

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

Chamber Ref: FTS/HPC/CV/21/0267

Re: Property at 120 Kingsbridge Drive, Glasgow, G44 4JS (“the Property”)

Parties:

Ms Lisa McCabe, Mr Martyn Curran, 120 Kingsbridge Drive, Glasgow, G44 4JS (“the Applicant”)

Mr Angus McIntosh, Castlemilk Law Centre, 155 Castlemilk Drive, Glasgow G45 9UG (“the Applicant’s Representative”)

Staffa Rock Plc, Formerly Known as Carduus Housing Plc, Registered Office at C/O, DWF LLP, 110 Queen Street, Glasgow, G1 3HD (“the Respondent”)

Ms Val West, Indigo Square, 42 Holmlea Road, Battlefield, Glasgow, G44 4AL (“the Respondent’s Representative”)

Tribunal Members:

Martin McAllister (Legal Member) and Donald Wooley (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent should pay the sum of Two thousand seven hundred and twenty five pounds (£2,725) to the Applicants

Background

1. There were three applications before the Tribunal concerning the Property and the parties.
2. One application is dated 28th August 2020 and is brought in terms of Rule 48 of the Rules. (FTS/HPC/RP/20/1890). The Tenants sought a determination of whether the Landlords have failed to comply with the repairing standard. This application is in terms of Section 22(1) of the Housing (Scotland) Act 2006 (the 2006 Act). An inspection of the Property had been carried out and a Hearing was conducted over two days. This application has been determined and a repairing standard enforcement order made. Members of the tribunal had inspected the Property on 31st January and a reinspection report has been issued to parties.
3. The second application is dated 2nd December 2019 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of the Rules. (FTS/HPC/EV/19/3845). The Landlords seek an eviction order and provided copies of the short assured tenancy agreement, form AT5, section 19 notice (form AT6), section 11 notice, rent statement, and relevant executions of service. The form AT6 intimated to the Tenants that the Landlord intended to raise proceedings for possession of the house on grounds 8,11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988. The Respondent's Representative has intimated that he considers there to be issues which require to be determined in respect of the validity of the application and the particular lease which the Applicant is relying on. This application was set down for hearing on 3rd February 2022 but, because of lack of time as a result of the tribunal dealing with the third application, was adjourned to date to be arranged.
4. The third application is dated 3rd February 2021 and is brought in terms of Rule 70 of the Rules. The Tenants seek an order of payment in the sum of £5,501.60 in respect of compensation. The compensation sought is in respect of the condition of the Property and costs of decoration and the application alleges that the Landlords have not complied with their contractual and statutory obligations from the start of the tenancy on 17th June 2016.
5. There have been a number of case management discussions and directions were issued in respect of all the applications before the tribunal. Matters had been delayed because of restrictions imposed by Covid-19. A Hearing was held and concluded on 3rd February 2022 in respect of the third application.

The Hearing

6. A Hearing was conducted by video conference on 3rd February 2022.
7. Mr Angus McIntosh of Castlemilk Law Centre represented the Applicant and Ms Lisa McCabe gave evidence.
8. Ms Val West of Indigo Square represented the Respondents and gave evidence.

Preliminary Matters

9. Mr McIntosh objected to an updated rent statement which had been lodged by the Respondent's Representative a few days prior to the Hearing. He explained that his clients had separated and that Ms McCabe was no longer staying at the Property which is now occupied by Mr Curran alone. He said that, as a consequence of this change in circumstances, Mr Curran had applied for Universal Credit and that his claim had not yet been determined. Mr McIntosh said that he had not had sufficient time to consider the updated statement and there may not be the level of arrears stated if a payment was made by Universal Credit. Mr McIntosh said that the matter was important because, in due course, he would be submitting that any award of damages made should be offset against rent arrears and that this might impact on the eviction case where one of the grounds is that there is three months' rent lawfully due at the time of the application and at the date the matter is being considered by the tribunal.
10. Ms West said that she had not been timeously advised of the date Ms McCabe left the Property and that the rent statement submitted by her showed that the rent arrears as 27th January 2022 amounted to £2,732.13.
11. The tribunal considered that the matters raised concerning the rent statement and its implications on grounds for eviction were more properly applicable to the eviction hearing and deferred making a decision on the matters raised by Mr McIntosh until it could consider that application.

Matters Agreed

12. The Respondents moved into the Property on 17th June 2016 and, until Ms McCabe's departure at the end of 2021, continued to reside there.
13. Mr Curran continues to reside in the Property with three children.

