



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref:** Reference number: FTS/HPC/EV/22/2173

**Property:** 97 Station Road Banchory, AB31 5YP (“The property”)

**Parties:**

The Cook Factor Ltd, Schoolhill House, Cullweliw, Westhill, Aberdeenshire, AB32 6XP (“the Applicants”)

Austyn Middleton Robb and Elizabeth Jane Walker, residing together at 107 Ruthrieston Circle, Aberdeen, AB10 7LB (“the Respondents”)

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Gerard Darroch (Ordinary Member)**

**Decision**

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

**Background**

1. The Applicant sought an order for payment of rental arrears totalling £7,641.92. The Applicant had lodged with the Tribunal Form F dated 04/07/2022. The documents produced were a Tenancy Agreement and a statement of arrears of rental. A copy title sheet was lodged with the Tribunal which showed that the applicants are the heritable proprietors of the Property.

2. By interlocutor dated 01 August 2022, the application was referred to this tribunal. On 29 August 2022 the First-tier Tribunal for Scotland (Housing and Property Chamber) served notice of referral on both parties, directing the parties to make any further written representations.

3. A Case Management Discussion took place before the Tribunal by telephone conference at 2.00pm on 12 October 2022. The Applicants were represented by Ms C Mullen of TC Young, solicitors. The respondents were present but were unrepresented. At that Case Management Discussion, the respondents did not dispute that when the tenancy ended on 24 January 2022 arrears of rent totalling £7,641.92

had accumulated. The respondents argued that they were entitled to an abatement of rent. The case management discussion was continued to allow the respondents to lodge a written counterclaim.

4. The respondent lodged detailed written representations on 9 December 2022. The applicant submitted two inventories of productions.

5. A second Case Management Discussion took place before the tribunal by telephone conference on 9 December 2022. The Applicants were represented by Ms C Mullen of TC Young, solicitors. The respondents were present but were unrepresented. Immediately before the case management discussion the respondents lodged their counterclaim in the following terms

I refer to the above and the upcoming conference call.

You had asked about the numerous issues we had encountered latterly in the property at 97 Station Road Banchory.

The worst and one which had a profound effect on Liz's health was the black mould in the bathroom. This was due to the non-compliant legal issue of a fan in the bathroom. This issue was outstanding since our entry to the property but understandably would have meant major work in order to install a bathroom fan. An issue that is a legal requirement. Liz's health had been an issue since we moved out to the property and one of the reasons for us moving out the road. I have watched just this week as this very same issue tragically (black mould) caused the death of young Awaab Ishak in Rochdale. Black mould is a horrendous issue and can be fatal. We had to live with this problem and I wholly believe it was a reason Liz continuously had ongoing health issues whilst in the property. Having looked into the issue on our latter days at the property allowed me to understand the seriousness of this issue. This issue should never have occurred as a fan due to legal requirements in rented properties should be present, sadly this was not the case. This was not only present in the bathroom but the bedroom (the true bedroom in this ONE bedroomed property) also ruining clothes in the wardrobe. Clothes which would usually be destined for the Salvation Army had to be thrown out. We have not always been poor and among these clothes was an Armani suit which I received back in 1993 for modelling for Armani which had sentimental value. We had numerous items which could not longer be worn.

We had to live sharing the property with rodents from around April/May 2021 until we left the property. The problem became so horrendous on leaving the property we noticed that the mice had been in every room of the property. This was a real concern and caused Liz particularly extreme levels of stress. The issue was brought up with the landlords agent as this was the second health hazard we had to endure.

I mentioned above the one bed status of the property. The landlords made the very best of a dining room off the kitchen. This was used as a living room which was incredible dark. I have no doubt at all that this darkness had a profound effect on Liz's mental health as she does not work being unable to due to a number of health issues. To sit in a darkened room each day with a lack of adequate light coming into the room caused untold I psychological issues incidentally these mental health issues have continued since living at the property but were in no way present prior to moving out to the property. It is a proven fact that time spent in such will effect one's mental health.

One situation not mentioned was the fact that builders began work at 7am each morning ceasing any hope of remaining in bed for Liz on bad health days this was an

absolute nightmare. I was under the impression that work could not commence until 8am but every morning bar the weekends was the same 7am heavy equipment making high levels of noise, This could have had an effect on the distribution of the mice in the vicinity but certainly not an issue anyone would want to have to deal with or live with.

Water coming into the property caused a number of problems. The worst being the damage caused to my digital piano and dripping on my sons head as he lay in bed. There was potential for disaster where the water continuously came through at the front door as it was running down towards the light switch and could have if it reached the electrics been unthinkable. I was aware that this was not a problem that could be fixed overnight. I have seen some real damage caused by water coming into the older style granite buildings not to mention the cost of treating such problems. This didn't make it any easier for us and was a constant concern. I know that the property has been sold. I have looked into the matter what I do know is that the landlords have certainly done very well financially from what was a one bedroom property and marketed the property as a 2 bedroom property due to the old style property, the added dining room allowing for the living room at the front to be used as another bedroom. I could not find a floor plan on the site when looking up online as none was made available on the property centre website.

