



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: FTS/HPC/EV/21/2224

Re: Property at Lochnagar, St Rognvald Street, Kirkwall, KW15 1PR (“the Property”)

Parties:

Mr Iain Burgher, Mrs Margaret Burgher, Ness, Westray, Orkney, KW17 2DE (“the Applicants”)

Miss Lacey Sharpe, Mr Stephen Reed, Lochnagar, St Rognvald Street, Kirkwall, KW15 1PR (“the Respondents”)

Tribunal Members:

Valerie Bremner (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in favour of the Applicants and against the Respondents in terms of Grounds 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

The decision of the tribunal was unanimous.

Background

1. This application is for an eviction order in terms of Rule 109 of the tribunal rules of procedure which was first lodged with the Tribunal on 14th September 2021 and was accepted by the Tribunal on 9th November 2021. The application first called for a case management discussion at 2 pm on 20 December 2021.

2. At the case management discussion, the Applicants were represented by Mr Laughton solicitor and both Respondents were in attendance and represented themselves.
3. At the case management discussion the Tribunal had sight of the application, a tenancy agreement, a Notice to Leave with a paper apart stating the grounds on which an eviction order was sought, a letter from the Applicant's representatives to the Respondents dated 18 May 2021, postal slips, a surveyor's report, Orkney Islands housing policy, a statement of rent arrears, a notice in terms of section 11 of the Homelessness etc Scotland Act 2003 and an email intimating this notice.
4. On behalf of the Respondents written representations had been received including two pages of a previous decision of the first-tier Tribunal, some photographs and two letters from an environmental health officer at Orkney Islands Council dated 16 January and 12 November 2020.
5. The Applicants had also lodged further documents shortly before the case management discussion and these were an EICR, an EPC, three invoices, an email and a letter from Orkney Islands Council dated 12 November 2020. This letter was one of the letters already lodged by the Respondents. These documents were emailed to the Respondents by the Tribunal during the case management discussion.
6. Mr Laughton indicated that he was no longer seeking an eviction order based on a breach of Clause 16 of the tenancy agreement. He moved for an eviction order in relation to the Respondents having breached a term of the tenancy agreement by keeping dogs and cats in the property without written consent of the landlords and in relation to rent arrears over three consecutive months indicating to the tribunal that no rent had been paid since January 2020 by the Respondents.
7. On behalf of the Respondents Ms Sharpe indicated that they had commenced withholding rent because of the condition of the property. They had tried to move out of the property several times but finding suitable accommodation in Orkney was very difficult. They were a family with a number of young children. Ms Sharpe indicated that the property was damp and there were areas of mould and wetness. She said none of the work set out in the invoices lodged by the Applicants had been done. The gutters had been cleaned and an electrical certificate had been provided. She said the damage from the mould at the property was worse and was spreading. She and Mr Reed had requested that something be done about this, but nothing had been done. She accepted that a fan had been put in the bathroom and a fan above the cooker, but the problems continued which she described as mould and damp with rising damp. She said this was what they really wanted resolved at the property.
8. Mr Laughton set out that the Applicants' position was that all necessary work as outlined in the letter from Orkney islands council dated 12 November 2020 had been carried out. The Respondents' position was that the EPC certificate was out of date, the bathroom had a constant drip due to poor ventilation, the property was affected throughout by mould and that meaningful work had not been done in relation to the insulation in the roof space. Ms Sharpe said that the kitchen fan was not fit for purpose and its lengthy cord was a hazard which meant that cooking had to be done with windows open. The doorbell had not been replaced. The heating was an air-to-air system and only one heater was working at the property.

