



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

**Chamber Ref: FTS/HPC/CV/21/0133**

**Re: Property at 3F2, 165 Dalkeith Road, Edinburgh, EH16 5BY (“the Property”)**

**Parties:**

**Mr Adrian Wawrejko, Ms Katie Jones, Ms Alexandra Ransome, Ms Paula Sofia Reyes Valencia, Ms Johanna Rice, 3F2, 165 Dalkeith Road, Edinburgh, EH16 5BY (“the Applicants”)**

**Scott Black, Elaine Black, c/o 61A Queen Street, Edinburgh, EH2 4NA (“the Respondents”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)  
Elizabeth Dickson (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 £1040 should be made in favour of the Applicants.**

**Background**

1. By application received on 19 January 2021 the Applicants seek a payment order for £3715.33 against the Respondents. Documents lodged in support of the application include a copy tenancy agreement, photographs, and copies of email correspondence. A copy of the application and supporting documents were served on The Flat Company by Sheriff Officer, as the Applicants had named the Flat Company as the Respondent in the application. Both parties were notified that a case management discussion (“CMD”) would take place by telephone case conference on 13 May 2021 at 2pm and that they were required to participate. Prior to the CMD the Respondent lodged written representations and documents. Shortly prior to the CMD taking place they lodged a further submission which stated that they had taken advice and believed that the

application related to the wrong party and should name the landlords as Respondents, not the letting agent.

2. The case called for a CMD on 13 May 2021 at 2pm. All Applicants participated. The Respondent was represented by Mr McBain and Mr Wilkin. The Legal Member noted that the application relates to compensation being claimed by the Applicants for a delay in repairs being carried out to the bathroom of the property and the loss and inconvenience experienced by them as a result. The Legal Member noted that the tenancy contract names Scott and Elaine Black as the landlords. They also appear to be the current owners of the property. Following discussion, the Applicants confirmed that they wished to amend the application to substitute Mr and Mrs Black as the Respondents and remove the Flat Company. Mr McBain confirmed that he had no objection to this and said that he would probably be instructed by Mr and Mrs Black to represent them. The Legal Member allowed the amendment in terms of Rule 32 of the Procedure Rules. The Legal Member determined that the CMD should be continued to allow for service of the application on the new Respondents. The application was served by Sheriff Officer on the Respondents on 21 May 2021 and all parties were advised that a further CMD would take place by telephone conference call on 24 June 2021. Prior to the CMD the Applicants lodged further documents which included a table showing a breakdown of the sums claimed entitled "Compensation Calculation".
3. A further CMD took place on 24 June 2021. The Applicants participated. Mr McBain and Mr Wilkin participated, as representatives of the Respondents. Mr McBain advised the Legal Member that the Respondents dispute the claim and that they wish to rely on the written submissions and documents he submitted prior to the first CMD.
4. The Legal Member noted that the following sums are sought; -
  - (a) **Lack of access to facilities - £2283.33.** The Applicants advised that they did not have access to bathroom facilities for 25 days over a 4 month period (9 of which they spent in decant accommodation). This was the only bathroom in the flat. They said that the sum claimed had been calculated based on 25 times the daily rent for the property. The leaks were all related and due to the defective installation of the bathroom by the Respondents.
  - (b) **Increase in monthly rent.** The Applicants advised that the rent for the flat had been increased before they moved in because the bathroom had been refurbished. They were seeking reimbursement of the sum of £400 because of the problems with the defective work. This had been calculated based on half of the monthly increase in rent per person ( $£20 \times 5 = £100$ ) multiplied by four months.
  - (c) **Increased risk of contracting COVID - £200 (£40 per Applicant).** Although none of the Applicants had contracted the illness, they believe that some compensation is due for the increased risk due to them having to move out of and back into the property, having contractors in the property and having to

shower at the gym.

