



**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**

**Chamber Ref: FTS/HPC/CV/20/2373**

**Re: Property at Flat 2/1, 116 Dundrenan Road, Glasgow, G42 9SH (“the  
Property”)**

**Parties:**

**Birchgrove Properties (Glasgow) Limited, (c/o JPB) 2 Carment Drive,  
Shawlands, Glasgow, G41 3PR (“the Applicant”)**

**Ms Shona McLean, Flat 2/1, 116 Dundrenan Road, Glasgow, G42 9SH (“the  
Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment in relation to unpaid rent together with interest from the date of decision.
2. The application contained:- a copy of the tenancy agreement; rental statement; and email correspondence between the parties

3. On 15 January 2021 a case management discussion took place. Both applicant and respondent appeared. Reference is made to the case management discussions note; and also, the direction issued subsequent to the CMD.
4. In accordance with the direction issued, additional documents had been lodged by both parties. The respondent had not fully complied with the terms of the direction. She advised that she had recently been involved in a serious car accident, three weeks before the hearing and this had prevented her from being able to submit documents and deal with the matters raised in the direction. The applicant advised that he was prepared to proceed with the hearing notwithstanding the failure of the respondent to fully comply with the terms of the direction.
5. The hearing took place on 25 February 2021. Verbal evidence was concluded that day; the hearing was then adjourned to a future date in order that the tribunal and parties were able to view the video evidence of the windows in the property submitted by the respondent. A further hearing was held on 19 April 2021. No further evidence was led at that hearing. The applicant had submitted a written submission prior to the hearing.

#### Hearing

6. The applicant confirmed that he was seeking an order for payment for unpaid rent. The respondent's position was that she was not disputing that the rent arrears were outstanding however she considered that there should be a deduction made to the rent arrears due to outstanding repairs and the condition of the property.
7. The applicant noted that the respondent had raised matters as to why she had not paid rent at the CMD. The applicant advised that it appeared that the respondent was looking for a rent abatement. The applicant said he had considered the matters raised by the respondent in the CMD and he would address each matter in turn. He also advised that he was prepared to be flexible with the respondent in relation to any payment order granted allowing her to enter into a suitable repayment arrangement.
8. The matters raised by the respondent at the CMD were:-

- (1) That she had no working boiler for a period of 12 weeks; she had reported this to the letting agents and there had been a delay in getting this fixed, and she could only use the property to sleep in.
- (2) There had been an agreement to reduce rental payments in around 2013 as she had lost her job.
- (3) Her flat had been broken into two times.
- (4) She had been furloughed for the last 6-8 months.
- (5) The toilet had not worked properly, and the landlord had refused to fix it; and she had had to pay for repairs herself amounting to £150.
- (6) Her living room window was being held up by towels and there was no seal on the window.
- (7) There had also been an issue with her sky aerial connection which had turned out to be leak in her roof. Having someone out to look at the aerial issue had cost her £90 on each occasion.
- (8) There had been a leak in the bathroom ceiling.
- (9) There was no phone line when she moved into the flat.
- (10) The carpets were extremely worn.

9. The applicant advised that he did not think it was fair and reasonable to have a rent abatement imposed upon him, where he had not been advised of issues or concerns with the property. He submitted that it would risk punishing a landlord for something he was not aware of and could not have done anything about.

10. He advised looking at the respondent's email to the tribunal of 6 February which listed the issues she was seeking a rent reduction for, in his opinion, there had been no intimation about any of the matters except for issues 1, 5 and 9 (the aerial system; central heating system; and new locks on the door). He submitted that all other matters had not been intimated and therefore could not justify an abatement. The

applicant submitted that there with no explanation by the respondent as to why there had been no intimation given to him before now. He suggested that if an abatement was sought by the respondent, then she had to submit evidence to support her position; her failure to lodge information to justify each matter was relevant.

