



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

**Chamber Ref: FTS/HPC/CV/23/1112**

**Re: Property at 2/1 5 Sherbrooke Drive, Pollokshields, G41 5AA (“the Property”)**

**Parties:**

**Ms Eileen Reid, Glendaruel, 11 Torridon Avenue, Dumbrack, Glasgow, G41 5AX (“the Applicant”)**

**Mr Campbell McEwan, Unknown (“the First Respondent”)**

**Mrs Chantell McEwan, Unknown (“the Second Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr G Darroch (Ordinary Member)**

**Decision (in absence of the Second Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in the sum of £6550 in favour of the Applicant with interest thereon at the rate of 4% per annum.**

**Background**

1. This is a Rule 111 application dated 6<sup>th</sup> April 2023. The Applicant was seeking a payment order in respect of rent arrears in the sum of £5950 with 4% interest thereon. The Applicant representative lodged a rent statement and copy of a tenancy agreement which commenced on 1<sup>st</sup> March 2020 and ended on or around 10<sup>th</sup> July 2023.
2. By email dated 12<sup>th</sup> July 2023, the Applicant representative made an application to increase the sum sought to £7650.
3. Notification of the application and the forthcoming Case Management Discussion upon the Respondents was carried out in an advertisement which appeared on the Service by Advertisement page of the website of the First-tier Tribunal for Scotland Housing and Property Chamber from 9<sup>th</sup> October to 14<sup>th</sup> November 2023.

4. By email dated 13<sup>th</sup> November 2023, the First Respondent requested a postponement of the Case Management Discussion. The postponement was refused, and the Respondent was notified accordingly. The First Respondent was provided with case papers by email.
5. The case called for a Case Management Discussion (“CMD”) by telephone conference on 14<sup>th</sup> November 2023. The Applicant was represented by Ms Melissa Wilson, Solicitor. The Respondents were not in attendance. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondents. The Tribunal continued the application to an evidential hearing. The Tribunal issued a Direction to the Respondents to lodge a note of defence.
6. By emails dated 10<sup>th</sup> December 2023, the First Respondent lodged written representations and productions.
7. By email dated 31<sup>st</sup> January 2024, the Applicant’s representative lodged supplementary written representations and a second inventory of productions.
8. Notification of the forthcoming hearing upon the Respondents was carried out in an advertisement which appeared on the Service by Advertisement page of the website of the First-tier Tribunal for Scotland Housing and Property Chamber from 4<sup>th</sup> January to 20<sup>th</sup> February 2024. Notification and the provision of the Applicant’s representations and productions was also made upon the First Respondent by email.

## **The Hearing**

9. A hearing took place by telephone conference on 20<sup>th</sup> February 2024. The Applicant was in attendance and represented by Mr Kenneth Caldwell. The First Respondent was in attendance. The Second Respondent was not in attendance.
10. In pre-hearing discussions with the Tribunal clerk, it became apparent that the Applicant was calling in from Italy. Mr Caldwell also indicated he wished to call a witness, but no witness list or contact details had been provided.
11. Upon convening, the Legal Member explained that evidence could not be taken from the Applicant in Italy as the country is not included in the list of countries that have given their permission to taking evidence from within their jurisdiction. Permission would have to be sought from the Foreign and Commonwealth Development Office and this could take some time.
12. There was some discussion about whether to adjourn the hearing, as it would not be possible to take evidence from the Applicant. Mr Caldwell suggested that, if the First Respondent was to confirm that the rent statement showing the sum of £7650 in arrears was correct, and that no payment had been made

by the Respondents for nine months, it may be possible to continue with the hearing, if evidence was taken from the Applicant's witness. Mr Caldwell submitted that it would be appropriate for the First Respondent to give his evidence first.