9. Mr Laughton accepted that some delay in paying the rent appeared reasonable and what he termed a discount appeared to be appropriate for the period up to January 2021 when he said that repairs had been carried out. The Respondents' position was that they did not accept that full rent was owed for the last year given the issues which still existed at the property.
10. As far as the issue around breach of the tenancy agreement by keeping pets without written permission was concerned, the Applicant relied on a surveyor's report lodged which suggested that cat litter was present against a rear elevation at the property where it was suggested that cat litter had been emptied out of a window. It was suggested that family or friends of the Applicants had seen the family with dogs at the property. The Respondents denied that cat litter had been emptied out of a window but did not deny that the Applicants had seen cats at the property and that they knew that they kept dogs there too. It was suggested that the Applicants knew of the pets and had effectively given permission for them to be there and that this issue was only being raised due to the dispute over the outstanding rent.
11. Given the dispute over the issues and in particular the level of any outstanding rent arrears the Tribunal felt it appropriate to fix a hearing on the matter and to issue a Direction to parties. This Direction required both parties to outline in writing their position on the level of rent arrears and any discount which might be regarded as applicable to the outstanding rent given the condition of the property. The Respondents were required to set out arrangements they had made in relation to the withholding of rent which they said they had done.
12. A Hearing was fixed in the matter for 11th March 2022. A response to the Direction was received from the Applicants but not from the Respondents.
13. Two days before the hearing the Tribunal received a letter from solicitors acting on behalf of the Respondents indicating that they would not attend or be represented at the hearing. No reason was given for this decision.

The Hearing

14. At the Hearing the Applicants were again represented by Mr Laughton, Solicitor and there was no appearance from or on behalf of the Respondents. Mr Laughton moved for an eviction order based on the Applicants' oral and written representations and the documents they had lodged. The Tribunal considered that it was appropriate to hear evidence on the issues given that the Tribunal had sight of written representations and oral submissions made by Ms Sharpe on behalf of the Respondents at the case management discussion and there remained disputes over certain facts.
15. At the hearing the Tribunal had sight of all of the documents previously lodged and a list of witnesses and productions lodged on behalf the Applicant together with a letter from Orklean.
16. The Tribunal was satisfied that it was appropriate to proceed in the absence of the Respondents given that they had notice of the Hearing date but had decided not to attend.
17. Mr Laughton called 3 witnesses on behalf of the Applicants being Mrs Anne Burgher, Mr Euan Rendall and Mr Anthony Merriman.

18. Mrs Burgher gave evidence that she had bought the property in 2016 and had let it out straight away to previous tenants with whom there had been no issues. She said that she did not intend to rent the property out in the future.
19. The property had been let to the Respondents from 1st August 2019 and the monthly rent payable in advance was £600. The tenancy was ongoing.
20. Mrs Burgher had received rent payments for August, September, October, and November of 2019 then a payment in January 2020 but had received no rent since that date. She had contacted the tenant Ms Sharpe and had at first been told that there were problems with the bank affecting payment of rent but later she had advised Mrs Burgher that the Respondents were withholding rent due to the condition of the property. She could not say when she had been given this information.
21. She referred to the letter from Orkney Islands council dated 12 November 2020 and indicated that she had engaged several firms to put matters right which had been outlined in that letter. She referred to Merrimans, Rendalls and Orklean and indicated that she had instructed a surveyor to attend the property. She described with reference to the letter how Merrimans had installed a new doorbell and a ventilation fan in the bathroom as well as providing an EICR. The work had been completed by 27th January 2021. Euan Rendall's firm had been instructed to take back the insulation in the roof space area to allow for ventilation there.
22. She indicated that she had instructed a surveyor, a Mr Coward and referred to his report. As a result of this she had instructed Merrimans to increase the ventilation in the roof void by moving the glass wool insulation which was blocking the eaves. She referred to the report which mentioned cat litter against a rear elevation at the property. Mrs Burgher indicated that she believed the tenants were putting cat litter out of the window.
23. Mrs Burgher referred to the keeping of pets at the property which was not permitted in terms of the tenancy agreement without prior written consent of the landlords. She said that friends had walked past on a number of occasions and seen Ms Sharpe with dogs at the property. Mrs Burgher denied ever consenting to the Respondents keeping animals or pets at the property and said she would not have done that because that she did not like cats and was frightened of dogs. She said she had asked Ms Sharpe if she was keeping pets and she had denied it. She described a visit to the property when she saw a total of 5 cats running out, with at least 3 of these cats inside the property. Mr Burgher had asked regarding the cats at that time. Mrs Burgher indicated that she had sent a message after the visit expressing her disappointment regarding the pets, indicating that she was not happy that pets were being kept at the property. She had taken no further steps at that time. She believed that the two dogs were no longer at the property.
24. Mrs Burgher had contacted Orklean to clear the gutters at the property and a letter confirming this work was produced. The work had been carried out in March 2021.
25. She described that the property, a three-bedroom bungalow had been affected by dampness during the tenants being in occupation. She believed that the dampness was being caused by the Respondents not heating the property and never opening windows. There were three heaters in the house, and she believed that this was adequate. She described being contacted by the Respondents regarding an immersion heater having broken and she indicated