11. Turning to the issue about the condition of the windows in the property. The applicant at the hearing advised that he had not yet viewed the video evidence submitted. He suggested that the video would be helpful in looking at the issue. He advised that this was the first time he had been advised that there was a video to view; previous reports provided to him did not show the window held up by cardboard; he submitted that there was no evidence of any repairs issue regarding the windows being intimated to him before these proceedings.
12. The applicant submitted that he did not consider that the email chain he had submitted supported the position of the respondent. She had not notified the landlord or his agents about the matters that she now claims exist at the property.
13. The applicant advised that if there were any maintenance issues to address, he was happy to address them. However, he said having regard to the email chain he felt unable to accept that the respondent was entitled to withhold rent. It was necessary to consider why the window issue had not been reported earlier. The respondent had not communicated at all with the landlord or his agent. He submitted that the question was not if the window needs attention, but more about if it was relevant for discussion at a hearing on abatement. If the respondent was sincere about concerns about the window, she should have reported them several years ago. She said that the windows have been in poor condition for 9 years and she says she reported it 5 years ago, yet there was no evidence that she had done so.
14. He disputed that the landlord was aware of any issues with the windows; and he suggested that it was not reasonable to just award an abatement where the landlord had not been aware of a problem. To do so would risk punishing the landlord for something he was not aware of.
15. Only issues 1, 5 and 9 had been notified. He submitted the other issues she raises had not been intimated and would not justify an abatement; he advised that issues 1,5 and 9 had been intimated and therefore could justify an abatement. The respondent advised that she did not dispute that she had not paid rent. There were

several reasons for this including personal circumstances. Turning to the issues she had raised she advised as follows:-

1. Ariel this had been reported to the landlord, and was shown on the rent statement in October 2018, the landlord advised it was not their responsibility. The cable needed replacing. It was on the outer part of the building, it had worn out over the years, it had worked and then it broke. She advised that she had engineers out to look at it. She had been advised that it was an issue for the landlord. She had had Sky engineers out twice. She advised that she had no other documentary evidence to support her position. No invoice was kept as she had been told it was her responsibility. She submitted that it had cost her £250 to get the new aerial installed. She referred to photographs submitted. She advised it was not a communal aerial. The aerial had been there when she initially took entry of the property. She believed it was the landlord's responsibility not hers.
2. Toilet Flush she advised that that had been broken. She had toilet flush fixed herself and she had paid for it. She advised that she had reported this issue to the agents when they had been out to do an inspection. She told him that it was not flushing, and he advised her that she needed to get that fixed herself. She advised that she had to have it replaced and it cost her £80 pounds. She did not keep the receipt. It had been a friend who had fixed it for her.
3. Phone Line this was installed in around 2015. The phone line broke one day. She advised that she had contacted the landlord's agent. The agent advised that he had contacted the landlord and had been told it was not the landlord's responsibility. She had to put a new phone line in herself and it cost her £180. She accepted that there was no email evidence that she had contacted the landlord and she had no receipt to evidence that she had paid for a replacement.
4. Bathroom ceiling the issue arose due to the tenant in the upstairs flat having work done, around 4 years ago. There had been water coming through the ceiling in the bathroom. She advised that she called the landlord's agent and advised that there was a hole in the ceiling. She then paid to have the bathroom ceiling replastered. She advised that she had contacted the landlord's agent and they have advised her that the landlord would not fix it. She advised that she had spent £80 getting it replastered. She advised that she had never applied to First Tier tribunal for any breach of the repairing

standard. She confirmed that there had been a leak in the bedroom ceiling in August 2019 and the landlord had looked at this leak. This had been reported to the factor and the issue had been resolved.