13. The Tribunal explained matters to the First Respondent. There was some discussion about the whereabouts of the Second Respondent. The First Respondent suggested the hearing might be adjourned to allow him to locate the Second Respondent, who he described as his estranged wife. The Tribunal took the view that the requirements of Rule 24(1) had been satisfied, and it was appropriate to proceed with the application in the absence of the Second Respondent, therefore, that would not be a reason to postpone matters. The First Respondent indicated he agreed that the balance outstanding was correct, albeit there were reasons why he had not paid the rent, and that no payment had been made for nine months. The First Respondent indicated that he was content to proceed on the basis suggested by Mr Caldwell.
14. The Tribunal adjourned to consider matters. The Tribunal considered there was no prejudice to the Respondents in proceeding with the hearing, particularly given the First Respondent's indication that he was in agreement with the hearing taking place.
15. Upon reconvening, Mr Caldwell indicated that the Applicant was content to proceed as suggested.

### **The Second Respondent's position**

16. The Respondents entered into a tenancy commencing on 1<sup>st</sup> March 2020 and ending on or around 10<sup>th</sup> July 2023. The Second Respondent said the Property was not up to the bare minimum, and he was required to get a lawyer involved. The Respondents were not provided with a full copy of the signed lease, an Energy Performance Certificate ("EPC") or an Electrical Installation Condition Report ("EICR"). The First Respondent asked the Applicant's letting agent, Mr Verrico, for a copy of the EPC. It transpired there was a current copy and that was provided by a third party to the Respondents. It showed the Property was band G. The First Respondent said he would not have rented the Property had he been aware of this poor rating. The EPC was subsequently changed to band E.
17. The Respondents felt aggrieved that the rent for other properties within their block of flats, some of which were furnished, was less than that for the Property, which was unfurnished.
18. The First Respondent said there had been a hand-written addition to the tenancy agreement signed by the parties regarding new carpets and the forfeiture of the tenancy deposit if the Respondents left within the first year. It was his position that this was not included in the copy of the tenancy agreement lodged with the Tribunal. It was pointed out to the First Respondent that the

copy tenancy agreement lodged with the Tribunal did contain a hand-written addition, although carpets were not explicitly mentioned.

19. The First Respondent said he asked Mr Verrico numerous times for a copy of the EICR. In March 2022, an electrician attended at the Property and checked the installation. The electrician said there were several fails. The First Respondent asked Mr Verrico thereafter for a copy of the EICR. Mr Verrico said the Property was totally compliant and there was nothing to worry about. No copy of the EICR was provided to the Respondents despite numerous requests. The Respondents instructed their own EICR which showed failures. It was the First Respondent's position that the electrician he had instructed had carried out a more in-depth inspection. He had told the electrician he was the tenant rather than the landlord. Asked for the name of the company who had carried out the EICR, the First Respondent was unable to confirm this. It was his position that he had lodged a copy of the EICR with the Tribunal, but it had not been received. The First Respondent stated that he was told the March 2022 EICR had been provided to the Applicant, and that she had told him everything was okay on the report, but as a favour, she would look to replace the consumer unit in the Property.
20. The First Respondent said he came home one day and was alerted by the Second Respondent to a smell in the Property. They discovered a plug that had caught fire. The First Respondent contacted Mr Verrico, who said he could come with a new plug. The First Respondent took the view that he could change the plug himself. The Second Respondent told him she did not want Mr Verrico at the Property, and just to leave it. Photographs of the plug and socket had been lodged by the First Respondent. Screenshots of the text messages between the First Respondent and Mr Verrico had been lodged. The electrical system was old. The water heating system was poor. The shower was not powerful.
21. The front door of the Property was not compliant with fire and safety and building regulations, as all doors in a close entry must be FD 30 rated. This was pointed out to Mr Verrico who said the door was alright. Asked how he knew the door was non-compliant, the First Respondent said he sells doors for a living.
22. There were noisy neighbours. It was the First Respondent's position that, had the Respondents been informed of this, they would have asked to pay less rent.
23. The First Respondent had concerns about the ownership of the Property, as Mr Verrico told them after some time that he was the owner. This was not reflected on the landlord register. The First Respondent said they were entitled to know the identity of the landlord.
24. The bathroom was a wee bit tired. The doors were cracked and the paint had been touched up. The bath had slight cracking. The Respondents asked for a replacement bath but this did not happen, so they never used the bath.