14. The Tribunal made a repairing standard enforcement order in respect of the Property on 31st October 2021.

15. The terms of the repairing standard enforcement order were as follows:

The landlord was required to;

15.1 Repair or renew the cracked and bowing ceiling plaster within the living room, ensuring that it is in a reasonable state of repair and in proper working order. Thereafter all appropriate redecoration arising as a result of this repair should be completed as necessary.
(Section 13(1)(b) of the 2006 Act)

15.2 Renew or significantly upgrade the windows to contemporary standards ensuring appropriate ventilation.
(Section 13(1)(a) of the 2006 Act)

15.3 Insulate the single skin areas of the outer walls, around and below the window openings, to a standard which will adequately address the issue of condensation occurring at these areas.
(Section 13(1)(a) and 13(1)(b) of the 2006 Act)

16. The ceiling in the living room has been repaired.

17. All windows in the Property have been renewed.

18. Areas around the windows have had additional insulation installed.

19. On the Applicant's occupation of the Property in June 2016, they entered into a short assured tenancy dated 17th June 2016 which *inter alia* stated at clause 8: *"The Landlord undertakes to maintain the structure and exterior of the subjects of let in a watertight condition and will keep in repair and proper working order the installations in the subjects of let for the supply of water, gas electricity, sanitation and central heating.... The Tenant shall be bound to give the Landlord and their agents immediate notice of any damage or defects to the subjects of let or the said installations."*

The Claim

20. Mr McIntosh helpfully indicated that, although it is accepted that there are rent arrears (albeit the amount is not agreed), it is not part of his case that there is any element of the Applicants relying in their claim on withholding or retaining rent because of the condition of the Property. He subsequently led evidence from Ms McCabe with regard to the reasons for arrears of rent accruing.
21. In written representations, Mr McIntosh set out the Applicant's position that the Landlord is bound to maintain the Property in terms of the tenancy agreement between the parties, common law obligations and in terms of the Housing (Scotland) Act 2006. The representations state that the Respondents failed to comply with all these obligations from 17th June 2016 and that, as a consequence, the Applicants suffered considerable inconvenience due to the poor condition of the house. He confirmed that this remains his position.
22. Mr McIntosh indicated that the Applicants are seeking an award of compensation of £5,000 for the inconvenience caused by the Respondent's breach of duty and that this is calculated on the basis of £1,000 for each year since 2016.
23. Mr McIntosh stated that, as a consequence of condensation dampness and rain water penetration, the Applicants required to redecorate the Property more than would have been necessary had there not been breach of the Respondent's breach of duty. The amount claimed in respect of decorating costs is £501.60.
24. The total sum claimed by the Applicants from the Respondent is £5,501.60.

Condition of the Property

25. Mr McIntosh led evidence from Ms McCabe with regard to the condition of the Property and it is useful to deal with this under headings relating to the various alleged defects. Where appropriate, in relation to the condition of the Property, Ms West's evidence has been included.

Dampness

26. Ms McCabe said that she and her partner Mr McCabe lived in the Property from June 2016 and that no dampness was noticed at that time. She said that, in October/November of that year, they became aware of black mould under a window and that her understanding was that Mr Curran had reported it to the letting agent.

27. Ms McCabe was referred to various photographs which had been lodged with the Tribunal and she confirmed that these showed black mould on walls and around windows. She said that there was also mould growth around the black seals of the windows. She said that this existed from the winter of 2016 until new windows were fitted and additional insulation installed.
28. Ms McCabe was referred to Applicant Productions 3/8 and 3/9 which was a report extracted from the Respondent's I.T. system showing maintenance calls which had been made about the Property. She said that this showed that the mould in the area of the window in the large bedroom had been reported but that there had also been reports about mould in the kitchen and in the living room which were not noted in the list of maintenance items on the report.
29. Mr McIntosh referred to Applicant Productions 3/8 and 3/9 and invited the tribunal to note certain entries.
- 29.1 "23.11.2016.... Walls under window in large bedroom feels wet, it could be condensation as with other properties the rendering requires to be replaced."
- 29.2 "18.12.2017.... We have had two damp specialist companies to the property to investigate dampness, both have confirmed it is condensation.."
- 29.3 "19.10.2017..... Black mould patches under windows in large bedroom and kitchen soft wall in small bedroom under window not sure if a vent was originally in place."
- 29.4 "20.11.2017.....window seals....
- 29.5 can you assess the windows throughout the property and give us a report"
- 29.6 "15.02.2019.....wind blowing in large bedroom window, please assess."
- 29.7 "22.11.2018..... water ingress in small bedroom – roof to be assessed"
- 29.7 "19.01.2020... water ingress into dining room (off lounge)
30. Ms McCabe said that she thought that there should have been more reports noted. She had not made reports to the letting agent and said that it would have been Mr Curran who would have done so. She said that she thought he had made more reports than had been noted in the maintenance report of the Respondents which was referred to.