5. Central heating system she advised that the heating system had broken, down and she had been without any hot water for three months. She had spoken to the landlord's agent. It was reported in March 2020 and was not replaced until later. She conceded on further questioning, that it may not have been as long as 3 months and may have been around 6/7 weeks. She advised it was very frustrating having no hot water and heating. It was very cold at the time. She said that she had advised the landlord's agent that if she had no central heating, she should not have to pay rent. She advised that she had not put this in writing. She submitted that she should not have had to pay rent for a time when there was no central heating. She advised that she did not withhold rent at that time. She was asked if she had put any money aside any point, "withholding rent" and she advised that she had not.
6. Carpets the respondent advised that she had raised the issue regarding the state of the carpets, that they were so worn that her Hoover would not pick up dirt. She advised that the landlord had only done a couple of inspections since she had taken the property. She advised that she had spoken to the agent five years ago, he said he would get back to her about it, but nothing was done. They were the same carpets that were there since she moved into the property. She had raised it more than once, but nothing was ever done.
7. Windows she advised that there was a gap in the windows. The gaps had been there for five years and had been getting worse. There were no seals around windows in the property, except for the kitchen and bathroom windows. The bedroom and sitting room windows had no seals. She advised that she was scared to open the windows in the sitting room. She stated that there was a constant draft from the windows. She stated that she had raised this issue with the landlord's agent. She advised that she was told there was no issue with the windows. She advised that she had raised the issue in around August/September 2020. There had been an inspection on around 26 August 2020 and there was an exchange of emails. She referred to productions 3 and 4 in summarising the position. She advised that she had never received the landlord's email of 28 September 2020. The landlord referred to production 8 which was a copy of a letter repeating the issues in the 28 September 2020 email. He advised that this letter had been hand delivered to respondent's flat.

8. Door handles the respondent advised that there had never been any door handles on the internal door into the sitting room since she had moved in. She advised that she had notified the landlord when she moved in, but nothing was done about it.
  9. New locks on the front door she advised that the flat was burgled, in 2017. She contacted the landlord's agent; they did replace the lock straightway. She advised that she had not withheld rent due to the locks being replaced. She merely raised this matter as she did not consider that the flat had been safe.
16. The respondent submitted that she considered due to these issues she should be entitled to a reduction of 2 months rent, she accepted that she did owe rent, but thought that it would be reasonable to reduce the sum sought due to the issues that she had raised.
17. The applicant asked questions of the respondent. The respondent confirmed that she was looking for 2 months deduction from rent which amounted to £750. She advised that she was looking for reduction due to repairs amounting to £590; and central heating system and general condition amounting to £190. He noted that the respondent had confirmed that the leak in the bedroom had been fixed straightaway. He noted that there had been a reference to a washing machine replacement which had been carried out in one week in November 2018. He submitted that the respondent was happy when the central heating system was fixed in April 2018. He noted that the rent was paid by the respondent the day after the central heating system had been installed.
18. The applicant asked the respondent if she had obtained advice about withholding rent. She advised that she was told that she could withhold rent after what happened to her. She said that she had taken legal advice on this matter.
19. The applicant asked her about the toilet flush, he noted it was 2 years ago. He challenged the respondent, noting that he had fixed the washing machine and the central heating system, but then refused to fix the toilet flush. The respondent said yes that was correct. She advised it was a friend who had fixed it for her.
20. The applicant challenged the phone line, that it had not been referred to in August/September 2020 email.

21. Regarding the bathroom ceiling in 2017 the applicant noted that 2/3 months before, the door locks had been replaced. Further why would the upstairs neighbour say it was not their responsibility. The respondent said that the neighbour told her to contact the landlord. The respondent challenged the respondent as to how long she had waited until she had ceiling repairs undertaken. He noted that she had the repair done in one week. He challenged the credibility of speaking to the neighbour, contacting the landlord's agents, getting a response, organising the repair and it being carried out all in 1 week. The respondent submitted that this had all happened in that period.
22. Regarding the carpets, the applicant advised that there was no mention of the carpets in the 28 September 2020 emails. The applicant queried how often she had had the carpets shampooed. She advised she had done so a couple of times.
23. Regarding the windows, the applicant challenged the respondent that during the hearing the respondent was now claiming that there were additional windows which needed to be repaired. She advised that this was correct, more had deteriorated over the years. She advised that she was scared to open the bay window. The respondent advised that it appears to her that the window had come off its rail at the top, and there was cardboard that was now holding it up.
24. The applicant submitted that the door handle was never intimated before now. He challenged her that he had carried out other repairs then why not this matter.
25. The applicant challenged the respondent's evidence as to why she had not gone to a lawyer about these matters if she considered that they had existed for years. He submitted that these matters were only being raised because he had raised an application for repayment of the rent arrears. He submitted that there was no evidence of earlier intimation of these matters to him by the respondent. He submitted that much of the respondent's case turns on whether she intimated these matters to the landlord. He submitted that having regard to the date when the issues appear to have arisen there was no proof that she had contacted the landlord or his agent. He submitted that while there may be things in the flat that need to be looked at, he disputed that these were matters which could support an abatement of the rent.



