Housing and Property Chamber
First-tier Tribunal for Scotland

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Reference number: FTS/HPC/CV/20/1448**

**Re: Property at 3 Grange Gait, Monifeith, Angus DD5 4PL ('the property')**

**Parties:**

**Mr Hin Shun Hung and Mrs Rong Zhang ("the Applicant")**

**Ms Nicola Forster, 13 Tircarra Place, Broughty Ferry, Dundee DD5 2QE ("the Respondent")**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment by the respondent of the sum of £4600 should be granted in favour of the applicant.**

**Background**

1. An application form was received on 29 July 2020 from the applicant's representative for a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 rules"). Further information requested by the tribunal administration was then added to the application, which was accepted on 9 September 2020.

2. The applicant was seeking payment of rent arrears of £6400 from the respondent in relation to the property, being the amount of arrears outstanding up until 8 June 2020.

3. A case management discussion (CMD) arranged for 21 October 2020 was postponed at the respondent's request. The postponed CMD was held by remote conference call on 26 November 2020. The tribunal issued a decision

on 26 November 2020 in the respondent's absence, granting an order for payment by the respondent to the applicant for the sum of £6400 in rent arrears.

4. The respondent applied for a recall of the decision of 26 November 2020. The tribunal issued a decision granting the recall on 4 February 2021. In that decision, the tribunal noted that the respondent had indicated in her written submissions that she wished to dispute the money owed. In all the circumstances, the tribunal considered that on balance, it was in the interests of justice to give the respondent a further opportunity to dispute the applicant's claim. The tribunal urged the respondent to obtain legal advice on the matter as soon as possible.

5. A second CMD was arranged for 16 April 2021. The tribunal issued a direction to the parties on 17 March 2021 requiring the respondent to submit written representations setting out her reasons for opposing the application, together with any supporting evidence. Written representations were received from the respondent on 6 April 2021. An email was also received from the applicant's solicitor, confirming that the applicant was now seeking an order for the sum of £5200, following the refund to them of the full tenancy deposit of £1200.

6. The second CMD was held on 16 April 2021 by remote conference call. The applicant was represented by Mrs Tania Royle of Baillie Shepherd Solicitors. The respondent was present on the conference call and represented herself.

7. The respondent confirmed that she was seeking an abatement of the rent due in respect of various alleged repairs which had not been carried out by the applicant during her tenancy. She had raised a number of issues in her written representations:

   i. In October 2019, the burglar alarm had gone off multiple times during the night. The applicant's agent was unable to provide the code to turn it off. The matter was not resolved for a week.
   ii. For a month, there had been no hot water or heating in the house. The respondent told the tribunal that she thought this had occurred in around March 2019.
   iii. There had been various issues with faulty wiring in the property, including problems with lighting in the kitchen and one of the bedrooms.
   iv. The oven in the property was dangerous. When switched on, it caused other electrical appliances to trip. It had also burnt food cooked in it. The respondent had been left without an oven over Christmas in 2019.
   v. The toilet in the ensuite of the respondent's bedroom had been leaking into her son's bedroom downstairs. Following unsuccessful repairs, it had been left disconnected and could not be used. The matter was never resolved.

vi. There was no carbon monoxide alarm in the property when the respondent moved in. She said that she had to buy one herself.
vii. The applicant's agent had asked her to leave the property because the house was being sold, but this had not happened, and the property had been let out again.
viii. She felt that she had been forced to move her family out of the property during lockdown, following what she took to be threats from the applicant's agent if she did not do so.

8. She said that she had been withholding the rent until the repairs were carried out. She had fully intended to pay it once these were resolved, but this had not happened. She appeared to accept that she had an obligation to pay the rent and said that she was willing to pay whatever amount the tribunal thought was fair.

9. The tribunal chairperson informed the respondent that some of the other issues which she had raised in relation to the notice to leave and the alleged misrepresentation as to why she was being asked to leave could not be considered by the tribunal in relation to this application. The tribunal chairperson suggested that she may wish to seek advice on these issues.

10. Mrs Royle indicated that she had not previously been aware of some of the issues raised by the respondent and that she needed to take instructions from the applicant about these. She pointed out that the applicant was unable to address any alleged repairs issues until they were notified of these, and that they were entitled to a reasonable amount of time to address them. She also said that the respondent had not allowed access for repairs to be carried out.