25. The knobs on the kitchen hob came off, as they were old. Replacement knobs only lasted two to three months before coming off. There was a hole in the hob which was mentioned on the EICR.
26. The First Respondent said Mr Verrico had behaved unacceptably towards the Second Respondent. In his written representations, he set out details of alleged harassment, and remarks of a rude and sexual nature. The police were involved. The Second Respondent did not want Mr Verrico in the Property. Asked by the Tribunal whether the Respondents had taken any remedial action in this regard, the First Respondent said they never got any remedies. Other people in the block of flats installed CCTV. There were concerns that Mr Verrico was putting rubbish in the Respondents' bins. The Respondents' solicitor emailed the Applicant about the situation and this made matters worse.
27. Requests for access by Mr Verrico were always very vague. He would state that he needed access to the Property without explaining why he needed access. He would state in messages that he would let himself in if the Respondents were out.
28. Asked what had prompted the Respondents to withhold rent, the First Respondent said they paid their rent for six months, then thought it was ridiculous to pay rent.

### **Cross-examination of First Respondent**

29. Asked by Mr Caldwell to provide his address, the First Respondent said he would rather not do so due to concerns about Mr Verrico's behaviour towards the Second Respondent. Responding to questions from the Tribunal regarding the earlier comment that the Second Respondent was his estranged wife, the First Respondent said the Respondents are currently living together while the Second Respondent looks for accommodation. He then said he knew where she was currently staying and did not want her to be followed. He then said they sometimes live together and she sometimes stays with family and friends. The Tribunal indicated it would not be directing him to disclose the address in the circumstances.
30. The First Respondent said he had not retained the rent that he claimed to have withheld, and he had no funds to make payment of any order granted. The Respondents gave notice they were leaving the Property within the first year. They had found another property but the First Respondent claimed the landlord of the new property would not accept a landlord reference from Mr Verrico, so the let fell through. They then elected to remain in the Property. The First Respondent first asked for the EPC and EICR around the same time he asked for a full copy of the tenancy agreement, which was a couple of years into the tenancy.
31. The First Respondent said he thought the EICR in March 2022 (production 2) came about because he had asked Mr Verrico, who said he did not have one. The First Respondent denied receiving a starter pack with safety certification at

the start of the tenancy. He instructed a solicitor in or around April or May 2022. He did not send a copy of the EICR that he had commissioned as he was awaiting a copy of the Applicant's EICR. He paid around £85 or £90 for an EICR.

