Upper Tribunal for Scotland

2026UT65
Ref: UTS/AP/26/0044

DECISION OF

Sheriff O'Carroll

ON AN APPEAL AGAINST A DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND (HOUSING AND PROPERTY CHAMBER) IN THE CASE OF

Mr Graham Lundie

Appellant

- and -

Mr David Dickson and Miss Carrie Richmond

Respondents

FTS Case Reference: FTS/HPC/PR/24/4941

Decision

28 August 2026

The appeal against the decision of a First-tier Tribunal for Scotland (Housing and Property Chamber) dated 5 January 2026 is allowed for the reasons set out in the statement of reasons below. The matter is remitted, with directions, for redetermination to a freshly constituted First-Tier Tribunal for Scotland.

Statement of Reasons

[1] *Background.* On 5 January 2026 a First-Tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal"), in a claim for damages of £24,000 made by the current respondents in terms of section 71 of the Private Housing (Tenancies)(Scotland) Act 2016, upheld in part the claim by the respondents for damages arising from alleged disrepair to the subjects of the tenancy arising during the period November 2021 to July 2024. It found that some heads of claim were substantiated and made an award of damages against the appellant of £9,804.50, comprising £3,000 damages for "stress and inconvenience" and £6,804.50 in respect of a retrospective abatement of rent.

[2] The appellant sought permission to appeal on various grounds from the tribunal. Neither appellant nor the respondents are legally represented. By way of decision dated 4 March 2026 the tribunal refused permission to appeal. The appellant renewed his request to this UT. On 8 July 2026, following a hearing by way of Webex at which the parties appeared unrepresented, each speaking to their written submissions, this Upper Tribunal granted leave to appeal on grounds which are stated below.

[3] For ease of reference, hereon, I will refer to the appellant as the landlord and the respondents as the tenant.

[4] On 21 August 2026 this Tribunal held a hearing by way of Webex on the appeal at which the landlord and tenant all appeared. All supplied further submissions in advance of the appeal as ordered by this Tribunal, all of which have been taken into account by this Tribunal as well as the submissions advanced at the earlier hearing. The essential position of the landlord is that as regards certain items of alleged disrepair, the tribunal was wrong to find them proved and further, was wrong to have made a financial award against him it was excessive. He points to a large amount of documentary material and his submissions to the tribunal to support his position. The tenant's essential contention is that he advanced a large amount of evidence to the tribunal supporting the tenant's position as regards disrepair and their losses resulting



from that. The tribunal was fully entitled to decide as it did for the reasons that it gave. This Tribunal should adhere to the decision of the tribunal in full. The tenant made no cross-appeal against the decision of the tribunal to refuse various aspects of the tenant's claim against the landlord.

[5] This Tribunal has allowed a certain latitude to the parties when considering the bases of the appeal and the submissions to the parties, considering that neither has been legally advised or assisted, so as to ensure that justice is done to the appeal and the parties. In doing so, this Tribunal has carefully examined what has been said by the parties and the terms of the written decision by the tribunal and in particular various legal issues raised by the terms of the tribunal's decision which became apparent only after close examination, as may be seen in this decision. It was thereafter necessary for this Tribunal, to put the essential bases of the appeal (and answers) into a conventional form comprising arguable errors of law raised by the appeal and the tribunal's decision as follows. It is argued that the tribunal erred in law in the following ways. There is some overlap between them.

5.1. *Ground 1.* It failed to determine the reasonable time within which repairs should have been carried out. A landlord is only liable for losses resulting from disrepair if the damage has been reported to the landlord and the landlord has failed to remedy within a reasonable period of time. It failed to make adequate findings in fact and give adequate reasons as regards certain claimed items of disrepair and resulting losses.

5.2. *Ground 2.* The tribunal erred in its approach to damages for inconvenience and abatement of rent leading to double counting and/or excessive calculation of compensation.

5.3. *Ground 3.* In its assessment of abatement of rent, it failed to make an equitable assessment leading to excessive awards.

5.4. *Ground 4.* As regards damages for inconvenience, it failed to give adequate reasons and took account of irrelevant matters.