11. The tribunal considered that it was unable to make a decision at the second CMD on whether the sum sought should be abated, and if so, to what extent, on the basis of the evidence before it. The tribunal therefore determined that a hearing was required to resolve the parties' dispute.

12. The tribunal issued a direction to the parties on 19 April 2021, directing them to provide written representations and various information in advance of the hearing. Written representations were received from the applicant's representative on 7 May 2021 and from the respondent on 12 May 2021.

**The hearing**

13. A hearing was held on 27 May 2021 by remote conference call. The applicant was represented by Mrs Royle. The applicant called Mrs Rui Dong, who manages the property on behalf of the applicant ('the applicant's agent'), as a witness. Mrs Dong gave evidence through a Mandarin interpreter, Ms Yueshi

Gu. The respondent was present on the conference call and represented herself. She called no witnesses.

**The evidence**

14. The following evidence was considered by the tribunal:
    - Application form received on 29 July 2020, together with further information received from the applicant's representative which was added to the application before it was accepted.
    - Copy private residential tenancy agreement between the parties dated 24 August 2018.
    - Rent statement showing the rent outstanding up until 8 June 2020 to be £6400.
    - Registers Direct copy of Land Register title ANG9304, which confirmed that the house is owned by the applicant.
    - Copy Scottish Landlord Register registration details for the property, confirming that Mr Hin Shun Hung is the registered landlord and that Mrs Rong Zhang is registered as a joint owner.
    - Written representations received from the respondent on 6 April 2021.
    - Written representations received from the applicant's representative on 7 May 2021, including two legal authorities (*Rutkowska v Garvie* [2021] UT 5; and *Taghi v Reville* 2003 Hous. L.R. 110); an affidavit from Mr Paul Smith, electrician; and various copy documents and copy text messages / email correspondence.
    - Written representations received from the respondent on 12 May 2021.
    - The oral representations of the applicant's solicitor, the respondent and the applicant's witness at the hearing.

**Summary of the issues**

15. The issues to be determined by the tribunal were:

- Whether there should be any abatement of the rent arrears owed by the respondent to the applicant in respect of the alleged repairs issues raised by the respondent and their impact on her enjoyment of the property.

- If so, what the amount of any rent abatement should be, in light of the extent and duration of the repairs issues and the alleged difficulties experienced by the applicant in obtaining access to the property to carry out the required works.

**Findings in Fact**

16. The tribunal made the following findings in fact:

i. The private residential tenancy between the parties began on 29 August 2018. It ended when the respondent moved out on or around 8 June 2020.
ii. The rent payable under the tenancy agreement was £1200 per month, payable in advance on the 29th of each month.
iii. The applicant is the owner of, and the registered landlord for, the property.
iv. The property was managed on behalf of the applicant by Mrs Rui Dong.
v. The respondent had paid the rent late in each month between 29 January 2019 and 29 October 2019. She had made no further rental payments after 29 October 2019.
vi. The tenancy deposit of £1200 paid by the respondent to the applicant was refunded in full to the applicant by the tenancy deposit scheme.
vii. The outstanding rent arrears owed by the respondent to the applicant at the date of the hearing totalled £5200.
viii. Repairs were carried out to the kitchen lighting on 13 January 2020 by Paul Smith, electrician.
ix. The respondent notified Mrs Dong that there were issues with the oven at the property on 5 November 2019. She contacted Mrs Dong again on 20 December 2019, to say that she was still waiting to hear from the electrician.
x. The oven was replaced on 17 January 2020.
xi. The Electrical Installation Condition Report (EICR) dated 31 August 2018 in respect of the property produced by Paul Smith of Wired Dundee Ltd, an NICEIC registered contractor, found that the electrical installation was satisfactory and included no C1 (danger present) or C2 (potentially dangerous) observations.
xii. The respondent notified Mrs Dong on 20 December 2020 that there was a leak from her bedroom ensuite into the bedroom below.
xiii. The respondent refused access to the plumber to fix the leak in the ensuite on 13 January 2020.
xiv. An email was sent to the respondent by Mrs Royle on behalf of the applicant on 6 February 2020 enclosing a landlord notification of repair letter regarding access to the property for the plumber to repair the leaking toilet.
xv. The leak from the ensuite toilet was not resolved during the respondent's tenancy.
xvi. The respondent notified Mrs Dong that the burglar alarm was faulty on 17 October 2019
xvii. The burglar alarm was dismantled by the respondent in October 2019 and was never repaired or replaced by the applicant during her tenancy.
xviii. The respondent was without heating and hot water from 29 April 2019 until 22 May 2019. She asked the applicant's agent for an abatement of rent in recognition of this, but the applicant refused this.
xix. The respondent notified Mrs Dong on 9 January 2020 that there had been no carbon monoxide alarm in the property at the start of her tenancy,
xx. The gas safety certificates for the property dated 20 August 2018 produced by GM Heating, Dundee, and 12 July 2019 produced by SP Gas Services Dundee, both registered gas safe engineers, both stated that there was a carbon monoxide alarm in the property.