32. Referred to production 2/3/1, an email from the First Respondent to the Applicant on 30<sup>th</sup> September 2022, the First Respondent said he continued to ask for the March 2022 EICR because he was giving Mr Verrico a chance to come up with it. He did not take the Applicant to task based on his own EICR because he thought Mr Verrico was lying. This was the last month the Respondents made payment of the rent. The First Respondent said he told Mr Verrico around that time that he was withholding rent. Mr Verrico had said all discussions should go through him, and the Respondent should not contact the Applicant. She was busy and was not to be disturbed.
33. The First Respondent said he involved his lawyer when the Applicant proposed a rent increase. It was his position that the Applicant had not used the correct procedure and had to withdraw the increase notice. His lawyer had asked the Applicant to provide a copy of the EPC. The EPC carried out on 4<sup>th</sup> October 2022 and lodged as production 2/11/1 was carried out at the instigation of the Respondents. It showed the Property as Band E, which was better than previously. The First Respondent said the matter was still not resolved as the EPC was only one of the issues in dispute. Asked why the tenancy agreement and EICR were not mentioned in the solicitor's letter of 24<sup>th</sup> October 2022 (production 2/6/2), the First Respondent said they were probably mentioned in a following letter. Someone had recommended the solicitor firm to him, and the particular solicitor was based in Dundee.
34. The First Respondent said there were numerous attempts to gain access for an electrician in November 2022 but Mr Verrico was let down two or three times by the electrician not turning up. The date of 18<sup>th</sup> November probably did not suit the First Respondent and he denied failing to comply with a further attempt to gain access later that month. The First Respondent said he was not allowing access until he got his hands on a copy of the EICR from March 2022. He said he never refused access if it was convenient. Sometimes it did not suit the Respondents, and sometimes it did not suit the Applicant's representative.
35. The First Respondent accepted that Mr Verrico offered to attend when he was notified of the issue with the plug in November 2022, stating that he had offered to attend with another plug. Asked why he was not screaming from the rooftops to get an electrician to carry out an EICR, given the issue with the plug, the First Respondent said he did not want Mr Verrico coming into the Property and if he could repair the plug himself, he would do so. Asked what he thought had caused the issue with the plug, the First Respondent suggested it may have been a wrong fuse. Asked if he had maliciously damaged the plug with a lighter, the First Respondent said categorically not.
36. Referred to production 2/14, the First Respondent was asked why he had refused access to the Property to the electrician and Mr Verrico on 4<sup>th</sup> January

2023, the First Respondent said he had informed Mr Verrico that he would only get access if he brought a copy of the EICR from March 2022, which he did not do. Mr Verrico was lying all the time about the EICR. Asked whether he was using the issue of the EICR as an excuse to withhold rent, the First Respondent said that was not the case, and the Respondents had paid the rent all through the Covid-19 pandemic.

37. Referred to production 15, a letter from the Applicant's solicitor to the First Respondent dated 7<sup>th</sup> March 2023 including, among other things, a request for access to allow electrical works and replacement of the consumer unit, the First Respondent said that was the first time a consumer unit had been mentioned. He said he knew it was required from the EICR that he had commissioned himself, but it had never been mentioned by the Applicant or her representative. It was the First Respondent's position that his solicitor told him not to allow access until he was provided with a copy of the EICR. Although his solicitor was no longer involved by this time, that had been his previous instruction. Asked if he responded to the Applicant's solicitor's letter of 15<sup>th</sup> May 2023 requesting suitable dates for access (production 2/19) the First Respondent said he could not remember. He may have responded to Mr Verrico.
38. When the Tribunal attended following a request for assistance to get entry, Mr Verrico did not attend. The Respondents had packed up and were ready to leave and tried to give the Property keys to the Tribunal. Asked whether the Respondents had given notice to the Applicant that they were ending the tenancy, the First Respondent said all dealings were with Mr Verrico.
39. The First Respondent was asked if he accepted that, had access been allowed in November 2022, work could have been carried out and a further EICR issued. The First Respondent said more work was required and there was no point in having the consumer unit replaced. The First Respondent denied he had stubbornly refused access, and said he was told everything was fine in terms of the EICR.
40. The First Respondent said things are financially a bit tight at the moment but they are picking up. He accepted the Respondents were being pursued for an electricity debt of around £3800 and said this would be addressed. He has rectified car hire or rental arrears by making payment.
41. Responding to questions from the Tribunal, the First Respondent said it was his understanding that the Property had been re-rendered before the tenancy commenced, and this had meant the band changed. It was, therefore, always a band E while the Respondents were living there.
42. The First Respondent said Mr Verrico was always vague about wanting access. Asked whether he thought to clarify with Mr Verrico exactly why access was sought, the First Respondent said he did ask but he was told they were just coming for a check. Asked if he could infer that access was required for improvement works, the First Respondent said this was never suggested, and the consumer unit was not mentioned until he received the letter from the

Applicant's solicitor. Asked if his solicitor had told him not to allow access even for essential repairs, the First Respondent said he'd been told all was fine and Mr Verrico had never mentioned any specific reason for needing access.