- (d) **Relocation to a property without desks - £210.** The Applicants advised that the property had been let to them as a student flat, with desks. When they were decanted, they did not have desks which caused considerable inconvenience. The Wi-Fi was unreliable. This also impacted on their studies. They missed tutorials. The compensation claimed is based on the cost of an hour of university contact tuition.
- (e) **Unexpected expenses - £32.** The Applicants confirmed that this claim relates to taxi fares and other such expenses incurred due to the move to the decant property. Ms Reyes Valencia said that the receipts which had been submitted related to journeys to locations for showers and back to the property to collect books and other items which were needed.
- (f) **Impact on academic achievement, mental health and inconvenience caused by having to communicate with the letting agent and other agencies - £590.** The Applicants advised that this claim relates to the inconvenience they incurred in corresponding with the letting agent, the university and other agencies in connection with the repairs issues and the impact on their studies and wellbeing.

5. Mr McBain was asked to confirm the Respondent's position about the breakdown and stated, -

- (a) Repairs were carried out within reasonable timescales. The bathroom complaints were three separate and unrelated issues and therefore should not be treated as one complaint which took 4 months to resolve. The first on 25 September, was resolved the same day. The second on 16 October was addressed within 4 days and the last was reported on 11 November. The Applicants were decanted on 19 November and returned to reside at the property on 28 November.
- (b) The rent increase between the previous tenancy and the Applicants tenancy was unrelated to the bathroom but based on the market value of the property at the relevant time. It is also an irrelevant consideration.
- (c) The Applicants did not contract COVID, and it is not possible to put a price on the risk of contracting the virus when there is a pandemic ongoing.
- (d) The decant was suitable. No complaints were received about the desks and the wifi problems were addressed within 24 hours.
- (e) Disputed.
- (f) Disputed. The letting agent provided full information to the Applicants and no compensation is due for this.

6. The Legal Member noted firstly that there are a number of disputed factual matters including whether the bathroom leaks were all connected or otherwise,

whether they were due to defective installation by the landlord, whether the Respondents dealt with the complaints in a timely manner, whether the decant property was suitable alternative accommodation for the period in question, whether there was an impact on the academic progress and mental health of the Applicants and whether the Applicants experienced inconvenience as a result of the leaks and the decant. Secondly, the Legal Member noted that the Respondent disputes that there is any legal basis for the sum being claimed. Thirdly, if the Landlord is liable for the losses which are claimed, is the sum sought reasonable. The Legal Member determined that the application should proceed to a hearing.

7. The hearing took place by telephone conference call on 20 September 2021 at 10am. Prior to the hearing, the Tribunal were notified that not all the Applicants would be able to participate due to work and other commitments and the cost of participating in the call from America. Ms Reyes Valencia, Ms Ransom and Mr Wawrejko participated. Mr McBain and Mr Wilkin participated as representatives and witnesses for the Respondents who did not participate

## **The Hearing**

### **Preliminary Matters**

8. The Tribunal sought clarification from the Applicants as to the legal basis for the application. Ms Reyes Valencia advised the Tribunal that it was based on the failure by the Respondent to ensure that the property complied with the repairing and tolerable standard. Following discussion, she confirmed that the application was based on the Respondents' failure to fulfil their obligations in terms of the tenancy contract regarding the condition of the property and the repairing standard.
9. The Tribunal noted that Applicants had lodged a copy of their signed tenancy agreement with the application. This is based on the Scottish Government model agreement although some additional clauses have been inserted. In particular, the Tribunal noted that the following clause has been added to clause 18 which deals with repairs and the repairing standard, " In the case of destruction or damage resulting from fire, tempest, flood or other unavoidable accident the Landlord shall not be liable to rebuild or restore the Let property, nor shall they be responsible for paying restitution or compensation to the tenant for the temporary deprivation of occupancy of the let property resulting from the bursting, leakage, stoppage, overflow or other failure of water, gas or oil pipes, or the failure, fusing or breakdown of electrical appliances as a result of any cause whatsoever." The clause otherwise provides that breaches of the repairing standard must be rectified within a "reasonable time" and repairs carried out "as soon as is reasonably practicable after having been notified of the need to do so".