that she had this fixed straight away by E Fraser electrical services. An invoice for this had been produced by the Applicants before the case management discussion.

26. Mrs Burgher indicated that after the work had been carried out at the property, she had not heard from the Respondents with any concerns that the work required had not been carried out or done properly until this was raised during the Tribunal proceedings. When asked regarding the outstanding rent she said she had not been formally notified that the rent was being withheld and after the work had been done, she had received no rent nor any contact to suggest payment of rent would be made. She had not pursued this directly with the Respondents as she was concerned that matters would as she put it “have got nasty”.
27. Mrs Burgher believed that some of the defects in the property had developed whilst the Respondents were in occupation at the property. The Respondent Ms Sharpe had at some stage in the tenancy messaged her regarding dampness on a bedroom wall but had said she was managing this herself. Mrs Burgher could not say when this message had been received. Mrs Burgher believed the condensation building in the property was due to the lifestyle of the Respondents.
28. Mr Euan Rendall a self-employed joiner of 19 years’ experience gave evidence to the Tribunal. He stated that work was carried out at the property at the request of Mrs Burgher. Glass wool insulation had been installed in some sections in the roof space and some of it was going over the top of the ceiling and roof boards, leaving no gap for ventilation. He had gone into the roof area and pulled back the glass wool insulation. He said that not every area needed that done. He said that a two-to-three-inch gap should exist where the insulation ends, and the boards begin. He indicated that if the glass wool insulation had not been moved back a build-up of moisture would have continued. He described how the roof vents higher up in the roof helps air to circulate and leave the roof area and if that does not happen you can get what he called a through draught. He said cold air in the loft space area could create moisture. He said he visited the property on two occasions. On the first occasion a wasps’ nest had been discovered in the loft which prevented the work being completed. On the second occasion a few weeks later, he had returned with an employee and completed the work. He referred to the invoice submitted and said that he had taken photographs of the roof area. He was asked if the glass wool installation had been badly installed. He said it wasn’t overly badly installed. He saw no evidence of water penetration in the roof space at that time and said that work had been done on the roof some three to four years before he had been working in the roof space. He himself had re slated the roof four years before. He believed that the work had been carried out in August and September 2021 and over the two visits a number of hours had been spent including a trip to acquire protective PPE equipment. He was aware that there was a considerable length of time between him being asked to carry out the work and his being able to complete it. He could not say exactly when he had first been instructed without consulting his diary, but it could have been several weeks or some months before the work was carried out.
29. Anthony Merriman also gave evidence to the Tribunal and is a qualified approved electrical engineer with 45 years’ experience. He did not directly work on the property, but two colleagues had worked on the property, and he was

able to explain what they had done. He explained that work done had been done for the most part by 21st December 2020 and was completed by the invoice date in January 2021. One of his colleagues Andrew had completed a condition report for electrical wiring and had installed heat and smoke detectors to bring the property up to what he called renting standard. He also described that a condensation drain had been fitted as well as a bathroom fan. He referred to the existing doorbell being made safe, and a battery-operated bell being installed. He described work being done to the earthing as electrical bonding was missing. He referred to the fitting of an extractor fan in the kitchen and a grill connecting the fan to the outside. He referred to the EICR report and described how this is completed and described the assessment carried out at the property as giving results which were described as satisfactory.

