as to its

condition is, at best, exaggerated. The Respondent is not entitled to abatement of rent.

- q. With regards to the carbon monoxide detector, it is a matter of admission that this was not provided by the Applicant until February 2021. The Respondent is entitled to an abatement of rent for the period September 2020 until February 2021.
- r. With regards to the extractor fan in the kitchen, it is a matter of admission that this required to be replaced and that it was replaced following the issuing of the RSEO. The first intimation of the need for repair was in the Respondent's letter to the Applicant dated 9 October 2020. A reasonable period of time to fix the extractor at that time would have been six weeks. The extractor was not fixed until on or around 31 March 2022. The Respondent is entitled to an abatement of rent for the period 13 November 2020 to 31 March 2022. In respect that the area around the extractor fan requires redecoration, the Respondent has refused access for the Applicant to undertake decorative repairs in the Property. In any event, the need for decorative repairs is a minor issue that does not materially affect the use or enjoyment of the Property. The Respondent is not entitled to an abatement of rent in respect of the need for redecoration.
- s. With regards to the shed, it is a matter of agreement that it has been demolished, and that the Respondent has access to other external storage areas including a garage and the cupboard under the external staircase. The lack of a replacement shed does not materially affect the use or enjoyment of the Property by the Respondent. The Respondent is not entitled to an abatement of rent.
- t. With regards to the fence, the Tribunal is satisfied that the Applicant is unable to replace and repair the fence unilaterally because it is a shared fence. The Tribunal also accepts the Applicant's evidence that she is currently in dispute with her co-owner of the fence regarding the repair and replacement thereof, and that she cannot do anything to the fence until that matter is resolved. Accordingly, the Tribunal is satisfied that the Applicant is not in breach of her repairing obligations. The Respondent is not entitled to an abatement of rent.
- u. With regards to the summer house, it is a matter of agreement that it is and has always during the tenancy been in poor condition. The Tribunal accepts the evidence of the Applicant and Mr Weston that the Respondent turned down the offer to fence off or remove the summer house, and accepted that it should be left in poor condition. That being the case, the Tribunal is satisfied that the Respondent has waived his right to demand repair of the summer house. In any event, the condition of the summer house does not materially affect the use or enjoyment of the Property by the Respondent. The Respondent is not entitled to an abatement of rent.

28. In respect of the Carbon Monoxide detector, that is a disrepair that falls to be considered in isolation. The Applicant's statutory duty was to ensure that the Property had adequate measures at the commencement of tenancy and throughout the tenancy for the detection of carbon monoxide. Whilst the failure to provide the detector did not of itself render the Property uninhabitable, it did create a special kind of risk that the Tribunal felt should be addressed differently to the other disrepairs. The Tribunal considered that an appropriate abatement would be a sum equal to 5% per month for the period from September 2020 until February 2021, being six months at £69.75. Accordingly, the Tribunal finds the Respondent entitled to an abatement of the rent sued for in the sum of £418.50.
29. In respect of the remaining items in respect of which the Tribunal considered that abatement is appropriate, the Tribunal has determined that a fair and reasonable total abatement of rent, having regard to all of the issues highlighted above where the Tribunal considered abatement was due, is 10% per month for the period 1 October 2022 to 31 March 2022, being eighteen months at £139.50. Accordingly, the Tribunal finds the Respondent entitled to a further abatement of the rent sued for in the sum of £2,511.00.
30. That being so, the Tribunal determined that the Respondent is under contractual obligation to make payment to the Applicant in the sum of £21,783.50. The Tribunal made a payment order in that amount.

### **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.**

**Andrew Upton**

29 June 2022

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**Legal Member/Chair**

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**Date**