10. The Tribunal adjourned the hearing for 30 minutes to allow the parties the opportunity to consider, discuss and make representations regarding the provision about liability for the “temporary deprivation of occupancy” and the implications for the application. Following the adjournment Ms Reyes Valencia advised the Tribunal that it appeared that the first two lines of the clause, which referred to the property being destroyed through unavoidable accidents qualifies the rest of the clause. The bathroom leaks at the property were not unavoidable events. To interpret the clause otherwise would allow the landlord to avoid all liability including, for example, for personal injury. She also advised that the clause was too vague to be enforceable. Temporary was not defined. In any event, the problems at the property were not due to the water pipes but the Landlord’s defective installation of the bathroom. The clause could also not be considered enforceable because of the words “of any cause whatsoever” as this would allow the Landlord to escape liability even if had deliberately damaged the pipes which caused the leak. The clause was too vague to be enforceable. She further advised that the Applicants believed that the property met the tolerable standard and was fit for human habitation when they moved in. This was not the case. She said that the evidence would show that the installation of the bathroom was defective.
11. Mr McBain advised the Tribunal that he thought that the clause in question was one of the standard or mandatory clauses. He referred to clause 50 of the tenancy agreement, “Declarations” which states that the Tenants have read and understood all the terms of the agreement. They all signed the agreement and were therefore bound by its terms and conditions.

### **The Applicants’ evidence**

12. Ms Reyes Valencia gave evidence on behalf of the Applicants with some contributions by the other two participating Applicants. She advised the Tribunal that the tenancy started on 1 September although they did not all move in on that date. They had all moved in by 15 September 2020. On the 25 September 2020, the downstairs neighbour notified them that there was a leak of water from their bathroom into the flat below. There was no evidence of this in their bathroom, but they reported the issue to the Flat Company (“TFC”). A plumber attended later that same day. He could not see any problem in the bathroom and did not carry out any extensive investigations. He re-sealed a section of tiles. He told them not to use the shower for 24 hours to allow this to set. There were no further complaints or issues until Friday 16 October 2020 when the neighbour reported that the leak was back and was more aggravated. TFC were immediately notified, and the Applicants were told that the Landlord would attend to deal with the leak on Monday 19<sup>th</sup>. He did not attend until Tuesday 20<sup>th</sup> October. He re-grouted part of the shower and told them not to use the shower for 48 hours to allow it to dry. Prior to his arrival on 20<sup>th</sup> October, the applicants did not use the shower at the request of the neighbour and because they did not want to make the situation worse. There were no further issues until the evening of 10 November when a further leak was reported by the neighbour. This was described as a continuous stream of water which

became worse when their shower was being used. This was immediately reported to TFC. Three different plumbers visited between 11 and 13 November. They did not carry out any repairs and said that they were there to investigate. They did not lift the floor. They advised the Applicants that the installation of the bathroom was defective. On 14 November 2020, the neighbour advised them that the ceiling in their property had collapsed as a result of the leak. They were subsequently told by TFC not to use the sink in the bathroom. They also had no access to the shower in the property from 10 to 19 November. During this time, they had to use the showers at the gym or go to a friend's house. On the 16 November, a temporary repair was carried out and they were advised that they would be re-housed while the more extensive work was carried out. They moved to the AirBnB on 19 November. They contacted TFC to complain about the poor Wi-Fi. A solution was proposed but did not really address the problem and they all had to make trips to the university library to access Wi-Fi for their studies. Katie Jones telephoned TFC and spoke to Mr Wilkin. She told him that the property was not adequate for their needs as there was no window in one of the bedrooms and there were no desks. They returned to the let property on 28 November 2020. They were not given a full report on the work which was carried out in their absence. The plumbers they had spoken to while still living at the property had all said that the problem was the defective installation of the bathroom.

- 13.** The Tribunal then heard evidence about the quantification of the claim as outlined in the "Compensation calculation". **£2283.33.** Ms Reyes firstly advised that the Applicants seek compensation equivalent to 25 days rent for the days during which they had no access to the shower or the whole property. This includes the nine days when they resided in the decant property as they could not continue to live in the let property during the repairs. During this nine day period they paid rent for a property they could not use. The Airbnb was a 40 minute walk from the property, about 2 or 3 kilometres. Although classes were online, they had problems with the wi-fi in the Airbnb and had to make regular trips to the library and to the property to collect items that they had not been able to carry on the first trip. Ms Reyes Valencia conceded that after the first complaint about the wi-fi they did not raise the matter again with TFC and just made other arrangements, such as going to the library.
- 14. £400.** Ms Reyes Valencia advised that the reasoning behind this figure was that the former tenants had decided to move out when the landlord increased the rent following the bathroom upgrade. As the Applicants did not get the full benefit of the upgraded bathroom over a number of months, they do not think that they ought to have paid the increased rental figure. She confirmed that they were essentially seeking repayment of part of the rent paid for this period, an abatement of rent.
- 15. £200** Ms Reyes Valencia advised the Tribunal that although none of them had tested positive for COVID 19, they may have been asymptomatic and the exposure to various contractors and visits to friends' houses and the gym had been a breach of lockdown restrictions. It was conceded that the circumstances were unprecedented, but she said that the Applicants had experienced anxiety