31. Ms McCabe said that she had been advised by the letting agent to clean the areas of mould and that she also used what she described as "mould killer spray." She said that she did this once or twice a month in summer and more regularly in the winter months. She said that she had to wipe water from windowsills on a daily basis.
32. Ms McCabe said that she used to sleep in the large bedroom in the front and that she would dread getting out of bed in the mornings since it was so cold, especially in the winter. She said that the letting agent had arranged for silicone to be installed around the skirting board under the window in that room but that it made little difference and it was just as cold.
33. Mr McIntosh referred Ms McCabe to various photographs of rooms in the Property which showed mould on walls and under and around windows.
34. Ms McCabe described the cleaning regime which she adopted to deal with the mould during her time living in the Property. She said that this involved using a special spray, a mop or disinfectant wipes and then disposing of any cloths which she had used. She mentioned concerns about mould because of the children being in the house.
35. Ms McCabe was referred to a photograph of an area of wall under the living room window which was taken on 23rd July 2021 and which showed a considerable amount of black mould. She said that, although she wiped mould on a regular basis, she thought that she had last wiped that area at the end of February 2021 and could not say if she had cleaned it in March, April, June or July of that year. She said that she had been advised by her solicitor not to wipe it prior to the inspection of Tribunal members in connection with the repairing standard case so that they could see how bad the mould issue was.
36. Ms McCabe said that, in 2017, the kitchen ceiling was completely black because of mould and that there was also mould under the window in that room. She said that it was six or seven months before the letting agent dealt with the kitchen ceiling by arranging for someone to come to the property, use mould cleaner and then paint it. Ms McCabe said that some mould returned but that she painted the ceiling on a couple of occasions.
37. Ms McCabe was shown a photograph which showed water ingress at the small bedroom/dining room. She said that Mr Curran would have reported this prior to November 2018. Ms McCabe said that water was coming in to the left of the window and that it got worse when it rained. She said that a repair was done outside the Property which involved the erection of scaffolding and that there is now no water ingress.

38. Ms McCabe said that there was dampness at the black seals of all the windows in the house and there was mould at all the windows in the house. She was referred to photographs and she agreed that this showed the problems she was talking about.

39. Ms McCabe agreed that the Respondents had installed ventilators in the kitchen and in the bathroom and that this had improved matters in those rooms.

Decoration as a consequence of dampness

40. Ms McCabe said that she and Mr Curran had painted the walls, ceilings and internal woodwork in the Property. She said that they had required to do this because of the dampness and the mould.

41. Ms McCabe said that the windowsill in the bathroom was painted on three occasions, the kitchen on three occasions, the big bedroom on four occasions, the living room on two or three occasions and the middle bedroom and the hall on one occasion. She said that, each time painting was done, it involved the walls and ceilings being emulsioned and the woodwork being gloss painted. She said that, with the exception of the big bedroom, everything was painted white. She said that the colour in the big bedroom was changed on a few occasions. Ms McCabe said that the painting had to be done more often because of the situation with dampness and mould.

42. When questioned, Ms McCabe said that all walls required to be painted even if only part of a room was affected and she explained that one would not only decorate part of a room. She said that, other than the large bedroom, the walls in the Property were white. She said that the colour in the large bedroom changed a few times.

43. Ms McCabe said that, after painting had been done, there was no sign of mould but that it tended to reappear after a couple of months.

44. Ms McCabe said that the decorating which was carried out involved buying emulsion and gloss paint together with brushes, rollers and paint trays. She said that each tin of Crown paint which was purchased cost £24.

45. Ms McCabe said that when the big bedroom was painted it probably took two days, the kitchen around one or two hours and the small bedroom a day.

46. Ms West said that she did not accept that all rooms would have been required to be painted in the way as described by Ms McCabe and she did not see why

walls unaffected by mould/dampness would have required to have been painted and the Landlord “penalised” as a consequence. She said that the matter of décor is a personal choice for tenants. Ms West said that it was reasonable for areas affected by mould to have been decorated.

Drying of Clothes

47. Ms McCabe agreed that, at the recent re-inspection of the Property by the Tribunal members, no mould was evident. When asked about clothes being dried inside the Property, she said that she was no longer living there although Mr Curran was living in the Property with three children.