26. He submitted that it was not credible that he had refused to fix the toilet flush while at the same time carrying out other repairs. He submitted the respondent was seeking abatement of £750. Of that sum £190 was for the general condition. In terms of issues 2,3,4,6,and 8 there was no proof or explanation for these issues and the respondent's position was not credible; some of the issues occurred several years ago. He submitted that the phone line expense had not been proven. He submitted that had the toilet flush issue been intimated he would have had a repair carried out. He submitted that there had been no intimation of the bathroom ceiling. He submitted that the respondent's position was not credible that the landlord would address broken door locks but not a leaking bathroom ceiling. He submitted that the carpets were 9 years old and will suffer from wear and tear, but the carpets had never been raised as an issue. He advised that the internal door handle had never been intimated, and further if the respondent was getting plumbers and plasterers to do work in the house, he failed to understand why she had not arranged to put a door handle on. She had lived in the house for 9 years and never raised the issue. He submitted that the aerial system had also not been intimated. He was also not convinced that this was in any event an obligation of the landlord. It was not referred to in the lease agreement.
27. Having regard to the windows, he submitted that there was no evidence of concerns about the windows until September/October 2020. This was despite an exchange between the parties in August 2020. He submitted that the inspection report showed the window open, contrary to the respondent's claim that she was too scared to open them. He submitted if intimated the landlord would have investigated them.
28. He referred to the letter he sent on 28 September 2020; and then again on 24 October. 2020, he submitted that there had been no engagement with the respondent after that correspondence.
29. The central heating system had never been before associated with a reduction in rent. He advised that he was sympathetic to the respondent that the heating system had broken down, but there was no mention of rent being withheld. He said that it was fixed in around 6 weeks. They had attempted to repair it first, and when this was not possible, they had replaced it. He considered that this was a reasonable approach for him to take and that the time taken was reasonable.

30. He referred to the rent statement (production 2), the rental records do not track that the tenant was withholding rent. Arrears had accrued and then also reduced. He advised that there had been no contact in this case from the respondent and he doubted the sincerity of the respondent in her evidence. He submitted that there was evidence of the landlord carrying out repairs on a number of occasions, and the arrears have increased. He invited the tribunal to find that there was no pattern of the landlord failing to carry out repairs.
31. The respondent reiterated that there were issues with the windows, she referred to her video evidence and advised that it supported her position. The landlord advised that he did not doubt that there were issues with the windows, but he reiterated that they had not been intimated to him until the end of September 2020. The respondent disputed this and re-iterated that she had intimated the matter on several occasions.
32. The applicant advised that he was not seeking interest as set out in the lease agreement but would be happy to accept interest as the tribunal considered reasonable.
33. When the hearing recommenced on 19 April 2021. The parties did not make any further submissions. The applicant confirmed that the current rent arrears were £3147, and it was this sum he sought an order for payment for. The respondent advised that she had been paying £400 towards rent and arrears.

#### Findings in Fact

34. The Tribunal found the following facts to be established:
- a) A tenancy agreement was entered into between the Applicant and the Respondent for the property. It commenced on 1 March 2012.
  - b) Page 2 of the tenancy agreement provided that monthly rent was £375.
  - c) Page 3 of the tenancy agreement provided that interest on late payment of rent may be charged by the landlord at 20 % per year.

- d) The rent account statement showed amounts due each month, amounts received, and rent outstanding and showed arrears as of 1 November 2020 of £3,222.
- e) As at 19 April 2021 rent arrears were £3147.00.
- f) That a central heating in the property had broken down in around March 2018. It had been intimated to the landlord. A new central heating system had been installed in around 24 April 2018.
- g) The respondent had paid rent on 25 April 2018 of £600.
- h) 1 October 2018 a fault with the aerial had been reported; the tenant was advised it was not the landlord's responsibility.
- i) 1 November 2018 a washing machine fault had been reported; and it was replaced.
- j) 1 August 2019 a leak in bedroom ceiling was reported; it was resolved by the factor and the flat above.
- k) 1 July 2020 landlord contacts the tenant about rent arrears
- l) On around August/September 2020 the tenant contacts the landlord to report issues with property.