and an adverse effect on their wellbeing because of the increased risk.

- 16. £210.** Ms Reyes Valencia said that although the problems with the wi-fi did not resolve, the Applicants did not make further complaints. However, Katie Jones had complained to Mr Wilkin both about the lack of a window in one of the bedrooms and the absence of any desks. She also advised that the Airbnb was the only property offered to them as alternative accommodation and she was not aware of any offer to move them again as a result of Katie Jones complaint. She also said that that the Applicants main priority at the relevant time was their studies.
- 17. £32.** In terms of the compensation calculator, this sum is claimed for the lack of access to the wi-fi at the property, although they were still paying for it, and transport costs to the library and back to the property to collect items.
- 18. £590.** Ms Reyes Valencia advised the Tribunal that this sum is claimed for impact on their wellbeing and mental health, the time spent by the Applicants in communicating with TFC, obtaining advice from advice agencies regarding the leaks and the consequences of it, additional time communicating with university staff including, in her case, her mental health mentor. In addition, she had re-sits which delayed her graduation which she attributes to the upheaval and stress caused by the leaks and the move to the Airbnb.

### **The Respondents evidence**

- 19.** Mr McBain advised the Tribunal that the first leak occurred 25 days after the start of the tenancy, although the shower had been used by the Applicants from the first day. Had the problem been defective installation, the problems would have manifested themselves more quickly. He referred to photographs lodged by the respondents and said the contractor noted that a section of the silicone had perished and re-sealed the area affected. He recommended replacing the tiled area in question with wet wall. However, following the repair the area was watertight. The issue reported on 16 October 2020 was a new matter. There had been no complaints in between both incidents. The landlord was notified and said that he would deal with it. Neither Mr McBain nor Mr Wilkin was able to provide the Tribunal with any information regarding training or qualifications but stated that the Respondent is a competent plumber and has installed bathrooms and kitchens at several of his properties. They also commented that plumbers always criticise the work of other plumbers. Mr McBain also advised that 48 hours seems an excessive period to avoid using a shower following re-grouting but confirmed that he wasn't present and could not comment on what was said by the Respondent to the Applicants. Mr McBain advised that TFC arranged for Smart Gas to attend immediately following the report of the third leak on 10 November 2021. The initial investigations related to the pipework above the floor, but no problem was identified. They then asked for quotes for investigation under the floor. A leaking lead waste pipe was discovered. This was completely unconnected to the new bathroom as all the work for the new installation had been above floor level. Occasionally a weak spot develops in lead pipes and they burst, as had happened in this case. Had this been the source of the previous leaks the problems would have continued in between

the repairs. He conceded that a leak from a pipe can sometimes take a while to cause a ceiling to come down.

- 20. £2283.33.** Mr Mc Bain said that the decant property had been adequate for the Applicants needs and he thought that the wi-fi had been sorted out when there were no further complaints. He explained that some upheaval had been unavoidable so that the leak could be fixed. An offer of compensation had been made and rejected, but the Landlord did not accept that any compensation was actually due since the work was carried out within reasonable timescales.
- 21. £400.** Mr McBain advised that the previous rent paid for the property was irrelevant to what was paid by the Applicants. Mr Wilkin advised that the increase had nothing to do with the bathroom. The market rent for a property is generally re-assessed between tenancies and the increased rent reflected the market value.
- 22. £200.** Mr McBain conceded that the leaks and decant had occurred during very difficult times but that the repairs had to be carried out and the Landlord could not control the impact of the pandemic.
- 23. £210.** Mr McBain advised the Tribunal that he had no record of complaints about the desks or the lack of a window. Mr Wilkin confirmed that he had spoken to Katie Jones. He could not recall all the matters discussed and cannot recall the desks being mentioned. The window issue was mentioned. He offered to re-locate them again. He advised the Tribunal that the Applicants had been offered a choice of alternative accommodation and had chosen the Airbnb.
- 24. £32.** Mr McBain advised that the landlord would have been willing to reimburse the Applicants for any out-of-pocket expenses, as part of the good will gesture he had made.
- 25. £590.** Mr McBain advised the Tribunal that he appreciated that things had been difficult, but the events were unavoidable. He added that it would be difficult to prove that academic performance issues were due to the problems with the property.