30. Mr Merriman indicated that the work carried out in relation to smoke and heat detection equipment brought the property up to the required standard for the local authority. He could not say if there was no such equipment in the property prior to his colleagues fitting the detectors or if these were already installed but not working.
31. Mr Merriman indicated that a bathroom fan at the property had been incorrectly installed and this caused water to gather. A trap had been fitted to duct work and a plastic pipe run to an external wall from the fan to the outside. This prevented condensation running back into the room. He described this as being similar to a toilet system overflow. He said that the trap should prevent drips coming out of the fan.
32. As far as the kitchen fan was concerned he explained that this was an all-purpose fan for kitchen and utility areas where a higher rate of extraction was required. He said that the Respondents had been advised they could decide the cord length and cut it to a suitable length. The fan cord length should not have presented a hazard.
33. During the `hearing Mr Laughton for the Applicants lodged the photographs of the roof area taken by Mr Rendall together with an email from him and an email from Orkney Islands Council confirming that no contact had been received from either party since February 2021 and the matter had been closed by them in July 2021. The email indicated there was no record of a request for an inspection being made in December 2021 but recent contact had been made by one of the tenants and a solicitor on their behalf.
34. The Respondents' position was set out in an email received prior to the case management discussion and their oral representations made at the case management discussion. They had lodged two photographs and what was said to be two pages of a previous Tribunal decision. In summary they indicated that they were not against an eviction order but stated that they were advised not to pay rent until all works were done to a satisfactory standard. They referred to mould throughout the property which they said was worsening. They complained of the inadequacy of the heating at the property. They said they were seeking another property but housing in Orkney was scarce.
35. The Respondents had lodged part of a decision in a previous Tribunal case which appeared to relate to the property and indicated in paragraph 43 of the text that the withholding of rent was reasonable given the vouched condition of the property.
36. At the case management discussion, the Respondent Ms Sharpe indicated that no work had been done other than the gutters being cleaned and the provision

- of an electrical certificate. Her position was that nothing had been done to address the ongoing issue of mould and damp which was continuing.
37. The Respondent Ms Sharpe at the case management discussion had indicated that she had contacted Orkney Island council Environmental Health department and asked for a further inspection to be carried out and this was expected early in 2022.
 38. The Respondents at the case management discussion did not deny that they had cats and dogs at the property but said that the Applicants had raised no objections when the animals had been seen by them.
 39. The Respondents raised no issues in relation to the eviction documentation lodged by the Applicants and did not challenge the validity of the Notice to Leave or the service of the Notice in terms of S11 of the homelessness etc (Scotland) Act 2003.
 40. Mr Laughton made a submission to the Tribunal at the end of the evidence. He submitted on behalf of the Applicants that all work had been carried out in respect of the matters raised in the Orkney islands Council letter of 12th November 2020. He referred to the evidence of the electrician, the joiner and the surveyor's report. He said there was no evidence of penetrating water in the roof space when Mr Rendall worked on it and noted that after completion of works by Mr Rendall nothing was stopping proper ventilation of the roof space. He submitted that it could be inferred that problems with condensation were at least significantly contributed to by the failure to ventilate or open doors at the property.
 41. Mr Laughton referred to the cleaning of the gutters and noted that the Respondents had only suggested that work was not properly completed in December 2021. He referred to the case management discussion note at paragraph 13 where it was accepted by the Respondent Ms Sharpe that work had been done albeit unsatisfactorily.
 42. Mr Laughton's position was that as of 10th September 2021 when all the required works were completed there was no reason for the Respondents to withhold rent and yet they had paid no rent since January 2020.
 43. Mr Laughton submitted that the EPC for the property was valid and an up to date EICR had been provided.
 44. Mr Laughton indicated that as far as rent arrears were concerned his client accepted that a deduction on the rent was appropriate and he suggested a global deduction of 25% from February 2020 to February 2021 and suggested that the Tribunal find that rent arrears overall amounted to £13050 having regard to the rent outstanding up to the middle of February 2022.
 45. As regards eviction Ground 11 Mr Laughton invited the Tribunal to accept the evidence of Mrs Burgher that no prior written consent had been given to keep pets at the property and that a number of cats and dogs had been so kept. He referred to the evidence of the surveyor's report and the suggestion of cat litter being outside the property, that cats had been seen when the Applicants visited the property and the position taken by the Respondents at the case management discussion as regards pets. His position was that the Applicants could have done nothing more than they did when they discovered the situation, Mrs Burgher had sent a message to Ms Sharpe to express her disappointment and set out that pets were not permitted to be kept at the property without prior written consent which had not been given.