### Reasons for Decision

35. Section 16 of the Housing (Scotland) Act 2014 provides that the First Tier Tribunal has jurisdiction in relation to actions arising from a number of tenancies, including those arising under an assured tenancy within the meaning of section 12 of the Housing (Scotland) Act 1988. As this tenancy is an assured tenancy, we were content that we had jurisdiction to deal with this case.

36. The respondent did not dispute that rent arrears were outstanding or the level of the arrears, the dispute was limited to whether there should be some reduction in the rent arrears through abatement or damages.

37. There was evidence that the respondent had resided in the property for a number of years, it appears without any great issue. It also appeared that she had paid her rent regularly. From the rent account there had been some arrears on the account for a number of years, however they did not appear to be excessive or had led to any payment proceedings being raised. From around March 2018, about the time that the central heating broke down, arrears do appear to have started creeping up, although in August 2018 they had reduced to £350. From August 2019 the arrears are shown as consistently over £1000. There was no deducible reason for the arrears creeping up at that time, and we were not convinced that it was due to the central heating system breaking down. We did consider that there may have been a degree of frustration on the part of the respondent in terms of some aspects of the condition of the property.
38. In considering the respondent's evidence, the tribunal found her credible in as much as she did not dispute the arrears. She raised issues about the condition of the flat which she provided some evidence of in photos produced. There was however little evidence that she had in fact notified the landlord or his agent about all of the issues she referred to or of the landlord refusing to address them. Some of the issues which she said had been raised, were referred to in the rent statement, it showed matters being notified and noted how they were resolved either by being addressed within a reasonable timeframe, or by the landlord not accepting it was an obligation of his (see the sky fault).
39. The applicant also appeared credible in his evidence. He did not appear to dispute his responsibility, but considered it was only triggered if he was aware of the matter. In particular, the landlord did not dispute that he had duties towards maintenance where he was aware of the issue, and he appeared to concede that issues with the windows needed to be looked; and further the carpets may have worn out. This in itself is not an unreasonable position to take, however we take the view that if his agent was aware of the matter then the landlord's duty is engaged. The respondent spoke to the landlord's agent carrying out some inspections and her raising issues with them, we consider that her evidence on this point was credible. The applicant did not deny the inspections had taken place. We consider that issues such as the condition of the carpets and the windows should have been identifiable by the agent. The applicant did not appear to dispute the respondent's evidence that both issues needed attending to. The tribunal considered that these two matters would support an abatement of rent.

40. The other matter that the tribunal considered relevant was the central heating system, it having broken down for seven weeks. We consider that it would have caused inconvenience to the respondent, both in terms of the property lacking heat and also, hot water. It appears reasonable to us that she should be entitled to an abatement of rent for this matter.
41. We considered that there was no other evidence to support the other issues she raised, some of which were of some age. We did not find her evidence about the toilet flush or bathroom ceiling particularly credible. We preferred the evidence of the applicant that where matters had been clearly intimated to him they had been addressed in some way even if it had been to refuse to undertake them.
42. Based on the evidence submitted and having regard to the papers including the application, further papers received from the Applicant and the Respondent and the video evidence, we consider that an appropriate abatement in this case should be £375 the equivalent of one month's rent.
43. The applicant sought an award of reasonable interest in this matter. The tribunal were not prepared to award interest in this case. We consider that there appears to be a long history of a landlord tenant relationship, where the respondent has regularly paid rent. The respondent has never sought to deny the arrears and to this end has already been attempting to make payment towards the rent arrears. It appeared that she struggled with finances during the covid-19 pandemic and had personal issues. We note that she has been making efforts to repay these arrears before the hearing commenced. We consider unless we are obliged to order interest in terms of a contractual duty, we are entitled to make any award that we considered reasonable and, in this case, we consider that no award of interest would be reasonable.
44. Accordingly, we consider that we should make a payment order of £2, 772.00.

#### Decision

45. We grant an order in favour of the Applicant for the Sum of TWO THOUSAND SEVEN HUNDRED AND SEVENTY-TWO POUNDS (£2,772.00) STERLING.

## 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.

# M Barbour

30 April 2021

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Legal Member/Chair

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Date