## **Findings in Fact**

- 26.** There were three separate leaks from the bathroom at the property on 25 September, 16 October, and 10 November 2020.
- 27.** The leak on 16 October 2020 was not repaired within a reasonable timescale.
- 28.** The Applicants were not decanted to alternative accommodation, and the repairs were not carried out to the property, within a reasonable timescale following the leak on 10 November 2020.



29. The Applicants paid rent for a property they were not able to occupy between 19 and 28 November 2020.
30. The Applicants experienced inconvenience, loss of amenity and an adverse impact on their wellbeing because of the delay in the carrying out of repairs to the property.
31. The Applicants paid full rent for the property throughout their tenancy.

## **Reasons for Decision**

32. The application is a claim for damages for breach of contract by the Respondents. The Applicants seek a payment order for £3715.30 which has been broken down into six separate heads of claim. The Respondents dispute the application.
33. The tenancy agreement which is the subject of the application is a private residential tenancy which started on 1 September 2020. The document which has been used is the Scottish Government Model Agreement. This incorporates the repairing standard obligations imposed on the Respondents in terms of the Housing (Scotland) Act 2006 (“the 2006 Act”). The Respondents are therefore not only obliged to ensure that the property meets the repairing standard in terms of the legislation but are contractually bound to do so. This includes an obligation to ensure that the property is wind and watertight and reasonably fit for human habitation and that the installations for supplying water and for sanitation must be in a reasonable state of repair and proper working order. Clause 18 of the tenancy agreement also specifically provides that the Respondents have a duty to maintain the property from the start of the tenancy and to complete repairs within a reasonable time.
34. Although the Respondents, as Landlord, have a duty to ensure that the property meets the repairing standard in terms of the 2006 Act, the remedy available to tenants under the legislation is to make an application to the Tribunal for a repairing standard enforcement order, not an order for compensation. The Tribunal is therefore satisfied that the Applicants are only entitled to compensation if it is established that the Respondents have failed to comply with their obligations in terms of the tenancy contract.
35. Although the tenancy agreement is based on the Scottish Government model, there have been some modifications made to this and additional clauses have been inserted. In particular, the Respondents have failed to highlight in bold the mandatory clauses which apply, which include the statutory terms. These are supposed to be in bold with the optional and additional clauses in ordinary type. The result of this is that the additional clauses would not have been immediately obvious to the Applicants when they signed the agreement. The clause which is referred to in paragraph 9 has been added by the Respondents to an otherwise mandatory clause which relates to the repairing standard and the Landlords obligation to maintain the property. The lack of distinction between the two parts of the clause is highly unsatisfactory. However, as the

Respondents' representative pointed out, the Applicants signed the agreement which includes a declaration that they have read and understood its terms. Parties to a PRT are free to agree additional terms and conditions, as long as these do not conflict with the provisions of the 2016 Act or any other relevant legislation. The Tribunal is satisfied that this particular provision does not conflict with either the 2016 Act or the repairing standard provisions in the 2006 Act. In the circumstances, the Tribunal is satisfied that the Respondents are entitled to rely on this provision as a valid and enforceable term of the contract.