The furniture in the property was of very poor quality, very cheap and we had to get a new settee in as the one in the property was very uncomfortable. We had to purchase a settee for our stay there along with a new double bed as the double bed in the property broke. The property was furnished very cost effectively and therefore was not durable or designed to last anytime at all.

It occurred to me (for 20 years I was a mortgage adviser dealing in property) that the property should never have been classed as a 2 bedroom property but a 1 bedroom property. The living room should have been at the front of the property as the living room was to the back next to the kitchen and was a very dark room with virtually no daylight coming in. This had an awful affect on Liz's moods and could have been so different had the living room been where it was designed/intended to be, The extra room next to the kitchen should have been a dining room. I noted recently online that a floor plan of the property was not made available as am sure this would have given away the fact that the property was in actual fact a one bedroom property.

The absolute truth of the matter is that since I lost my Dad, my job life has taken a spiral downward, which is dangerous for both Liz and I as we have battled addictions over the last 20 years. The initial move to the property was to be closer to our children who were residing in Crathes just along the road. All was good and very positive until Covid and the events aforementioned. Liz and I had been doing very well Liz was having health issues (rheumatoid arthritis and necrotising pancreatitis). We are currently addressing these issues and receiving help for such. There is absolutely no doubt that residing in the property latterly was having an awful affect on Liz's health. The dark living room affects her moods and the black mould in the bathroom/kitchen was so bad am lucky Liz is still here. Having to put up with rodents in the property especially around our food was horrendous. The water coming into the property the noise pollution early Morning with the new flats going up.

This situation has not helped. I cannot understand why the landlords in the current economic climate and during Covid feel that they should have retained the initial agreed rent when every other business and individual globally was losing money to their business. I worked for my employer for almost 30 years and due to cash flow received not a penny when I should have received a lump sum for my time. Because it was a family business I did not pursue the matter we used all our savings that we

had on the new settee new bed and other costs when initially in the property. We now live week to week and struggle at the latter end of the week having to rely on food banks. The truth of the issue is we are broke. Am considering quitting my job as an old football injury in the cold weather makes every day on my round extremely painful.

I would ask that due to the stress the health issues which deteriorated drastically during our time in the property that no monies are due to the landlord. The black mould being the worst offender and if a legal requirement in rented properties had been present this would NOT have been the case.

This is in lieu of the above and the other issues affecting health which I think I have covered.

Apologies I have had to write this on my phone I do not have a laptop or a PC or a printer,

6. The case was continued to an evidential hearing. The evidential hearing took place at 10am on 8 March 2023 by telephone conference. The Applicants were represented by Ms C Mullen of TC Young, solicitors. The respondents were present but were unrepresented. Mr Robb spoke for both respondents. We heard oral evidence from Mr Robb for the respondents and from Mr Cook for the applicants.

### **Findings in Fact**

7. The tribunal found the following facts to be either admitted or proved

(i) On 09 March 2021 the applicants and respondents entered into a private residential tenancy agreement. That tenancy agreement ended on 24 January 2022 when the respondents vacated the property

(ii) The agreed rental was £650 per month. The respondents fell into arrears of rental. When they left the property the arrears of rental totalled £7,641.92, which is the sum applied for. No payments have been made to reduce that sum. At today's date, the arrears of rental are still £7,641.92.

(iii) Clause 17 of the tenancy agreement obliges the respondents to take reasonable care of the property. Clause 18 of the tenancy agreement reinforces the applicants' obligation to adhere to the repairing standard and contains an undertaking from the respondents to notify the applicants as soon as reasonably practicable of any need for repair or an emergency. Clause 18 obliges the respondents to allow the applicants reasonable access to the property to carry out necessary repairs.

(iv) When the respondents took entry to the property, the property was clean and in a good state of repair. When they left, the property was dirty and furnishings & furniture were damaged. A schedule of condition of the property when the tenancy commenced was prepared. A schedule of condition of the property when the respondents vacated the property was prepared. Both schedules are reproduced in the applicants' second inventory of productions.

(v) On 27 February 2020 the applicants' agent contacted the respondents to make enquiry about replacing the gas hob in the property. On 18 March 2020 the respondents asked the applicants' agents not to replace the gas hob. On 17 February 2021 the landlord applicants obtained a satisfactory gas safety certificate for the property.

(vi) In July 2019 the applicants' Handyman visited the property to carry out a number of minor repairs which the applicants' letting agent instructed following an inspection of the property.

(vii) On 3 November 2020, the respondents contacted the applicants letting agent because water was leaking into the bedroom of the property and leaking through the front door. The applicant's letting agent replied to the respondents immediately & made several offers to visit the property to inspect. Repairs were instructed, and carried out within days of the respondents reporting the water ingress.

(vi) In January 2020, the respondents contacted the applicants complaining about a broken television aerial. The television aerial was repaired within days of the respondents' complaint. In July 2020 the respondents again complained of a problem with the television aerial. The applicants' letting agent arranged for the necessary repairs within days of the complaint.