5.5. *Ground 5.* The compensation awarded for a faulty gas boiler did not take account of compensation previously awarded by another FTS tribunal for a similar fault. The tenant has thus been overcompensated.

5.6. *Ground 6.* The tribunal failed to give adequate reasons for its award of abatement of rent in respect of alleged faulty bi-folding doors and failed to recognize that no report had been made to the landlord of the alleged fault.

5.7. *Ground 7.* The tribunal was wrong to include any element attributable to lack of carbon monoxide monitors, since that matter had already been determined at a previous FTS tribunal and no compensation was found due.

5.8. *Ground 8.* The award in respect of abatement of rent attributable to faulty decking was excessive. Further no adequate reasons or findings in fact were provided as regards that defect or loss.

The law

[6] Jurisdiction on the tribunal to consider civil claims (including damages arising from a private residential tenancy) in respect of private residential tenancies is conferred by section 71 of the Private Housing (Tenancies)(Scotland) Act 2016 ("PHTSA"), which also excludes concurrent jurisdiction of the sheriff. The tenancy which is the subject of this appeal is a private residential tenancy within the meaning of section 1 of the 2016 Act. Thus, the FTS has the same powers as the sheriff had prior to 2017 to determine civil proceedings arising from the tenancy and must therefore apply the same law.

[7] The tribunal does not explain the legal bases for the claims made by the tenant. That is unfortunate since a claim for damages must rest on a proven breach of a legal obligation. It is necessary at the outset in this decision to consider briefly the legal bases of the tenant's civil claim for damages.

[8] *Sources of repair obligations.* Potentially, there are three legal bases for claims for damages in respect of disrepair in the case of private residential tenancies. The first basis is contractual; that is, deriving from the terms of the tenancy agreement or lease between the parties. That agreement does not require to be in writing: section 3 PHTSA 2026. However, there are terms which are incorporated in all private rented residential tenancies as a matter of law (section 7 PHRTSA 2016 and the 2017 Regulations (SSI 2017/408) made thereunder). By section 10 of the Act, where the terms of the tenancy are not in writing the landlord must provide the tenant

with a document setting out the terms of the tenancy. So, it is possible in principle that a tenant may have contractual rights to repair depending on the content of any written lease and the proper construction of any ancillary documentation supplied by the landlord.

[9] In the present appeal, this Tribunal has not been provided with a copy of the tenancy agreement, neither party founds on it and the tribunal makes no reference to it. Neither is there any reference to any accompanying documents. It is assumed for the purposes of this appeal that the tenancy agreement is irrelevant for present purposes. Nonetheless, given that this matter is to be remitted to a differently constituted tribunal, that tribunal should determine at the outset what repairing duties were incumbent on the landlord and their source, which may or may not include the tenancy agreement or lease.

[10] The second source is the common law which, unless expressly disapplied in the tenancy agreement/lease, is binding on the parties. I deal with that further below.

[11] The third source is statute. In the private sector, Chapter 4 of the Housing (Scotland) Act 2006 applies to most private sector tenancies: section 12. That includes the "repairing standard". The repairing standard is a comprehensive repairing code providing a detailed scheme regulating the standard of repair of private sector tenancies at the commencement of and during the tenancy. The repairing standard in section 13 to 20 consolidates in a single place a variety of provisions bearing on repairing duties which are derived from the common law, statute and other material (such as building standards, the tolerable standard, electrical safety and Scottish Government guidance).

[12] That code also provides an enforcement mechanism: sections 22 to 28. In short, a tenant (or local authority) aggrieved by alleged disrepair in a tenancy, may make application to the tribunal. If the application is accepted, the tribunal will inspect, hear the parties and decide whether the standard has been breached. If the tribunal decides the repairing standard is breached, it must make a repairing standard enforcement order requiring remedial work. If the work is not done, the tribunal must inform the local authority and also decide whether to make a rent relief order reducing the rent by up to 90%. In effect, the tribunal may make a statutory rent abatement. It is a criminal offence to fail to comply with a RSEO.