Findings in Fact

46. The Applicants entered a tenancy agreement with the Respondents at the property with effect from 1 August 2019 and this tenancy continues.
47. The monthly rent payable in advance is £600.
48. Five rent payments were made to the Applicants and no further rent payments were received from the Applicants after January 2020.
49. The Applicants were initially advised that there were issues with the Respondents' bank preventing the rent being paid but were then advised by the Respondents sometime in 2020 that rent was being withheld due to the condition of the property.
50. On 16 January 2020 an environmental health officer from Orkney Islands Council wrote to the Respondent Ms Sharpe giving advice regarding condensation problems and indicating that the loft at the property had what were described as damp problems and noting in some areas moisture levels of 40%.
51. On 12 November 2020 the same environmental health officer wrote to the Respondents following a visit to the property on 11th November 2020. This letter noted defects requiring attention which included a missing EICR and a valid EPC, fire detection and smoke alarm systems not being up to the required standard, a doorbell to be disconnected from mains electricity, condensation collecting in a flexible pipe in the loft, which could run back down through a ceiling vent, visual evidence of dampness in the sarking boards close to the eaves, and a build-up of waste materials against a rear wall.
52. The environmental health officer indicated in the letter that the matters listed above were breaches of the repairing standard.
53. The letter of 12th November 2020 recommended that in order to ensure adequate natural ventilation could be maintained in the property at least one window in each room should be openable and that mechanical extract ventilation be installed in the bathroom and kitchen.
54. The letter noted that on the day the property was visited there was evidence of condensation throughout the property with the windows running with water and black mould staining in a number of areas including walls and areas of ceiling with personal possessions such as bags, clothes and papers affected by damp or mould growth.
55. A copy of this letter was received by the Applicants and the letter suggested twelve weeks for repairs to be carried out with advice being given to attend to the dampness in the loft and guttering as soon as practicable.
56. The Applicants instructed work to be carried out at the property to deal with the matters raised.
57. In December 2020 and January 2021 electrical contractors carried out an inspection and prepared an EICR, installed heat and smoke detection equipment, worked on the earthing in the property and installed an extractor fan in the kitchen and a condensate trap in the bathroom.
58. In March 2021 work was carried out to clear guttering at the property.
59. In April 2021 a surveyor instructed by the Applicants attended at the property and reported severe condensation staining in the roof void with very high moisture readings in the void area and indicating that the ventilation in the roof

area is insufficient and that it was most likely that glass wool ventilation had blocked ventilation at the eaves.

60. The surveyor also noted that the living space was not being ventilated and condensation had occurred. It was further noted that prolonged exposure to this condensation had caused mould to form.
61. In August and September 2021 work was carried out at the property to move back glass insulation from the eaves to increase ventilation in the roof area.
62. The EPC provided by the Applicants was assessed in April 2015 and remains valid.
63. During the tenancy the property has been habitable, and the Respondents have been able to cook, wash and have toilet facilities at the property.
64. The Applicants served a valid Notice to Leave the property dated 24th November 2020 on the grounds of rent arrears having accrued since no rent had been paid since January 2020, a breach of clause 16 of the tenancy agreement (which ground was not insisted upon) and a breach of the tenancy agreement by keeping cats and dogs at the property without permission.
65. A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was served on the relevant local authority in relation to this application.
66. On 18 May 2021 solicitors acting for the Applicants sent a letter regarding the rent arrears at the property to the Respondents offering to work towards a payment plan and signposting them to sources of financial support and information.
67. The Respondents have been in arrears of rent at the property since January 2020 and no rent has been paid since that date.
68. At the time of the Hearing on 11th March 2022 the Respondents are in rent arrears of a sum exceeding one month's rent.
69. The rent arrears accrued in this matter are not caused by any delay or failure in payment of a relevant benefit.
70. The terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 are established in this application.
71. The Respondents have during their tenancy at the property kept a number of dogs and cats at the property without the prior consent either orally or in writing of the Applicants in breach of a term of the tenancy agreement.
72. The terms of Ground 11 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 are established in this application.