Water ingress

48. Ms McCabe said that there had been water ingress in the small bedroom/dining room which had been reported to Indigo Square. She said that scaffolding was erected outside the building and a repair was carried out.

Internal Doors

49. Ms McCabe agreed that, when the Property was inspected by the tribunal on 21st August 2021, all internal doors had been replaced.

50. Ms McCabe was referred to a number of photographs showing internal doors and door frames. She was asked about the condition of the doors and door frames and she said that there were problems with all the doors with the exception of the ones to the middle bedroom and the small bedroom/dining room. She said that, within six months of living in the Property, she became aware of cracks in door frames and that eventually there were cracks in the middle of the doors.

51. Ms McCabe said that the problems with the doors got worse and that hinges became detached. She gave the example of the kitchen door where she said that the top hinge was not connected. She said that this was unsafe for her daughter who was born in September 2016 and her son who was born in January 2018. She said that, as the condition of the doors deteriorated, both children were mobile.

52. Ms McCabe said that eventually she and Mr Curran had to remove the internal doors because of the safety concerns they had.

53. Ms McCabe said that Mr Curran reported the concerns about the doors and that new doors were installed in 2021. Ms McCabe agreed that, prior to all the doors in the Property being renewed, doors to the large bedroom and the living

room were replaced by the letting agent. She said that she thought this was in December 2018.

54. Ms West said that it had not been reported to Indigo Square that doors had been removed by the Applicants. She said that no emails or text messages were received to indicate that this had been done. Ms McCabe said that her recollection was that she was sure that Mr Curran would have done so.

55. Ms West said that two doors were replaced in 2018 and that this is shown in Applicant Production 3/8 to have been completed in December 2017. She said that all the doors in the Property, including those which had previously been renewed in 2018, had been replaced in February/March 2021.

56. In response to questioning from Ms West, Ms McCabe said that she did not report any issues with doors but that Mr Curran did so "multiple times." When it was put to her that any reports received by Indigo Square were about door frames not doors, Ms McCabe did not accept this.

Living Room Ceiling

57. Ms McCabe said that she first noticed an issue with the living room ceiling in 2020/2021. She said that initially it comprised a hole of only a few centimetres but that it gradually got worse and that the ceiling bulged. She said that it was unsightly.

58. Ms West said that when an issue with the ceiling had been reported, it was considered by her to be cosmetic but that, when bowing in the ceiling occurred, Indigo Square took steps to get it repaired.

Electrics

59. Ms McCabe said that there had been constant problems with lights. She said that bulbs had to be replaced more often than would have been expected and that the lights in the small bedroom/dining room and the kitchen kept flashing on and off. She said that the problem appeared to be worse in the winter when it was wet and cold and that she didn't know how many light bulbs had to be bought to replace ones which had failed.

60. When asked when the issues with the lights were apparent, Ms McCabe said that it was probably 2018 that this started. She said that the circular bulb in the bathroom was replaced by the letting agent.

61. Ms McCabe said that Mr Curran would have reported the problems with electrics.

62. Ms McCabe said that there were also a couple of power sockets which were not working and that others were not properly secured to the wall. Ms McCabe said that one socket in the big bedroom didn't work and that it is still not functioning.

63. In response to questioning by Ms West, Ms McCabe said that an electrician was not always sent by Indigo Square when reports were made about issues.

64. Ms West said that, whenever she receives reports about electrics in properties requiring repair, she always attends to it by arranging for an electrician to call because of the safety issues that there might be. She referred the tribunal to the terms of electrical installation condition reports (EICRs) dated 28th April 2016 and 21st December 2020. She said that, subsequent to the later report, works had been completed in terms of the recommendation of the electrician. She said that, at some point, the Landlord had replaced some complete light fittings because there appeared to be some faults which were intermittent. Ms West referred the tribunal to an EICR dated 22nd January 2021 which, she said, showed that the electrical installation was in an acceptable condition.

Central Heating

65. Ms McCabe said that there had been a leak in the boiler and that sometime the autopilot light would go out. She said that this occurred three or four times a year for three of the five years she lived in the Property.

Dripping Sound

66. Ms McCabe said that there was a dripping sound in the kitchen ceiling which occurs when the hot water is being used.

67. Ms West said that she had been told by a heating engineer, who had been at the property, that the sound was that of a pipe or pipes contracting and expanding.

Rental Payments

68. Mr McIntosh said that he wanted the tribunal to hear evidence on the history of rental payments.

69. Ms McCabe said that, in 2018, her grandmother had a stroke and was in hospital. She said that this created problems in the family because her grandmother had been a full time carer for her son, Ms McCabe's uncle.