**Witness for the Applicant – Mr Nino Verrico**

43. The full name of the witness is Nino Verrico. He is over 60 years of age. He has over forty years of experience in owning and letting properties. He has acted for friends in letting out properties. He was involved in relation to setting up the tenancy agreement in respect of the Property on behalf of the Applicant. The tenancy agreement was signed at the Property. The First Respondent is a very astute person and read the tenancy agreement thoroughly before signing. He asked that the Second Respondent be added to the tenancy agreement, as this was required for the Home Office. The First Respondent had asked for a copy of the relevant parts of the tenancy agreement but did not ask for a full copy at that time. He asked for this later. The witness obtained a copy from the Applicant's solicitor and provided a copy to the First Respondent.
44. The witness said the First Respondent was given a copy of the EPC and EICR at the start of the tenancy. This is what always happens and it is required. The witness said he thought a new EICR was required in March 2022, if he remembered correctly. The outcome of the inspection in March 2022 was that the installation passed but a new consumer unit was advised. The installation was still safe, but the consumer unit needed replaced. Referred to the EICR, the witness said he did not recollect that it stated the installation was unsatisfactory. He thought a copy was sent to the Applicant and he did not have a copy. It was his recollection that the installation passed and work was required. The electrician was busy after lockdown. The electrician then arranged to come and for some reason it was not suitable to the Respondents. Access was denied on the last visit to the Property with the electrician.
45. The witness said the First Respondent knew access to the Property was required and the place needed to be vacated for around five hours as there would be no electricity. The Second Respondent worked from home and had a baby. It was not suitable for them to be there while the work was done. The electrician had been ill at one point and decided not to attend as he did not want to infect the Respondents' child.
46. The witness was aware there had been an exchange between the Respondents' solicitor and the Applicant in September 2022. Access thereafter was never suitable for the First Respondent. When Mr Verrico turned up to get access on the last day, the First Respondent gave him the keys with a smirk and said he would be lucky to get the outstanding rent. The witness had not expected to get vacant possession at that time.
47. The First Respondent refused the witness entry to the Property on 6<sup>th</sup> January 2023, saying the advice from his solicitor was not to let the witness in unless he had the EICR.



48. Work was carried out to the Property after the tenancy ended. The witness could not recall the cost of the work but a satisfactory EICR was issued.
49. The witness said he was not given an opportunity to repair the damaged plug as the First Respondent repaired it. The electrical socket was inspected by the electrician after the tenancy ended and he said it was fine then. The electrician suspected something had damaged the plug.
50. The witness confirmed that the EPC band E had been incorrect as the person who carried out the inspection had forgotten that insulation work had been carried out.
51. No complaint was ever made to the witness about the front door. He was informed once about noisy neighbours. The witness said he always called or texted the First Respondent when the rent was paid to ask if there were any issues. There had been a blocked sink which had been rectified by the Applicant. The First Respondent had raised the issue of cracks on the bath, but it was only scratches.
52. The witness said he had always been pleasant to the Second Respondent and had not been inappropriate in his conduct towards her. He had taken photos of the First Respondent parking inappropriately and the Applicant had passed these to the Factor. There had been contact from the police but it was nothing at all. The witness said he is very careful. In forty years, he has never had a complaint from a lady. He always takes witnesses with him to properties.

### **Cross examination of the witness**

53. The witness agreed there had been a handwritten note on the tenancy agreement about the carpets and was unable to say why the First Respondent might have received a copy without the handwritten note from the Applicant's solicitor when he later requested a copy. The witness said he could shed no light on the matter unless an error had been made in the solicitor's office.
54. The witness agreed he was not present when the EICR inspection was carried out. He had not heard back from the electrician initially and assumed all was okay, then he heard what work needed to be done. The witness said he had never seen the EICR and had been told the consumer unit needed replaced.
55. The witness denied knowing anything about having behaved badly towards the Second Respondent. He had once sent a text saying if both Respondents were out, he could let himself in. Asked why the First Respondent's solicitor had sent an email to the witness about his behaviour, the witness said it was all hearsay and there was no proof. Nothing had happened. It was put to the witness that there had been issues with other women. The witness became irate. When it was put to the witness that there were other issues in the Property highlighted within the EICR such as the cooker not being earthed, the witness said he did not believe this nonsense.