Reasons for Decision

73. The Tribunal considered that the Applicants had produced and served a valid Notice to Leave which had been correctly served within the appropriate notice period. A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act had been served. One letter had been sent in terms of the Rent Arrears Pre-Action Requirements (Coronavirus)(Scotland) Regulations 2020.
74. The Tribunal was satisfied on the evidence before it that both eviction grounds were established.
75. The tribunal considered whether it required to find in fact the amount of rent arrears outstanding at the property but took the view that it does not require to make such a finding providing it can be satisfied that the eviction ground in

respect of rent arrears at the property is made out. There was no dispute here that the monthly rent of £600 had not been paid at all since January 2020. The Respondents did not state any level of rent they accepted was due in terms of the arrears.

76. In this application the Respondents' position before they ceased to take part in proceedings was that the whole rent was not due at the property over the relevant period given that the condition of the property, in particular dampness at the property. They had indicated that they had withheld rent due to the condition of the property. They gave no information as to what arrangements they had made regarding the unpaid rent and where this had been maintained and there was no evidence that they had tried to pay rent or negotiate a rent reduction after any repairs were carried out. Their position to the Tribunal was that the repairs had not been carried out properly, but they did not raise this until the tribunal proceedings. The Tribunal was satisfied that what had occurred here did not amount to withholding in good faith.
77. The Respondents had lodged an excerpt of a previous Tribunal decision with passages highlighted. This appeared to relate to the property and referred to the question of withholding. It suggested at an unspecified time that it would be reasonable for the Respondents to withhold rent given the vouched condition of the property. It was clear that this excerpt decision referred to documentation seen by the current tribunal. The tribunal in this application notes what was lodged by the Respondents in relation to a previous application and also considers that the withholding of rent might have been a reasonable step in relation to matters but found that this was not what occurred in this application and refers to its comments above regarding the continued non-payment of rent after repairs were carried out.
78. The Tribunal considered in terms of the overriding objective and if the Respondents' position was one of a submission that not all the rent arrears were due and that an abatement of rent might be appropriate. It was clear in this application that there were breaches of the repairing standard and breaches of the tenancy agreement by the Applicants in relation to required repairs at the property.
79. In considering the question of abatement the Tribunal was constrained by the lack of evidence presented by the Respondents and their decision not to respond to a tribunal direction or to attend the hearing on matters. In considering the question of abatement the tribunal had regard to *Taghi v Reville* 2003 Hous L.R 110 and *Renfrew District Council v Gray* 1987 SLT (Sh Ct) 70 in which it is set out that a tenant has a right to an abatement of rent if they did not enjoy what they contracted for, in terms of disrepair at the property.
80. The evidence of the witnesses led by the Applicants was accepted as credible by the Tribunal. The evidence of Mrs Burgher was however vague at times, and she did not indicate whether she was aware of the letter from Environmental Health to the Respondents in January of 2020 or indeed when the issue of dampness was first raised with her. It was clear that she knew of it from November 2020 in terms of the second letter from the Environmental Health Department at Orkney Island Council in November 2020 and this letter identified issues in the roof space with dampness and condensation. The Tribunal considered that the Applicants were slow to deal with some of these issues, in particular the issues regarding ventilation in the roof space. No reasons were given by Mrs Burgher as to why it took some months to have the

roof space looked at although Mr Rendall accepted there had been some considerable time between his instruction to attend and the work being done. It should be noted that there was no evidence led by the Respondents on the repair issues raised other than their written representations and the letters lodged by them.