70. Ms McCabe gave evidence of the financial pressures that this put her under because she had to assist with caring for her uncle which involved transport and other costs.
71. Ms McCabe said that her grandmother had to be readmitted to hospital because of a mistake by a carer who had administered the wrong medicine. This additional hospital admission meant that Ms McCabe had to further undertake a caring role for her uncle and her grandmother which led to financial pressures.
72. Ms McCabe said that the situation she found herself in was very stressful and that she and Mr Curran separated in September 2019 which caused further financial issues because of matters arising from their joint benefits claim. She said that they subsequently got back together.
73. Ms McCabe said that full rental payments were made from 27th March 2020. She said that she and Mr Curran had been going to try and address the rent arrears but that they did not manage to do so because of financial pressures.
74. Ms West said that the rent was not being paid directly from benefits and that, if this had that been the case, there would have been no arrears.
75. Ms McCabe said that, at one stage, the rent had been overpaid and that a refund was paid on 19th January 2018. Ms West said that in February 2018 there had been no payment of rent and Ms McCabe said that she could not recall why that was the case.
76. Ms McCabe said that she had left the Property in October 2021 and agreed that Mr Curran take over the tenancy and that he had made an application for benefits to pay the rent.
77. Ms West said that Indigo Square had not been timeously advised of the change in status of the tenants and that she was only told about Ms McCabe's departure from the Property in December 2021.
78. Ms West said that Mr Curran and Ms McCabe were liable for all rent arrears.
79. Ms West asked some questions of Ms McCabe.

80. Ms McCabe said that, although she had stopped living in the Property, she often visited it to see the children. She said that, on alternate weeks, she looks after the children in the Property.
81. Ms McCabe said that she used the extractor fan in the bathroom when she was showering but not when the children were being bathed.
82. Ms McCabe said that the new windows in the Property have made a difference although she was not sure how much because she was not living there. She said that the Property is still cold and she knew this because she stayed overnight two or three weeks previously for her daughter's birthday. She said that there was no sign of mould but that the windows and other repairs had made no difference to how warm the property is.
83. Ms West asked Ms McCabe why, if there were such issues with repairs being needed, she had not submitted an earlier application to the Tribunal for enforcement of the repairing standard. Ms McCabe said that she and Mr Curran had been unaware of their rights in the matter.

Evidence of Ms Val West

84. Ms West said that, in relation to any issues with dampness, Indigo Square reacted appropriately and responded to any complaints. She said that they relied on reports from two professional companies which said that there was no dampness issue, that condensation was the problem and that it could be solved by better use of ventilation and efforts to try and reduce the moisture within the Property. Ms West referred the tribunal to the relevant reports which had been lodged. She said that C. Hanlon is an all trades company and that Alliance is a dampness and timber specialist. She said that the view expressed in the reports was supported by the fact that issues appear to have been worse in winter than summer.
85. Ms West said that, had Indigo Square been aware of information on additional insulation, the Landlord would have installed it. She said that the tribunal process had been informative and she said that she had recommended to another landlord that this should be considered in a property of the same construction as the one occupied by Mr Curran and Ms McCabe. She said that, in future when she is faced with a complaint about a property where condensation is involved, she would certainly look at the possibility of improving insulation.
86. Ms West said that it was reasonable for the Landlord to consider that the Property was suitable for the rental market based on the terms of the Home Report which had been available prior to purchase and that this view had been

reinforced by the terms of the Home Report dated 25th June 2021 which the Landlord had obtained.

87. Ms West said that the contractors who had looked at the Property in respect of the dampness/condensation issues were not experts but that she considered that she was entitled to rely on them because of their experience. She said that Professor Sharpe, who had given evidence in the repairing standard case, was an expert.
88. Ms West said that she considered that condensation issues in the Property had improved since the Landlord had carried out works.
89. Ms West said that the letting agent had been asked to provide a new lease in name of Mr Curran alone and she said that she had received advice that this was not necessary. She said that both Applicants will remain responsible for rent arrears.
90. Ms West said that the lease had a provision which allowed the landlord to increase the rent automatically by no less than the retail price index. She said that the Landlord had opted not to increase the rent. Ms West said that she believed the full rental value of the Property to be £625/£650 and that the Applicants are being charged the same as they were in 2016.