**The applicant's submissions**

17. Mrs Royle confirmed that the applicant sought an order for payment for the sum of £5200. She said that while the applicant accepted that they had a legal obligation to ensure that the property met the repairing standard, they had carried out repairs within a reasonable time once these had been notified to them by the respondent. She said that the reason that some of the issues had not been resolved quickly was that the applicant had had difficulty obtaining access to the property to carry out repairs. She submitted that in refusing access, the respondent had frustrated the applicant's attempts to carry out the required repairs. The respondent therefore had no grounds for an abatement of the sum owed in respect of unpaid rent.

**The respondent's submissions**

18. The respondent suggested at the hearing that the applicant had not been registered as a landlord at the time they entered into the tenancy agreement. She submitted that the applicant could not therefore rely on its terms. Mrs Royle objected to this, noting that this issue had not previously been raised by the respondent, and that she had produced no evidence to support this allegation. Mrs Royle told the tribunal that the applicant was the registered landlord and that their registration number was set out in the tenancy agreement. The tribunal noted that the landlord registration details for the property showed that Mr Hin Shun Hung is the registered landlord and that Mrs Rong Zhang was registered as a joint owner. The tenancy agreement provided the applicant's landlord registration number at section 3 on page 7. The tribunal was therefore satisfied that the applicant was registered as landlord for the property, and did not consider this matter further.

19. The respondent appeared to accept that she had been under a contractual obligation to pay the rent during her tenancy. She argued, however, that the applicant had not carried out their contractual obligations under the tenancy agreement to keep the property in good repair. She had therefore begun to withhold the rent from November 2019 until the various repairing issues which she had raised were addressed. She confirmed that she was seeking an abatement of the unpaid rent in recognition of the impact the repairs issues had on her enjoyment of the property.

20. The respondent told the tribunal at the second CMD that some of the repairs issues had existed when she moved into the property in August 2018. She had raised some of the issues prior to November 2019, but had not felt that she was in a position to object strongly during that time, as she had been having difficulties in paying the rent due to changes in her work circumstances.

21. She pointed out that she had paid a substantial monthly rent, which she had paid in full until November 2019, including during the period when there was no heating or hot water. She said that she had major concerns about the safety of her family in relation to the oven, the wiring and the lack of a carbon monoxide alarm, and that these issues had not been addressed within a reasonable timescale. If the various issues had been dealt with more quickly, she said she would have stayed in the property.

22. Regarding the alleged difficulties experienced by the applicant's contractors in contacting her and in gaining access to the property to carry out repairs, the respondent explained that as a nurse she worked night shifts three times a week, which involved a lengthy commute to and from Aberdeen. She was accordingly often sleeping during the day and it could be difficult to find a suitable time during the day due to her shift work.

23. The evidence produced by the respondent to support her abatement claim was mostly in the form of printed text message conversations dated between October 2019 and June 2020. Most of these exchanges, some of which were also submitted by Mrs Royle in her representations, were between the respondent and Mrs Dong. The respondent pointed out that some of the messages had come from a different mobile phone number. She was unsure who these had come from, although Mrs Royle said she believed that some of them were from Mrs Dong's husband.

**The relevant law**

24. While the respondent had used the term *'withholding'* in her text message correspondence with Mrs Dong and in her evidence to the tribunal, in fact the issue to be considered here was whether there should be any *abatement* of the rent due. The distinction between these concepts is perhaps not entirely clear.

25. While withholding (or retention) of rent in order to compel a landlord to carry out repairs is a recognised common law remedy, it is generally expected that the rent becomes payable when the defect has been addressed (Robson and Combe, *Residential Tenancies* (4th edition), at para 7-71). The respondent told the tribunal that she had been withholding the rent until the repairs were carried out. She had intended to start paying the rent again once this had been done, but some issues had not been addressed during her tenancy.