[13] However, what of the position where a tenant may not be in occupation any longer and has suffered loss. Or the tenant is still in occupation and has suffered loss although repairs have been completed. Can that tenant rely on the repairing standard to mount a claim for damages (rather than a rent relief order)? That question is not answered by the terms of the legislation just mentioned. There is no express grant of such a right in the Chapter 4. Neither is the repairing standard incorporated into tenancy agreements as a matter of law (unlike, for example, the repair provisions found in schedule 10(1) to the Housing (Scotland) Act 1987, now repealed). While section 7 of the 2016 Act incorporates certain terms into all private residential agreements, those terms do not include the repairing standard (see SSI 2017/408). It may be that while the Scottish repairing standard applies to all private tenancies, the only methods of enforcing that standard (if neither the common law nor contract provide an alternative route) is via the route in sections 22 to 28. See also *Pompa's Trs v The Magistrates of Edinburgh* 1942 SC 119, 125 where the Court held that if a statute prescribes a special method for enforcing a statutory right, the general rule is that no other method of enforcement can be used.

[14] On the other hand, it might be said that the plain words of section 14 ("The landlord …must ensure that the house meets the repairing standard… at the start of the tenancy and at all times during the tenancy…") are unequivocal; that the means of enforcement provided is severable from the imposition of the repairing standard in private tenancies and does not preclude alternative means of enforcement, such as a civil claim for damages under section 71 PHTSA. It might also be argued that it is unlikely to have been the intention of the Scottish Parliament to create and impose a repairing code of this type which consolidates pre-existing law and has the general intention to improve the lot of tenants, while then restricting the means of enforcement to the limited Chapter 4 remedies.

[15] This Tribunal cannot rule on this question at this stage. It does not form a ground of appeal and no submissions have been made by the parties on that question. The answer will have to wait for decision on another day. In the context of this appeal, it may be assumed, without deciding the question, that the tribunal below worked on the basis that the common law applied. So, the landlord was under a duty prior to the commencement of the tenancy to

inspect the house so as to ensure that the house was at the commencement of the tenancy wind and watertight and in all other respects reasonably fit for human habitation. Thereafter, the landlord was obliged to carry out repairs or other works necessary to keep the house in that condition within a reasonable time of the tenant notifying the landlord of the need for such repairs or otherwise becoming aware of the need for such works. Assessment of the reasonableness of the time for repair might take into account: the nature of the disrepair; the effect on the tenant; the ease of specifying the repair; the means by which repair needs to be effected, the ease or difficulty in obtaining the necessary materials and contractors and so on.

[16] Those particular obligations are for practical purposes much the same whether one considers the repairing standard (see section 13(1)(a), section 14 and 19 of the 2006 Act) or the common law: *Wolfson v Forrester* 1910 SC 675 (landlord's duty to keep subjects wind and watertight; against ordinary encroachment of the elements); *Lamb v Glasgow District Council* 1978 (Notes) 64 (obligation to inspect at the commencement of the tenancy); *M'Kimmie's Trs v Armour* (1899) 2 F 156, 162 (if repairs completed within a reasonable time, the landlord has complied with its duty); *Bells Principles, s.1273*; *Rankine* Law of Leases in Scotland, pages 240-244; *Paton and Cameron* Landlord and Tenant, pages 130-134. See also *Robson and Combe* Residential Tenancies (4th ed.) paras 7-05 to 7-19 for an examination of the case law in this area. It is important also to note that the repairing obligations (whether statutory or common law) are not absolute: see section 13 and the case law referred to above. Ultimately, assessment of whether a legal repairing obligation has been complied with is a matter of judgment for the fact finder (normally in the private rented sector, FTS) on the evidence. This summary of a private landlord's repair and maintenance duties is far from complete. Fuller accounts may be found in the works cited above.