Submissions

91. Mr McIntosh said that any rent arrears should be set against compensation. In support of this he referred the tribunal to the case of *Fingland and Mitchell v. Howie* 1926 SC319 where Lord Hunter at page 324 stated “a claim for rent to be a liquid claim must be put forward by a landlord who has fulfilled the obligations imposed upon him by the lease, because the contract is a mutual contract involving rights and obligations upon both parties to the lease”.
92. Mr McIntosh said that, even if there were two liquid claims (one for rent arrears and one for compensation) they should be set one against the other. He said that the Respondent has an application before the Tribunal for eviction and has made no application for payment. He said that setting any compensation against rent arrears has significance for the application for eviction since it is possible that, on the date the application for eviction is being dealt with, the grounds for eviction may not be met since it is possible the three months’ rent would not be lawfully due when the tribunal came to determine the eviction application.

93. Mr McIntosh referred the tribunal to paragraph 122 of the Decision issued in the Repairs case which were the Findings in Fact and which he described as “the starting point” in considering compensation due to the Applicants:

93.1 The Applicants are tenants in the Property and have been since 17th June 2016.

93.2 The windows in the Property are in need of repair.

93.3 There is a current Gas Safety Certificate and a current Electrical Installation Condition Report. Both are in acceptable terms.

93.4 There are some hairline cracks in the Property.

93.5 The ceiling in the living room is defective.

93.6 There is evidence of mould growth on walls and around windows throughout the Property.

93.7. There is loft insulation in the Property which is installed in a random manner.

93.8 There is deficient insulation at areas of the Property around the windows.

94. Mr McIntosh said that findings had already been made that the Respondent had breached its obligation to maintain the Property to the repairing standard and that the tribunal was entitled to consider that this demonstrated that the Respondent had failed to comply with its common law obligations and its contractual obligations in terms of the tenancy agreement.

95. Mr McIntosh referred the tribunal to Renfrew District Council v. Gray 1987 SLT (Sh Ct) 70 at page 73 where Sheriff Principal Caplan had referred to the earlier case of Stewart v. Campbell and where he said that “loss suffered by the tenant may be one appropriate measure of the degree of abatement justified.” Mr McIntosh distinguished between abatement of rent and compensation. He said that a claim for compensation for inconvenience has nothing to do with abatement of rent.

96. Mr McIntosh invited the tribunal to consider that the Applicants suffered inconvenience as result of the Respondent’s failure to properly maintain the Property and that this was for the period from October 2016 to January 2022. He said that the issue with condensation was worse in the winter of each year but that other problems such as those with the doors were present both in summer and winter and he asked the tribunal to accept all the evidence from Ms McCabe in support of this.

97. Mr McIntosh referred the tribunal to cases which he believed would assist the tribunal in arriving at the appropriate level of compensation. He also provided the tribunal with the Bank of England inflation calculator table which historic values to be brought up to the 2018 value.
98. Mr McIntosh referred the tribunal to the case of *Gunn v. National Coal Board* 1982 SLT Reports at page 526. This was a case concerning severe rising damp for a period from 19th February 1979 to December of that year. The court awarded compensation of £300 which, using the Bank of England tables would equate to around £1,000 in 2018. Mr McIntosh accepted that rising dampness was different from condensation.
99. Mr McIntosh referred the tribunal to *Edinburgh District Council v. Davis* Edinburgh Sh Ct 17. He said that this was a serious case where the court made an award of £7,000 for a period of four or five years which was described as “squalid horror.”
100. Mr McIntosh referred the tribunal to the case of *Kenneth Campbell v. City of Glasgow District Council* which was an unreported Sheriff Court case from 5th August 1987 where the matter complained of existed from May 1983 to May 1985 and an award of £1,000 was made by the court. Mr McIntosh said that, using the Bank of England tables, this equated to a current value of nearly £2,900. He accepted that the circumstances in the case were considerably worse than those found in the Property. The case involved a sewerage issue which was a potential health hazard.
101. Mr McIntosh said that the tribunal, in considering the appropriate level of compensation, had to apply what he described as “a general feeling of fairness” and that £1,000 for each year of the tenancy would be a reasonable level of compensation. Mr McIntosh accepted that an advantage which the tribunal had, in comparison to those determining the cases to which he referred, was the fact that the members of the tribunal had inspected the Property on two occasions.
102. Mr McIntosh submitted that the claim for compensation in respect of decorating costs was reasonable and he said that he had arrived at the figure by costing paint, paintbrushes, rollers etc and had also applied the level of the minimum wage at £8.72 per hour for the Applicants’ work in carrying out the decoration. He said that, had there not been condensation, the Applicants would not have decorated as often.