81. The Tribunal had little information as to the effect of damp on the Respondents and their ability to use and enjoy the property. There was a written submission received before the case management discussion in December 2021 suggesting that one bedroom was affected substantially by dampness and water ingress with no timescale given and the Environmental Health Officer's letter of 12th November 2020 refers to condensation throughout the property. That letter did not suggest that on the day of inspection there was water ingress observed at the property other than on the windows. The Tribunal did consider that the issue with the roof space was dealt with too slowly and there was a period of some months before this issue of the ventilation was addressed in September 2021. On balance the evidence suggested that there had been wet areas in the roof void early in the tenancy and these required attention which had not happened until September 2021. It was not clear from the evidence when the Applicants found out about this issue in detail or if this had occurred before the letter of 12th November 2020 had been received from the Environmental Health officer at Orkney Islands Council. The Tribunal's view was that had it been necessary, it could not determine the level of any abatement which might apply as there was a lack of evidence regarding the timescale over which dampness had affected the property and how that had affected the Respondents' enjoyment of the property. The surveyor instructed by the Applicants who attended the property in May 2021 suggested that the build-up of mould and condensation had come about due to the failure to ventilate the property and that there was an absence of dampness during his inspection and this required to be considered regarding these matters. Given these factors and the conflicting information as to the extent of and reasons for the presence of mould and damp in rooms at the property the Tribunal could not make any findings regarding abatement of rent in relation to dampness, mould and condensation. The Tribunal did find on the evidence before it that the house appeared habitable (although there were issues affecting its condition) and that rent arrears had accrued at the property since January 2020 as no rent at all had been paid since that time. The tribunal was however satisfied that arrears of more than one month's rent had accrued and were outstanding. The Applicants accepted that a reduction in the rent due was appropriate and submitted that a reduction of 25% was reasonable up until the repairs were carried out in January 2021. The Tribunal for the reasons stated above regarding the lack of evidence on the extent and effect of the dampness issues, the time period over which this issue may have existed and the surveyors report suggesting that issues inside the property arose due to lack of ventilation, meant that the Tribunal could not determine any abatement which might be appropriate or simply accept the level of deduction offered by the Applicants.
82. The Tribunal considered the other issues which were said to give rise to breaches of the repairing standard. Had it been required the Tribunal would not have found that an abatement could be determined in relation to the smoke and heat detection equipment as there was no evidence before it as to the

position of this equipment prior to November 2020 in relation to whether detectors had been there previously or were simply not in working order. In relation to the other matters raised as breaches any abatement considered might have been low given that these matters were attended to promptly by the Applicants when they were advised of these, but again it was not clear from the evidence how long these other matters had been at issue.

83. The question of abatement having been considered the tribunal was satisfied that the eviction ground in relation to rent arrears was satisfied on the evidence before it, the arrears amounted to more than one month's rent and the exact amount of any such arrears need not be established. The precise amount of any rent arrears would be a matter that could be raised by the Applicants if they so wish by way of a payment order application and the Respondents if so advised can consider their position at that time.
84. The tribunal considered whether it was reasonable to make an eviction order and noted that the Respondents had chosen not to appear at the hearing on matters and had indicated in their written submissions that they were not opposed to eviction but simply felt that the rent arrears were not all due given the condition of the property. The Tribunal considered that a prima facie case had been made for eviction and there had been no argument advanced by the Respondents that eviction was unreasonable in the circumstances of either of the grounds advanced by the Applicants and the Respondents had themselves indicated that they wished to leave the property.
85. The Tribunal considered the question of the keeping of pets at the property. It was satisfied on the evidence that a number of dogs and cats were being kept at the property without written permission of the Applicants in breach of the tenancy agreement at clause 33. Whilst it is stated above that the evidence of Mrs Burgher was vague in certain areas the tribunal accepted her evidence on this matter entirely and given her stated views on cats and dogs it was considered highly unlikely that she would have ever given such permission.
86. Whilst there was no evidence of damage, or any incidents connected to the keeping of the animals the Tribunal considered it reasonable to make the order on this ground given the number of animals said to be kept at the property.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction order be granted in favour of the Applicants and against the Respondents in terms of Grounds 11 and 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Valerie Bremner

Legal Member/Chair

Date

11/3/22