[17] *Remedies.* I turn to consider the question of the remedies available to a tenant who has suffered loss as a result of a landlord's breach of a repairing obligation. The remedy is a claim for damages, as is sought from the FTS by the tenant. A claim for damages is a restitutionary remedy: that is, to compensate the tenant for the loss caused by a breach of an obligation (contractual, statutory or common law) so as to return the tenant to the same position the tenant



would have been but for the breach, so far as money will allow. The onus is on the tenant to prove heads of damages. That may include the value of the tenant's property damaged or destroyed by the disrepair (for example damage to property destroyed by damp or mould, decanting costs, etc). Heads of damages may include *solatium*: compensation for pain and suffering where the disrepair has caused mental or physical injury to the person. They may include damages for inconvenience and/or abatement of rent. The tribunal in this appeal has made an award in respect of both heads last mentioned. It is necessary to explain briefly the law as regards those heads of claim.

[18] *Abatement of rent.* In *Renfrew District v Gray* 1987 SLT (Sh. Ct.) 70, the tenant resisted an action for payment of rent arrears of £740 on the basis that the house as a whole was completely uninhabitable, being in a serious state of disrepair. So, the tenant did not get effective possession of the house. The sheriff principal held that there are three remedies available for a tenant who does not get full or effective possession of a house (at page 72E). The tenant can withhold rent: but that is a temporary measure and does not govern the ultimate obligation to pay rent. Second, the tenant can claim damages if loss has resulted. Third, the tenant can claim an abatement of rent on the basis that he has not enjoyed what he contracted to pay rent for.

> "Rights to abatement of rent and damages for loss due to breach of the lease may in many cases be equivalent in practical terms, but they are different concepts. It is a prerequisite of damages that there has been a breach of contract and the quantification is based on established loss flowing from the breach. Abatement of rent as illustrated by the authorities is an equitable right and is essentially based on partial failure of consideration…abatement really is based on the fact that the tenant should not pay for rights he never enjoyed rather than loss suffered although in certain cases loss sustained may be a suitable measure of the abatement due" (page 72F).

[19] The sheriff principal's lengthy opinion is supported by further discussion under reference to a number of authorities concerning abatement in the case of disrepair. It is not necessary to explore that further in this decision. It suffices for the moment to note three aspects of the decision.. The first is that abatement of rent is an equitable remedy and is relative to the extent if any that the tenant has been deprived of full possession of the subjects of the tenancy; to the extent that the tenant has had less than full enjoyment of the property or partial failure of

consideration. Second, the remedies of abatement of rent on the one hand and damages on the other are distinct. Third, in many cases in practical terms, an assessment of loss based on abatement principles may be equivalent to an assessment of damages for inconvenience. So, the two remedies are conceptually separate but assessment of loss under one heading may, in some case, be a suitable measure of the abatement due.

[20] An award of compensation is often made in disrepair cases to compensate the tenant for the inconvenience caused by the disrepair. In *Mack v Glasgow City Council* 2006 SC 543, the tenant claimed damages for property damaged by dampness in her house and the inconvenience of living in the unrepaired house, all said to have been due to the landlord's breach of its repairing obligation. The court held that where a breach of contact (such as a contract of lease) caused the innocent party inconvenience (meaning physical inconvenience and discomfort and not personal injury), that may be reflected in an award of damages, not merely nominal: paragraphs [7], [15], [16]. Quantification of damages for inconvenience is a "jury question". Where this decision refers in short to "inconvenience" as a head of damages, that term should be understood consistently with the decision in *Mack.*

[21] There are many reported cases where the courts have awarded damages for inconvenience following breaches of repairing obligations. Some awards made by courts are summarised in *Robson and Combe* at paragraph 7-69; though since assessment is essentially a "jury question" and since every case will turn on its own facts, those figures cannot be regarded as anything more than illustrative. See also the Upper Tribunal decision in *Zhao v Dunbar* 2022 UT 25 and the assessment by that tribunal and Upper Tribunal of damages due.