103. Ms West said that, although the Respondent might be happy to offset compensation against rent arrears, there might be an issue with regard to the Application for eviction which could be prejudicial for the Respondent.

104. Ms West asked the tribunal, when assessing compensation, to take into account that the Respondent had responded to complaints and dealt with matters and had spent a total of £8,000/£9,000 on the Property.

Findings in Fact

105.

105.1 The parties entered into a tenancy agreement for the Property which commenced on 17th June 2016 and which is continuing.

105.2 During the period of the tenancy, until December 2021, there was insufficient insulation and ventilation in the Property.

105.3 During the tenancy, until December 2021, there was condensation in the Property in the months between October and March of each year.

105.4 The condensation present in the Property caused mould to form on surfaces.

105.5 By December 2021, the Respondent had replaced all windows in the Property with new ones which incorporated ventilation.

105.6 By December 2021, the Respondent had installed additional insulation at various parts of the Property.

Findings in Fact and Law

106.

106.1 The Respondent has not complied with the contractual obligation contained in the tenancy agreement to keep the Property in good repair.

106.2 The Respondent had not complied with the common law duty to keep the Property in good repair and in a satisfactory condition for the Applicants.

106.3 The Respondent has not complied with its obligation to maintain the Property, at all times during the tenancy, to the repairing standard as required by Section 14 (b) of the Housing (Scotland) Act 2006.

Reasons

107. The tribunal considered that it had to determine the application before it and that it was not necessary, when doing so, to have regard to the eviction application. Mr McIntosh had invited the tribunal to find that any award of damages could be set against rent arrears. It appeared to the tribunal that it was a matter of established law that such an arrangement would pertain between a debtor and creditor but this was not relevant to determination of the application before it.
108. Mr McIntosh accepted that the tribunal had the advantage of having inspected the Property on two occasions. The tribunal not only had the advantage of this, where judges in the cases referred to it did not have the advantage of inspection, but also the specialist nature of the First-tier tribunal meant that a chartered surveyor was part of the tribunal determining the application.
109. Ms West made no submissions to the tribunal that an award of compensation should not be made. She asked the tribunal to take into account the money which the Respondent had spent on the Property and also raised some issues such as the level of reports which had been made.
110. There were no substantive issues of credibility to be determined with regard to the evidence of Ms McCabe and Ms West. Both provided evidence in a straightforward manner. There were instances where their recollection of matters did not coincide but, where there was a divergence of evidence such as in relation to the internal doors and reporting of faults, the tribunal did not need to come to a view because it did not consider the particular matters where such divergence occurred to be relevant.
111. The tribunal accepted the submission of Mr McIntosh that the "starting point" in considering whether or not compensation is appropriate is the "Findings in Fact" in the repairs case. It had no hesitation in establishing that the Respondent had not complied with its contractual obligations in terms of the tenancy agreement or its common law duty to provide a house which was fit for purpose. The tribunal had already established that the Property had not met the repairing standard under the Housing (Scotland) Act 2006 when it was inspected on 9th August 2021.
112. The tribunal heard evidence on a number of issues regarding the Property. Some related to matters which were not part of the Findings in Fact in the repairs case and the tribunal required to come to a view on them.

113. The tribunal did not accept that it had sufficient evidence in relation to any issues with internal doors. The doors had been replaced when the inspection had taken place in August 2021 and, whilst there may have been issues with hinges, these were not considered to be significant. It could come to no view on the doors prior to them being replaced.
114. The tribunal accepted the evidence of Ms West that, when any matters concerning the electrics were reported to her, she would take appropriate action and arrange for an electrician to go to the Property. Ms McCabe did not provide contrary evidence but said that there had been issues with the electrics. In support of Ms West's position, the tribunal had the EICRs. One was dated 28th April 2016 and was valid until April 2021. The Respondent, presumably as a result of reports being made by the Applicants, instructed a further EICR in December 2020 which identified matters requiring remediation. A final report dated January 2021 was obtained, following completion of the remedial works. The tribunal accepted the evidence of Ms McCabe that there were issues with the lights in the property and that some power sockets were not working but did not consider that such issues warranted an award of compensation.
115. The tribunal did not accept that any issues which there might have been with the central heating or a dripping sound warranted an award of compensation to be made.
116. The tribunal, in determining the repairs case, had found that the living room ceiling required to be repaired but it did not consider that the issue with the ceiling was significant in affecting the Applicant's enjoyment and use of the Property. Ms McCabe said that she had noticed a small hole in 2020/2021 which had become a larger crack with some bowing prior to the recent repair.
117. The tribunal accepted that there had been water ingress to the small bedroom/dining room but did not consider that this warranted an award of compensation. When the matter was reported the Respondent's agents, action was taken to rectify the ingress and the tribunal found no significant damp readings in that area when it inspected the Property on two occasions.
118. The tribunal accepted that there was condensation in the Property causing mould to be present and that this had to be cleaned. It accepted that this was a burden on the Applicants as well as its presence being unsightly. The tribunal noted that, when it inspected the Property in August 2021, the area of mould beneath the living room was particularly bad and, although no significant damp readings were obtained, it accepted Ms McCabe's evidence that it had not been wiped clean for some months in order that it would remain visible to the members of the tribunal.