*26.* As Stalker (*Evictions in Scotland*, 2nd edition, at pp.128-129) notes, however, the remedy of retention has two purposes. In addition to its use to compel the landlord to carry out repairs, the tenant *"will invariably wish to assert a right to have some of the retained rent abated, or will seek damages to be sought from the amount retained.*" (ibid at p129). As Sheriff Principal Caplan stated in

*Renfrew District Council v Gray* (1987 SLT (Sh Ct) 70: *“if the tenant does not get what he bargained to pay rent for it is inequitable that he should be contractually bound to pay such rent.”*

27. Stalker notes (ibid, at p.359) that in respect of a private residential tenancy (PRT), the right of retention is an equitable remedy subject to the First-tier Tribunal’s jurisdiction. While the landlord has a legal obligation to comply with the repairing standard under sections 13 and 14 of the Housing (Scotland) Act 2006 (‘the 2006 Act’), as set out in the model PRT agreement, this does not displace the tenant’s right to exercise the common law remedy of retention of rent.

28. The tribunal accordingly has jurisdiction to consider a claim for abatement of rent. Both parties accepted that this was the issue under consideration in this case. While the respondent raised issues relating to the manner in which she had been asked to leave the property, and to the references provided by the applicant to potential landlords, she accepted that these issues could not be dealt with by the tribunal in relation to this application.

29. Section 14 of the 2006 Act requires a landlord to ensure that a house meets the statutory repairing standard (as set out in section 13 of the 2006 Act) at the start of a tenancy and at all times during the tenancy. Section 13(2) provides that this duty applies only where a) the tenant notifies the landlord or b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with the duty. In terms of section 13 (4), the landlord complies with the repairing standard duty where the work required to be carried out is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required. Section 16 (4) of the 2006 Act states that a landlord is not to be treated as having failed to comply with the repairing standard duty where the purported failure occurred only because the landlord lacked necessary right (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.

30. The respondent had not brought an application before the tribunal in respect of the applicant’s alleged failure to ensure that the property met the repairing standard. It appeared from a text message produced by the respondent dated 9 January 2020 that she was aware that such an application could be made and had suggested to Mrs Dong that she may do so. She said at the second CMD that she had decided not to bring such an application due to her work circumstances at the time and the onset of the coronavirus pandemic. There had accordingly been no property inspection as would normally be carried out by a tribunal in such cases, and no tribunal decision on whether the applicant had complied with the repairing standard had been made. Either or both of these might have assisted the present tribunal in making its decision.

## Reasons for Decision

31. Against this background, the tribunal heard evidence on each of the specific repairing issues in respect of which the respondent argued that there should be an abatement of the outstanding sum which she owed.

### *1. Faulty wiring*

32. The respondent told the tribunal that during her tenancy there had been problems with the wiring in the property. The main issue appeared to relate to the lighting, in the kitchen and elsewhere. She said that the lights would not all come on at the same time, that the lights would go off when she plugged in appliances, and that when she switched one light on, another would go off. There were also issues with the cooker switch tripping the lights. She was concerned that the wiring in the property was old and posed a fire risk.

33. The respondent said that she had first notified Mrs Dong about the issues with the lighting on 5 November 2019, but the electrician had not come to fix the lights until 13 January 2021. While she had produced copy text messages sent on that date regarding the faulty oven and dishwasher, however, she was unable to provide evidence that she had notified Mrs Dong about the lighting issues on that date.

34. Mrs Royle told the tribunal that the lighting issues had not in fact been notified until December 2019. The only evidence before the tribunal that the respondent had notified the applicant about wiring issues was a text message dated 4 December 2019 from Mrs Dong to the electrician (item 4.4 of the applicant's productions) asking him to go and look at these. There was evidence before the tribunal that the electrician had some difficulty in arranging access to the property to do the works, as discussed further below in relation to the oven. The parties agreed that the electrician had come to repair the lights on 13 January 2020.

35. The respondent told the tribunal that the electrician had only changed the light bulbs in the kitchen on that date, rather than carrying out repairs. The matter had not been satisfactorily resolved during her tenancy. She said that she had not notified Mrs Dong that the lighting was still faulty because she had been asked to leave by then and was focused on looking for another property.