56. There was no re-examination.

### **Summing up by First Respondent**

57. The First Respondent said legal aspects had not been followed. He was not given a copy of the tenancy agreement or the EICR. He was lied to about the EICR. Things were not handled Properly. It was a very unpleasant experience. The Respondents could have had a better property for the rent charged.

### **Summing up for the Applicant**

58. The Respondents paid rent until September 2022. They left the Property in July 2023. The rent outstanding is £7650. If the tenancy deposit is returned to the Applicant, that will be deducted from the outstanding balance in respect of any order granted.

59. The essence of the Respondents' defence includes the fact that the Applicant failed to give them a copy of the tenancy agreement. A full copy was provided in 2022. It is not clear why this would justify withholding the full rent. The witness claimed the Respondents were given the relevant documentation at the start of the tenancy. The EICR was due for renewal in March 2022. The installation was deemed unsatisfactory. There were difficulties in getting an electrician in the post-Covid period from March to November 2022. There were then attempts to get access to carry out remedial works. The First Respondent knew the Property did not meet the repairing standard but he stubbornly refused to allow access. Mr Caldwell had tried to engage with the Respondents with no success. An order for access was granted by a Tribunal, and the Respondents suddenly surrendered the keys to the Property. There was no evidence of other minor issues of disrepair. The allegations of inappropriate behaviour were not specific. These issues, and the noise from neighbours, were not justification for withholding rent.

60. The First Respondent ought to have been shouting about the condition of the Property following the EICR. The situation smacks of someone using their knowledge of the absence of certification to justify withholding rent. The First Respondent's solicitor requested the EPC. This was subsequently provided. This was not justification for withholding rent.

61. The credibility of the First Respondent was not good. He had not set funds aside to cover the rent. He had other debts. If he was genuine, he would have responded to Mr Caldwell's letter and engaged to allow access. If the First Respondent had engaged, the Applicant may have been pragmatic and considered an abatement of rent. If the Tribunal was to allow an abatement of rent, it should be moderate and no more than £100 per month for the period from October to December 2022. Account should be taken of access issues in January 2023. The Applicant has incurred significant expense in instructing legal representation. She may struggle to enforce any order granted, particularly when the Respondents' addresses are unknown.

## **Questions from the Tribunal**

62. Asked whether there was an EICR prior to March 2022, Mr Caldwell said he would be astonished if there was not. He does not have a copy. He was not representing the Applicant at that time.
63. The First Respondent stated that there probably was not an EICR prior to March 2022. He had asked for it and it was not provided.
64. The Tribunal asked the First Respondent for his response to the suggestion of an abatement of £100 for October to December. The First Respondent said that was unacceptable.

## **Findings in Fact and Law**

- 65.
- (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 1<sup>st</sup> March 2020 at a monthly rent of £850.
  - (ii) The Applicant appointed Mr Nino Verrico to act as her agent in matters relating to the tenancy.
  - (iii) In March 2022, an Electrical Installation Condition Report (“EICR”) was produced following an inspection of the Property. The electrical installation was deemed unsatisfactory with five areas categorised as C2.
  - (iv) The Applicant failed to provide a copy of the EICR to the Respondents.
  - (v) The Applicant failed to appoint an electrician to address the issues with the electrical system until November 2022.
  - (vi) An Energy Performance Certificate (“EPC”) for the Property mistakenly showed the banding to be band G.
  - (vii) On 30<sup>th</sup> September 2022, the First Respondent emailed the Applicant requesting a copy of the EICR, the tenancy agreement, and the EPC.
  - (viii) The Property was inspected for the purposes of an updated EPC on 4<sup>th</sup> October 2022.
  - (ix) On 24<sup>th</sup> October 2022, the Respondents’ solicitor wrote to the Applicant calling, among other things, for the banding of the Property in terms of the EPC to be addressed, stating that the Respondents would be withholding rent until this was addressed.
  - (x) An updated EPC was issued on 8<sup>th</sup> November 2022 classifying the Property as band E.