36. The Applicants argued that the clause is too vague to be enforceable, that the second part of it is qualified by the first part, that the clause could potentially allow a landlord to avoid liability for other types of claim such as personal injury and that, as the bathroom did not meet the repairing and tolerable standard from the outset of the tenancy, the clause could not apply. It was also argued that it could allow the Respondents to avoid paying compensation in circumstances where they had deliberately damaged the water pipes.
37. The Tribunal is not persuaded by these arguments. The clause is not ambiguous. Furthermore, it does not provide the Landlord with blanket immunity against all types of compensation claims. There are two separate parts to the clause. The first deals with situations where the property is destroyed by fire, flood, or other disaster. In these circumstances, the Landlord is not obliged to re-build the property and the tenancy comes to an end. The second part relates to "temporary deprivation of occupancy" due to burst pipes, a leak or other failure related to water, gas or oil pipes or electrical appliances. In these circumstances, the tenant is not entitled to compensation for that "temporary deprivation of occupancy". The clause does not go on to explain what happens in that eventually regarding payment of rent or alternative accommodation, but it does make it clear that the Applicants are not entitled to compensation for lack of access to the let property. The Tribunal is therefore satisfied that the Applicants are not entitled to compensation for being unable to live in the property between 19 and 28 November 2020. However, this clause does not affect other parts of their claim.
38. The Applicants claim that the installation of the bathroom was defective and that the three leaks were all connected and were caused by the shoddy work. Although it is certainly strange that there were three leaks from the bathroom within a relatively short period of time, very soon after a new bathroom had been installed, the Tribunal is not satisfied that this has been established. No reports or other expert evidence were produced. The only evidence in support of the claim came from the Applicants and was based on their recollection of remarks made by plumbers who came to the property to investigate and work on the third leak. This was not enough to satisfy the Tribunal that the bathroom installation was defective (or that it failed to meet the repairing standard) from the start of the tenancy. The Tribunal also noted that the Applicants experienced no adverse effects from the leak, as it only affected the property underneath, and in between the episodes they were able to make full use of the bathroom.

### **The claim for £2283.33**

39. The Applicants seek an amount equivalent to 25 days rent, being those days when they could not use the shower at the property and the days when they had to live in the decant property. As previously indicated, the tenancy agreement specifically precludes compensation for “temporary deprivation of occupancy” related to a leak. The Tribunal is therefore satisfied that there is no entitlement to compensation under this head of claim for the nine days during which the Applicants had to live elsewhere.
40. The Tribunal considered each of the leaks at the property and the impact on the tenants; -
- (a) 25 September 2020. It is not in dispute that a repair was carried out the same day. The Tribunal also accepts the evidence of the Applicants that they were told not to use the shower for 24 hours.
  - (b) 16 October 2020. It is not in dispute that this was reported on 16 October and that the repair was carried out on 20 October 2020. The Tribunal accepts the evidence of the Applicants that they were told not to use the shower for 48 hours.
  - (c) 10 November 2020. It is not in dispute that this matter was reported on 10 November or that the Applicants were decanted on 19 November. It is also not in dispute that the ceiling in the flat underneath collapsed on 14 November 2020.
41. The tenancy agreement states that the Landlord must attend to repairs within a reasonable timescale. If the landlord fulfils this obligation, there is no breach of contract and no entitlement to compensation. The leak of 25 September 2020 was repaired the same day. Some time to allow the silicone seal to dry was to be expected and 24 hours does not seem unreasonable. The Tribunal is satisfied that there was no unreasonable delay in this repair being carried out and therefore the Applicants are not entitled to compensation for the impact of this leak.
42. The leak reported on 16 October 2020 was not repaired until 4 days later. Given the nature of the issue, and the impact on the property which only has one bathroom, the delay of several days seems unreasonable. The delay appears to be due to the Landlord’s decision to attend to the matter himself, rather than arranging for a contractor, as had occurred on the previous occasion. This was the second leak in three weeks, and it ought to have been investigated immediately, certainly within 24 hours. The Tribunal is therefore of the view that the Applicants are entitled to compensation for the additional 2 days which elapsed (18 and 19 October) before the repair was carried out. However, they are not entitled to compensation for the period during which the grout was drying out as this was a natural consequence of the repair.