36. The tribunal noted that the current EICR relating to the property dated 31 August 2018 (item 3 in the applicant's inventory of productions), which was carried out shortly after the respondent's tenancy began, stated that the electrical installation was satisfactory. It had been carried out by Paul Smith of Wired Dundee Ltd, a NICEIC registered contractor, and raised no serious concerns about the wiring or the lighting in the property.

*2. Dangerous oven*

37. The parties agreed that the respondent had notified Mrs Dong on 5 November 2019 that the oven in the property was failing to heat quickly. The respondent said that she thought the oven was extremely dangerous, as it was heating food to very high temperatures. Later that day, Mrs Dong sent the respondent a text message to say that the electrician, Paul Smith, would contact her about the oven. In that message, she included Mr Smith's telephone number. Mrs Royle explained that this had been done because it was difficult to get hold of the respondent. The following day, 6 November 2019, Mrs Dong arranged with the respondent to come round that evening to look at the oven, but the respondent cancelled later that day due to a family emergency.

38. The respondent said that she had waited for Mr Smith to contact her as instructed, but that she had not heard from him. She sent Mrs Dong a text message on 20 December 2019 saying that the electrician had not contacted her. Mrs Dong replied later the same day to say that the electrician had contacted the respondent twice, but that there was no answer. There was before the tribunal a text message from Mr Smith to Mrs Dong dated 11 December 2019 (at item 4.4 of the applicant's productions), stating that he had called the respondent and left a message, but had not yet heard from her. The applicant's solicitor produced a signed affidavit from Mr Smith dated 13 May 2021, in which he stated that he had contacted the respondent twice by telephone and left her a message asking her to contact him. He stated that she had not returned his calls and did not contact him until about 3 weeks later, at which point he was about to finish work for the Christmas holidays.

39. The respondent said that she had never received any voicemail messages from Mr Smith. She did not have access to her phone during working hours. She said that when she did contact him, he did not seem to know who she was. By the time she spoke to him, he had finished up until January. She was therefore left without an oven over the Christmas period, leaving her unable to cook Christmas dinner. She had produced text messages from Mrs Dong dated 22 December 2019 stating that she would buy a mini oven the next day, and on 24 December 2019 saying that the oven was out of stock.

40. The parties agreed that the oven was replaced by the electrician on 17 January 2020. The respondent was therefore without a functioning oven for more than two months after she notified the applicant's agent about it, including over the Christmas period. Regarding the respondent's concerns that the oven was dangerous, the EICR dated 31 August 2018 did not indicate any safety concerns, although no separate PAT test certificate had been provided in respect of the oven.

*3. Leak from the ensuite toilet into a downstairs bedroom*

41. The respondent first notified Mrs Dong that there was a leak from the ensuite

toilet into the bedroom below on 20 December 2019. She said that the plumber had come out relatively quickly, before Christmas. He had fixed it, but just after he left, she flushed the toilet and it quickly became clear that it was still leaking through the ceiling below. She had therefore disconnected the toilet again.

42. The electrician had arranged for the plumber to come to the property with him on 13 January 2020, when he came to fix the lighting. The respondent had however refused to let the plumber in on that date. The respondent said that while she was happy for the electrician to visit the property that day, she did not want the plumber to come into the ensuite as she would be sleeping in her bedroom after working a night shift. She told the tribunal that she could not sleep anywhere else in the house due to issues with light coming in.

43. The plumber then arranged to come to the property on 16 January 2020. The respondent said she waited in all day, but the plumber did not come. Shortly after this, she was told to leave the property and the relationship between the parties broke down. The leak was never fixed, and the toilet had remained disconnected from 20 December 2020 until the end of her tenancy.

44. After that date, various other appointments were arranged, but the respondent said that none of these were suitable. She said that she had not heard from plumber after 17 January 2020. The applicant had produced a copy of a text message between Mr Smith and Mrs Dong dated 24 January 2021 (item 4.8 of the applicant's productions) – stating that the respondent had *"cancelled on him* [ i.e. the plumber] *again".* The respondent said that she only worked 3 twelve-hour night shifts a week and suggested that it should not therefore have been too difficult for the plumber to arrange a suitable appointment.