- (xi) Attempts to gain access to the Property for electrical works were not successful in November 2022, due to issues with both the electrician and the Respondents.
- (xii) Access agreed for 4<sup>th</sup> January 2022 was refused by the Respondents.
- (xiii) On 7<sup>th</sup> March 2023, a Notice to Leave was served upon the Respondents on the ground of rent arrears.
- (xiv) On 5<sup>th</sup> April 2023, the Applicant's agent applied to the Tribunal for Right of Entry.
- (xv) On 15<sup>th</sup> May 2023, a letter was issued to the Respondents calling on them to identify suitable dates for access. The Respondents failed to reply.
- (xvi) A Tribunal assigned 10<sup>th</sup> July 2023 as the date for access.
- (xvii) On 10<sup>th</sup> July 2023, the Tribunal attended at the Property and left as the Applicant's agent and contractor were not in attendance.
- (xviii) On 10<sup>th</sup> July 2023, when the Applicant's agent and contractor attended, the First Respondent surrendered the keys to the Property.
- (xix) The Respondents paid no rent from October 2022 to the end of the tenancy.
- (xx) The First Respondent is in debt to the electrical supplier who supplied the Property during the tenancy.
- (xxi) The Applicant failed to ensure the Property met the repairing standard at all times throughout the tenancy by failing to ensure that the installation for the supply of electricity was in a reasonable state of repair and in proper working order.
- (xxii) During November 2022, the electrician appointed to carry out works was unable to attend on occasion.
- (xxiii) During November 2022, dates suggested for electrical work to be carried out were not convenient for the Respondents.
- (xxiv) The Respondents failed to allow access to the Property for the purposes of carrying out electrical inspection and works in January 2023.
- (xxv) The Respondents failed to provide suitable dates for access to the Property in May 2023.

- (xxvi) The Respondents did not have full enjoyment of the Property from March 2022 due to the electrical installation being unsatisfactory.
- (xxvii) The Respondents are entitled to an abatement of £100 per month of the rent for the periods from May to December 2022, and from February to April 2023.
- (xxviii) Rent lawfully due to the Applicant is outstanding.
- (xxix) The Applicant is entitled to recover rent lawfully due.

### **Reasons for Decision**

66. The Tribunal considered there were elements of the evidence of both Mr Verrico and the First Respondent that were not credible or reliable. The First Respondent was evasive in certain areas, including in relation to the whereabouts of the Second Respondent, giving several different and contradictory responses to questions on this matter. Mr Verrico was flippant and evasive in giving evidence.
67. The Tribunal found that the issues of failure to provide a full copy of the lease, noise levels, and ownership of the Property were not relevant to the matters before it.
68. The Tribunal made no findings regarding the front door of the flat, having been provided with insufficient evidence that the door does not meet the required standard, or that it breached the repairing standard.
69. The Tribunal was satisfied that the EPC rating of the Property was band E throughout the tenancy.
70. The Tribunal made no findings as to whether the safety and other certification was provided to the Respondent at the start of the tenancy, having considered that there were reliability issues with the evidence of the First Respondent and the witness for the Applicant, and a lack of evidence, on this point.
71. The Tribunal accepted that the First Respondent began to ask for a copy of the EICR at some stage after the inspection was carried out on 14<sup>th</sup> March 2022. The Respondents were entitled to receive a copy of the EICR within four weeks of its completion. It was not clear when the EICR was provided to the Applicant, but Mr Verrico stated in a message to the First Respondent on 7<sup>th</sup> April 2022 that the Applicant had a copy. The Respondents ought to have received a copy by the end of April 2022. For some reason, the Applicant continued to refuse to provide a copy until the end of the tenancy. The Tribunal took the inference from this refusal that the Applicant was trying to cover up the fact that the installation was unsatisfactory. The Applicant stated in an email dated 26<sup>th</sup> October 2022 that the system required to be upgraded