43. As previously indicated, the Applicants are not entitled to compensation for being unable to occupy the property between 19 and 28 November. Had the Tribunal reached a different conclusion regarding the additional clause, it is still unlikely that it would have determined that compensation should be paid. The removal to temporary accommodation is an unavoidable consequence of extensive remedial work being required and the period spent in the Airbnb does not seem excessive in the circumstances. However, the Applicants did not move out of the let property until nine days after the leak was reported, which again deprived them of access to a shower and (for some of the time) the sink in the bathroom. In the circumstances, the Applicants ought to have been decanted more quickly. It should have been the first priority for the Landlord and certainly ought to have been arranged from 14 November 2021, following the ceiling collapsing in the flat underneath. The Tribunal is satisfied that the Applicants are entitled to compensation for 5 days from 14 to 18 November inclusive.
44. The Applicants seek compensation equivalent to the daily rental for the property for the relevant days. The Tribunal is satisfied that they are entitled to compensation based on the daily rent, effectively an abatement of rent for inconvenience and loss of amenity. As the daily rental figure was £90 per day the Tribunal determines that the sum of £630 is due under this head of claim.

#### **The claim for £400.**

45. As outlined in paragraph 10, the Tribunal is not satisfied that the evidence established that the bathroom was defective (and therefore the repairing standard breached) from the start of the tenancy. This claim based on the assumption that this was the case. From the evidence given at the hearing it appeared that the Applicants' position was that the rent they were paying was too high, given the defects in the installation of the bathroom, and that a rent reduction was due. The Tribunal was not persuaded by this argument and agreed with the Respondent's position that the previous rent paid for the property was irrelevant. The rent payable for a property is a matter of agreement between the parties to a lease and it is not unusual for rent to be increased from time to time, and between tenancies, to reflect the market value. The Tribunal is not satisfied that the Applicants are entitled to compensation under this head of claim.

#### **The claim for £200**

46. The Applicants did not provide the Tribunal with the legal basis for a claim based on the risk of contracting COVID 19. While it may certainly be accurate to assume that the increased contact with people, such as the contractors, other users of the gym and friends who allowed them to use their shower, did increase the risk of contracting the disease, these contacts were unavoidable. Repairs had to be carried out and so contractors had to attend. If the Applicants wanted to shower, they had to do so elsewhere, when their own was out of commission. The tenancy contract only obliges the Landlord to get repairs carried out within reasonable timescale. It does not guarantee that no repairs would be required

during the tenancy. Furthermore, the Applicants appear to have chosen a figure at random for a risk which is impossible to quantify, especially since there is no evidence that any of the Applicants became unwell. The Tribunal determines that the Applicants are not entitled to compensation under this head of claim.

### **The claim for £210**

47. The Tribunal is satisfied that the decant property was inferior to the let property as it had no desks, had inadequate wi-fi and one of the bedrooms had no window. Throughout the period that they lived there, the Applicants continued to pay full rent for the property they could not occupy. The Tribunal is satisfied that this claim is distinct from the first head of claim which related to the inability of the Applicants to reside in the let property. The Applicants experienced inconvenience due to the inferior quality of the accommodation and the additional trips to the library which resulted. The sum of £210 is claimed which is £42 for each applicant. This does not seem excessive given the time involved and the fact that full rent continued to be paid during this period.

### **The claim for £32**

48. The Applicant's claim a very modest sum for out of pocket expenses but the details of this – paying for wi-fi and transport costs – appear to be directly linked to the “temporary deprivation of occupancy” of the let property and therefore the Respondents are not liable for these costs in terms of the lease.

### **The claim for £590**

49. This claim is in two parts. The first part is for £390, being the sums spent by the Applicants on re-sits. The remainder of £200 is sought for the adverse impact on the health and wellbeing of the Applicants because of the upheaval. The Tribunal is not satisfied in relation to part 1. Although the Applicants certainly experienced upheaval, and although three re-sits may have been required, it has not been established in evidence that one led directly to the other. The Tribunal therefore refuses this part of the claim. On the other hand, the Tribunal is satisfied, from the oral and documentary evidence, that the leaks did cause upset and anxiety. This was not only during the period of the decant, but prior to this and following the second leak. Only £200 is sought which does not seem excessive in the circumstances. The Tribunal is therefore satisfied that £200 should be awarded for the impact on health the wellbeing.

### **The award.**

50. The Tribunal is therefore satisfied that the Applicants are entitled to a payment order for the sum of £1040.

## **Decision**

51. The Tribunal determines that an order for payment of the sum of £1040 should be made in favour of the Applicants.

## **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.**

Josephine Bonnar

**Josephine Bonnar, Legal Member**

**26 September 2021**