45. On 6 February 2020, Mrs Royle sent the respondent on behalf of the applicant a 'landlord notification of repair' letter using the template provided by the Housing and Property Chamber (item 5.1 of the applicant's productions). This letter stated that the applicant required access for the plumber on 11 February 2020 to repair the leak. In the covering letter, which was sent by both email and ordinary post, Mrs Royle stated that the applicant had provided the respondent with the required 24 hours' notice to repair the leak on three occasions, namely 17, 24 and 28 January 2020.

46. Mrs Royle told the tribunal that the plumber was unable to obtain access on 11 February 2020, and that no response to the letter was received from the respondent. The respondent said that she did not receive the letter, although she appeared at times to be confusing this with the notice to leave. She had told the tribunal at the second CMD that she had received the notification of repair letter, and Mrs Royle had produced evidence that it had been sent to her by email (item 5 of the applicant's productions).

47. The respondent said that the plumber and Mrs Dong had let themselves into the property at around that time without permission while she was asleep following a night shift and that she had asked them to leave. The tribunal observed that if this occurred it was not an appropriate way for the applicant to obtain access, but that this issue was not directly relevant to the matters under consideration in relation to the present application.

48. Mrs Royle confirmed at the second CMD that the applicant had never made an application to the First-tier Tribunal to exercise the landlord's right of entry, as the respondent had then been issued with a notice to leave.

***4. Faulty burglar alarm***

49. The respondent told the tribunal that the burglar alarm at the property had gone off several times during October 2019. It had gone off during the night twice on 17 and 18 October, waking the neighbours. She had contacted Mrs Dong by text message asking her for the code, but she had replied saying that she did not have this. She said that Mrs Dong had told her not to call again, and to take the battery out. She had produced a text message from Mrs Dong dated 17 October 2019 telling her to dismantle the alarm and throw it away.

50. There was no battery in the alarm, and the respondent said she eventually had to contact a burglar alarm company to ask them how to stop it. Eventually she had managed to disconnect it. The alarm had been left like that and had never been repaired.

51. Mrs Royle said that the applicant had viewed this as a one-off incident which appeared to have resolved itself. The respondent pointed however to the copy text message from Mrs Dong dated 17 October 2019, which stated that she would install a new alarm later.

***5. No hot water or heating for a month***

52. The respondent was initially unsure about the dates when this problem had occurred, and she had produced no supporting evidence. She agreed, however, that the issue had occurred well before she had stopped paying her rent. Mrs Royle said that Mrs Dong had been notified by the respondent that the boiler had broken down on 29 April 2019. The respondent confirmed that this date appeared to be correct. The applicant's written representations stated that the gas engineer had come out the next day to inspect the boiler and had to order a part for it. It had been fixed on 2 and 3 May 2019 but then stopped working again. The issue was eventually resolved on 22 May 2019 following a wait for another replacement part. The respondent agreed that this date sounded about right.

53. Mrs Royle said that the issue had been resolved as quickly as possible and within a reasonable time. The respondent disputed this, saying that she

believed it could have been dealt with more quickly had the applicant not gone through their insurance company. She said that she and her family had been without heating and hot water for four weeks. She said that at the time she asked Mrs Dong to reduce the rent to reflect this, but this request had been refused. Mrs Dong confirmed in her oral evidence that the respondent had asked her to reduce the rent. She said that she had asked the applicant about it, but they had refused to do this.

***6. No carbon monoxide alarm in the property***

54. The respondent told the tribunal that there was no carbon monoxide alarm in the property when she moved in. She was concerned about this as it was an important safety issue, and that she had bought an alarm herself. This had cost her around £15 but there were no installation costs, as her partner, who was a joiner, had installed it. She had not notified Mrs Dong that there was no alarm until 9 January 2020, however. Ms Dong had replied saying that she would install a carbon monoxide alarm. The respondent submitted that this suggested the applicant was aware there had been no alarm at the property.

55. Mrs Royle referred the tribunal to two gas safety certificates relating to the property dated 20 August 2018 and 12 July 2019 (items 1 and 2 of the applicant's productions), both of which clearly stated that a carbon monoxide alarm had been installed. The tribunal noted that the first of these certificates was dated just 10 days prior to the commencement of the respondent's tenancy. The respondent reiterated that she was certain there had been no alarm in the property when she moved in. The second gas safety certificate therefore dreferred to the alarm she had installed.