(vii) On 9 December 2021 the applicants' letting agent contacted the respondents to arrange a routine inspection. On 17 December 2021, the respondents told the applicants' letting agent that the fridge freezer, a radiator, and the front door lock require repairs, and said

we have always looked after the property you will see so when you come round had we not been here mice would be a big problem!!!

(viii) On 19 December 2021 the applicants' letting agent asked for more details about repairs required & tried to agree arrangements for tradesmen to visit the property. On 20 December 2021 the applicants' tradesmen visited the property, but were denied access by the respondents.

(ix) The applicants made arrangements for their Handyman to visit the property on 21 December 2021. He carried out certain repairs, and reported that there was no trace of mice infestation.

(x) On 10 January 2022, the applicants' roofer visited the property to inspect the front door and the west gable where it was reported water was leaking into the property.

(xi) The respondents complained about water ingress on two occasions . The first was on 3 November 2020. Repairs were carried out to the exterior of the property on 11 November 2020. The second time the respondents complained about water ingress was in the third week of December 2021. There were no complaints of water ingress in the 13 months between November 2020 and December 2021.

(xii) In December 2021 a roofer was instructed because it was believed that the water ingress was caused by faulty guttering. Estimates for repairs were obtained in January 2022, and the necessary works were completed by 24 January 2022.

(xiii) The property has not suffered from an infestation of mice or other vermin.

(xiv) When the respondents left the property in January 2022 the property was dirty. In the bathroom, the tiles surrounding the shower and the shower curtain had black mould the pattern and location of which would be consistent with condensation and/or surfaces not routinely being dried off after use. The respondents did not complain to the applicants about mould in the property throughout the currency of the tenancy.

(xv) The applicants' letting agent carried out regular inspections of the property. Between September and November 2021, the respondents resisted the applicants' letting agent's attempts to arrange an inspection, and did not report any maintenance issues in the property.

### **Reasons for the Decision**

8. It is not disputed that when the respondents vacated the property there were arrears of rent totalling £7641.92. The respondents say that the arrears of rent should be abated in their entirety because of faults in the property. The respondents' written submission, tendered on 9 December 2022, is reproduced at paragraph 5 above. Their representations are that they are entitled to an abatement of arrears of rental because

- (a) black mould was present in the bathroom
- (b) the property suffered from rodent infestation.
- (c) noisy builders worked nearby
- (d) the property was not watertight
- (e) the furniture was of poor quality
- (f) the respondents were not happy with the layout of the property.

9. Arguments 8(c), (e), and (f) are entirely irrelevant. The three matters that are worthy of consideration are (i) the presence of black mould (ii) the allegation of rodent infestation, and (iii) whether or not the property was watertight.

10. The leading authority on the principle of abatement is Muir v McIntyre 1887 SLR 24-333 in which Lord President Inglis stated that abatement of rent '*is to be allowed if a tenant loses the beneficial enjoyment of any part of the subject let to him either through the fault of the landlord or through some unforeseen calamity which the tenant was not able to prevent*'.

11. The weight of reliable evidence tells us that the black mould in the bathroom was caused by condensation dampness because the bathroom was not properly heated and ventilated. We accept Mr Cook's evidence that the black mould was cleaned after the respondents left the property. The black mould was removed using a readily available cleaner, and the cleaning process took 30 minutes. The mould was not caused by rising or penetrating damp, nor by any defect in the plumbing or the fitments. There was not any evidence of high moisture readings within the premises. The black mould was caused by the acts/omissions of the respondents, and not reported to the applicants.

12. The applicants establish, both by the oral evidence of Mr Cook and communications passing between the respondents and the applicants' representative (reproduced in the applicants' second inventory of productions), that whenever the respondents asked for repairs the repairs were carried out within days. The same sources of evidence adequately demonstrate that the applicants' letting agent carried out regular inspections monitoring the property for maintenance needs.

13. There is no reliable evidence that the property suffered a rodent infestation.

14. There is evidence that water leaked into the property on two occasions. The first was in November 2020, when repairs were carried out in days. It was not until 13 months later that the respondents complained of further leaks. The weight of reliable evidence indicates that there was no water penetration between November 2020 and December 2021.

15. The same reliable evidence indicates that as soon as the respondents told the applicants' letting agent about water penetration, steps were taken to inspect and instruct tradesmen. Works were carried out and completed in January 2022.

16. In the closing weeks of the tenancy, water leaked into the property. There was no delay in carrying out works to prevent the water ingress. There is no reliable evidence of the effect of water ingress on either of the respondents or their possessions.

17. The respondents do not quantify their claim. On examination of each strand of evidence, the respondents fail to establish their claim. The weight of reliable evidence indicates that the applicants responded immediately whenever they were told that the repair was necessary.

18. There is no reliable evidence that the respondents lost the beneficial enjoyment of any part of the property either through the fault of the applicants or through some unforeseen calamity which the respondent was not able to prevent.

19. There is no substance to the respondents' counterclaim. We therefore dismiss the counterclaim and make a payment order against the respondents.

### **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for payment.

### **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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

**P. Doyle**

**Legal Member**

**8 March 2023**