119. The tribunal accepted that the windows in the Property had not been up to standard and that, as well as being likely to cause draughts, did not provide sufficient ventilation to alleviate the condensation in the Property. No draughts around the windows were evident to the Tribunal during their initial inspection although this was undertaken during a period of relatively calm weather. It noted that the windows have now been replaced.

120. The tribunal accepted that insulation in the Property had been deficient and that this would have affected the Applicant's enjoyment of the Property. It was noted that neither the applicants nor their representative alleged that the condensation was of such an inconvenience that they were unable to occupy any room within the property for any length of time.

121. In considering the quantum of compensation to be awarded, the tribunal found the authorities referred to by Mr McIntosh to be of interest. The Bank of England tables were useful. It did however consider that the cases dealt with matters of a more serious nature than existed in the Property. For example, the case of *Campbell v The City of Glasgow District Council* involved persistent mould for a period of more than ten years but also, for part of that period, involved seepage from a waste pipe.

122. The tribunal considered that the cases it was referred to provided limited assistance. It relied rather on what was referred to by Mr McIntosh as a "general feeling of fairness" and the fact that it had inspected the Property.

123. The tribunal have previously considered the condition of the windows in the Property in relation to a separate Repairing Standard application. The subsequent Repairing Standard Enforcement Order (RSEO) included the following:

"Renew or significantly upgrade the windows to contemporary standard ensuring appropriate ventilation."

124. The original application had alleged that draughts were being experienced around several of the windows and that they were in such a condition that penetrating damp may result. No such damp or draughts were noted by the Tribunal during the inspection although the effects of prolonged levels of condensation were evident. The condensation issue has subsequently been addressed by the landlord through the installation of new windows incorporating adequate ventilation and insulation where appropriate.

125. Mr McIntosh accepted that the condensation within the property only became an issue during the colder months of the year broadly defined as lasting from October until the end of March, a period of approximately 26 weeks per year.
126. The fixing of any level of compensation in such applications is an exercise of judicial discretion. In considering the appropriate level of compensation in respect of the application before it and with particular reference to the effects of “dampness”, the tribunal restricted its award to reflect the inconvenience sustained by the Applicants as a consequence of the level of condensation within the property together with what it considers to be an appropriate sum for decoration necessitated by the effects of condensation and resultant “mould” staining / growth.
127. Taking all matters into account, the tribunal considered that it was appropriate to determine that the period where the Applicants were inconvenienced extended from October 2016 to the end of December 2021, a period of approximately one hundred and forty three weeks falling within the qualifying months of October until March (“the relevant period”).
128. Compensation has been assessed against the level of inconvenience suffered by the tenants as a proportion of the “weekly level” of rental paid during the relevant period. The tribunal accepted that the full market rental of the property, if it were currently exposed to the market, would be considerably in excess of the passing rent and the level of compensation as a proportion of the full rental value would therefore be greater if the full rental value was being paid.
129. The tenants have remained in occupation throughout the relevant period at a passing rental of £6000 per annum which equates to £115.38 per week. While considerably below the full rental value it is reasonable to assume that the inconvenience effect of the condensation experienced, as a proportion of the passing rental, would remain the same.
130. The tribunal determined that a reasonable sum to reflect the inconvenience of the dampness arising from condensation would be 15% of the passing rental equating to £17.31 per week which, when applied to the relevant period of 143 weeks, equates to a figure of £2475.
131. The tribunal accepted that decoration would have been required to deal with the mould issue and that the Applicants would have had to decorate more often than they otherwise would have. The tribunal did not accept that, on each occasion, all surfaces in a room would have required decoration and that the

Applicants would probably have undertaken some decoration during the tenancy had there been no mould present. In all the circumstances, the tribunal determined that the Applicants be awarded £250 in respect of this aspect

132. The tribunal determined that the Respondent should pay the sum of £2,725 to 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.

**Martin J. McAllister
Legal Member
28th February 2022**