56. Mrs Dong told the tribunal that the respondent had only raised this issue after she stopped paying the rent. She agreed that she had told the respondent she would install an alarm but said that she had then checked the gas safety certificates which confirmed that there was one in the property. She had not therefore taken any further action in relation to the alarm.

***Abatement of rent***

57. The tribunal then considered whether the respondent had established grounds on which to allow an abatement of the rent arrears sought by the applicant. In doing so, the tribunal could only consider the evidence placed before it by the parties. By the date of the hearing, it had been almost a year since the respondent left the property. The tribunal was being asked to form a view on circumstances which had occurred more than a year, and in some instances up to three years earlier, when there had been no tribunal inspection or determination on whether the property met the repairing standard.

58. It was clear from the evidence before the tribunal that the respondent had

been inconvenienced by several disrepair issues during her occupancy of the property. She had paid a considerable sum each month in rent and was entitled to expect the property to be in good repair. The tribunal noted, however, that most of the disrepair issues she had experienced were relatively minor in nature and had not generally lasted longer than a few months. The property appeared to have been generally in good repair during the respondent's tenancy. There was no evidence that it was not wind and watertight and reasonably fit for human habitation; that the structure and exterior were not in a reasonable state of repair and in proper working order; or that the property did not meet the tolerable standard. An EICR and gas safety certificates which were current during the tenancy had been obtained and indicated no issues of particular concern. The property was a four bedroomed house, and there was no evidence that any of the rooms were not capable of being used.

59. The tribunal considered that the respondent had established grounds for abatement in relation to some of the repairs issues she had raised. In considering what level of abatement would be appropriate, the tribunal considered the sheriff court decision in *Taghi v Reville*, which was submitted to the tribunal as legal authority by Mrs Royle. In that case, the sheriff principal said that *'the appropriate remedy in less serious disrepair cases is to seek a modest abatement of rent, in other words argue that because the landlord is in breach of contract a reasonable proportion of the rent should be deducted*." The tribunal also noted that the case law relating to court actions for damages for suffering caused to tenants as a result of poor living conditions indicates that the awards made have generally been fairly low. This is the case even where tenants have suffered from serious issues such as dampness over a period of years (Robson and Combe, Residential Tenancies, 4th edition, para 7-69).

60. Bearing these authorities in mind, the tribunal considered that any abatement of rent allowed should be modest and in reasonable proportion to the issues raised and all of the circumstances of the case. These circumstances include the landlord's repairing standard responsibilities, whether repairs were carried out within a reasonable time; and the extent to which the respondent's actions contributed to any failure to carry out repairs within a reasonable time. The tribunal considered whether any abatement should be applied in relation to each of the repairs issues raised by the respondent in turn.

61. **Faulty wiring** - on the basis of the limited evidence before it, the tribunal concluded that the respondent had notified the applicant of the issues with the lighting/wiring in early December 2019. The applicant's agent had taken action to address the issue fairly quickly. While the matter remained unresolved for more than a month, including over the festive period, this was

at least partly due to communication issues between the electrician and the respondent, as discussed below in relation to the oven.

62. The respondent said that the lighting issues were never resolved, but she had not notified the applicant of this following the apparently failed repairs on 13 January 2020. The applicant could not therefore have been expected to take further action to resolve the matter. While there was agreement that the electrician had carried out repairs to the lighting, there was no documentary evidence to support the respondent's allegation that the wiring was otherwise faulty. The tribunal does not consider that the respondent has established grounds for abatement in relation to the lighting or wiring.

63. **Dangerous oven** – while there was no documentary evidence to support the respondent's claims that the oven was dangerous, she clearly believed this to be the case. In any case, it appears to have been accepted by the applicant that the oven was not in a reasonable state of repair and in proper working order, as required under the repairing standard. It was also agreed that the respondent was without a functioning oven for more than two months after she first notified the applicant's agent about it. This included the Christmas period, when the respondent needed it to cook Christmas dinner. The key question, however, was whether the applicant had carried out the repairs within a reasonable time. It was clear that the applicant's agent had initially responded quickly when she was notified of the problem by the respondent. The delay in resolving the matter appeared to have resulted from difficulties in communication between the electrician and the respondent.