and it was a small job. This appeared to be contradicted by the fact that the work needed was to take a half day.

72. Not only did the Applicant fail to provide a copy, but she also failed to appoint an electrician until November 2022. The Tribunal was not persuaded by Mr Verrico's evidence that the electrician was busy after lockdown, and that no work could be carried out until November 2022. While this was undoubtedly a difficult time to get work carried out, there was no evidence provided of attempts made, or whether different electricians were approached. The installation was deemed unsatisfactory with five areas classified as C2 on the EICR. This means that at least five areas of the installation had the potential to be dangerous and cause injury, and the Applicant did not immediately try to remedy this. The Tribunal considered there were legitimate issues in respect of the electrician's, and the Respondents', availability in November 2022 that prevented the work being carried out. The Applicant then appears to have delayed from January to April 2023 before seeking entry through the Tribunal, with no evidence lodged of any attempt to gain entry during those months.
73. The First Respondent's evidence was that he obtained his own EICR at some time after March 2022 and that this clarified for him that the installation was unsatisfactory. It was difficult to understand why he would not then be demanding that action be taken to remedy the defects, particularly when there were allegations of a socket catching fire. The text messages lodged as evidence in respect of the socket showed a lack of concern on both sides as to the seriousness of this matter. The First Respondent ought to have insisted that the Applicant's representative took action in this regard, and the Applicant's representative ought to have insisted on taking action.
74. Instead of ensuring the installation was made safe, the First Respondent refused to allow access for inspection and works in January 2023, because he had not been given a copy of the EICR. The First Respondent also suggested that inappropriate behaviour towards the Second Respondent by Mr Verrico had affected the issue of giving access for works. If, indeed, any such behaviour took place, it would not justify continuing to withhold access. If the Second Respondent did not want to be alone in the Property with Mr Verrico, arrangements ought to have been made for her to vacate the Property or ensure she had someone present with her when he was there. The Respondents appear to have chosen to live in a property where the electrical installation was unsatisfactory and unsafe, rather than allow the works to be carried out.
75. The Tribunal accepted the First Respondent's evidence that the Respondents withheld rent because of the lack of certification; however, the Tribunal considered there were other factors that influenced the Respondents' decision to withhold rent, including financial difficulties, a perception that they were getting less for their money than other tenants within the block of flats, and a general dissatisfaction with minor issues within the Property. The Respondents were entitled to withhold rent as a means to compel the Applicant to carry out works. The rent would become due when the work was

carried out, but the Respondents failed to allow access for the work to be carried out in January and May 2023. It was incumbent upon them to allow access, and have the work carried out.

76. The Applicant failed to ensure the Property met the repairing standard throughout the tenancy, by failing to have a satisfactory EICR. The Applicant, thus, failed to meet her contractual obligation to the Respondents, who did not have full enjoyment of the Property. The Tribunal considered it appropriate to make a modest abatement of £100 rent per month for the period from May to December 2022, and again from February to April 2023. The Tribunal excluded January 2023 because of the Respondents' unreasonable refusal to allow access for work to be carried out that month, and again from May 2023 onwards, when the Respondents unreasonably failed to provide suitable dates for access.

### **Decision**

77. An order for payment is granted in favour of the Applicant in the sum of £6550 with interest thereon at the rate of 4% per annum.

### **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.

# H. Forbes

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Legal Member/Chair

26<sup>th</sup> February 2024  
Date