64. As the responsibility to organise repairs fell on the applicant rather than the respondent, it was perhaps understandable that the respondent had waited for the electrician to contact her as she had been instructed to do. The applicant's agent had asked the electrician within a reasonable time to contact the respondent to arrange a time to carry out repairs. The electrician appeared to have done so, but the respondent said that she had not received his messages. The tribunal notes that the respondent had waited for more than six weeks, however, to notify the applicant's agent that she had not heard from the electrician. By that point, it was almost Christmas and it was not possible for the electrician to attend to the oven before Christmas. The applicant's agent did appear to try to resolve the matter by offering to buy a mini oven as a temporary solution, although this was unsuccessful.

65. While the tribunal considers that the respondent could have alerted the applicant sooner to the fact that she had not heard from the electrician, and accepts that she was perhaps difficult to contact due to her shift working, it does not accept that the delay was entirely due to her actions / inaction. It was the applicant's responsibility as landlord to ensure that repairs were carried out within a reasonable time. The tribunal therefore considers that a modest

abatement should be made in recognition of the inconvenience and distress caused to the respondent as a result of being without a usable oven for more than two months, including over the Christmas period.

66. **Faulty burglar alarm** - the tribunal considers that the alarm was a fixture or fitting provided by the applicant as landlord under the tenancy and should therefore in terms of the repairing standard have been in a reasonable state of repair and in proper working order. The respondent did notify the applicant's agent of this issue when it arose, and it was clear that no attempt was made by the applicant to repair or replace it. The respondent was therefore left without the protection and security afforded by the burglar alarm for the last 8 months of her tenancy. While the respondent did not raise this as a major concern, the tribunal considers that she is entitled to a modest abatement in respect of this matter, as it was not repaired by the applicant within a reasonable time.

67. **Leaking pipe-** the for the last six months of her tenancy, the respondent was without a functioning toilet in her ensuite, although she did have access to at least one other operational toilet elsewhere in the property. It was clear that the applicant's agent had responded quickly when the respondent first notified her of this issue in December 2019. While the tribunal has some sympathy with the respondent's position regarding what occurred after that time ( i.e. her refusal to provide access to her bedroom ensuite during the day when she was asleep, and the plumber then failing to turn up when she had waited in all day), there had clearly been several unsuccessful attempts by the applicant thereafter to arrange access for the plumber.

68. It was unclear on the basis of the evidence before the tribunal why this had happened, but it does appear to the tribunal that the respondent had not made efforts to facilitate the repair. On the balance of probabilities, the tribunal concludes that the applicant made reasonable efforts to repair the leak within a reasonable time, but that this had not been possible due to the difficulties encountered by the applicant in obtaining access. While the applicant had not brought a right of entry application to the First-tier Tribunal, the tribunal considers that the applicant had taken reasonable steps to obtain access to carry out the repairs, in terms of section 16(4) of the 2006 Act. The tribunal does not therefore consider that the respondent has established reasonable grounds for an abatement in respect of this matter.

69. **Hot water and heating** -while this occurred some months before the respondent began to withhold her rent, the respondent and her family clearly suffered inconvenience and distress for around four weeks as a result of this problem. The tribunal notes that she did seek an abatement of rent during the time when she was without hot water and heating, but this was refused. Given the essential nature of these facilities, this is an issue which might be

expected to be fixed quickly. The tribunal considers that this matter was not resolved within a reasonable time, and that a modest abatement in recognition of this would be appropriate.

70. **Carbon monoxide alarm** - while this is clearly an important safety issue, and the repairing standard requires a carbon monoxide alarm to be provided, the respondent did not raise this with the applicant until she had been in the property for around 17 months. By that time, there was an alarm in the property. While the tribunal was unable to establish with certainty whether there was an alarm in the property at the start of the tenancy, the existence of a gas safety certificate dated 10 days prior to that indicating that there was one in place suggests that on the balance of probabilities this was the case. The tribunal did not therefore consider that the respondent had established grounds for abatement in relation to this matter.

71. The tribunal therefore determines that a modest abatement of the rent due should be made in recognition of the inconvenience, distress and loss of enjoyment of the property suffered by the respondent as a result of the applicant's failure to carry out repairs to the oven, hot water and heating and the burglar alarm within a reasonable time. The tribunal determines that an appropriate and reasonable sum in respect of the abatement was £600, being 50% of one month's rent.

**Decision**

The tribunal grants an order for payment by the respondent to the applicant for the sum of £4600.

**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.**

| | 16 June 2021 |
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| **Legal Member/Chair** | **Date** |