[22] *The tribunal's decision.* I turn now to consider the tribunal's decision. The tenant claimed £24,000 compensation from the landlord for alleged disrepair in the house during the 32 months of the tenancy. The heads of claim alleged ten distinct items of disrepair being faults in: bifold doors; gas boiler; washing machine; outdoor decking; wood burner; CO monitors, smoke alarms, electrical installations as well as lack of cleanliness at check in and a water leak to the bedroom. The tenant claimed for costs directly incurred for: gym membership; carpet; heating; bedding; laundry; damage to health as well as inconvenience and abatement of rent.

The tribunal rejected all heads of liability except for the following: bifold doors; gas boiler; washing machine; decking and wood burner. For each of the items of disrepair, varying sums by way of abatement of rent were awarded, totalling £6,804. It awarded an additional global sum of £3,000 in respect of inconvenience. It rejected all claims for costs said to have been directly incurred by the tenant.

[23] The tenant does not appeal against the tribunal's decision as regards liability for disrepair to the washing machine and wood burner or the sums awarded by way of abatement of rent for those items. The tenant does not challenge the tribunal's decision as regards other items of alleged disrepair or costs disallowed by the tribunal. Therefore, those aspects are not disturbed by this Upper Tribunal decision and do not fall to be reconsidered by another tribunal.

[24] *Ground of appeal 1 and 7*. Ground 1 argues that the tribunal did not decide when reports were made of the need for repair, nor the reasonable time within which disrepair ought to have been fixed in respect of the bifold doors, gas boiler and decking nor has it given adequate reasons for its findings as regards disrepair and related matters.

[25] First, I should say a little about the law as regards adequacy of reasoning. A tribunal must give adequate reasons for its decision. The test may be found in the well-known decision of *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345. In short, a tribunal must give proper and adequate reasons for its decision which deal with the substantial questions in issue in an intelligible way. The decision must leave the informed reader in no real and substantial doubt as to the reasons for the decision and the material considerations taken into account in reaching it.

[26] The tribunal finds as a fact at finding x. that "the bifold doors were not fully wind and watertight throughout the duration of the tenancy. As a result, inclement weather resulted in water ingress and draughts". However, there is a paucity of explanation and findings as regards that conclusion. While the tribunal states that "it had regard to" when the various defects were reported to the landlord or agents, no specification of that is given. The only precise reference is in paragraph 28 of the decision which refers to a single email of 17 November 2021. However, the tribunal does not say that the email mentioned the bifold doors.

That absence of detail is all the more puzzling given that there was apparently no shortage of relevant material. Paragraph 2 of the reasons records that a large volume of written submissions and documents were submitted by both parties with a case file in excess of 1000 pages. It also records that it heard from the parties in full on each of the alleged items of disrepair. Yet, despite that material, there is no attempt made by the tribunal to summarise, contrast and resolve the parties' position on this item of disrepair; all the more puzzling given the landlords flat denial of knowledge of the alleged disrepair as regards bifold doors and the availability of documentary evidence which might well have established some important facts. Neither are there any findings as to what exactly the problem with the doors was, the effect on the tenant, the frequency of draughts and water penetration, what was required to be done to fix them, dates of reports of disrepair or what a reasonable period to effect repair would have been. All the tribunal says is that it prefers the tenant's evidence because the tenant lived there; rather than dealing with the whole evidence including documentary evidence (from both parties) which could have shed proper light on the facts. In short, the findings in fact and reasoning of the tribunal are insufficient to explain properly to the parties why it concluded as it did. That absence of reasoning and fact finding as all the more apparent considering the large award made to the tenant in respect of abatement for the doors. In failing to adequately explain its reasons as regards the alleged disrepair the tribunal fell into error.

[27] The position is similar with even greater force as regards the decking. The decking in question is a large area of decking surrounding a ground floor bay window and the bifold doors which enable access to the garden and garage in which laundry may be done. The only finding in fact as regards that item is that the decking "was not in a reasonable condition when the tenants moved into the property" a finding which is somewhat vague and is inadequate. There are no findings as to exactly what was wrong with the decking, what reports were made and with what result or what needed to be done by way of repair and how long that would reasonably have taken to complete. Neither is there any attempt made to explain or quantify the effects on the tenants of the disrepair. Especially given the large award made, full findings

in fact and reasoning were necessary. That failure to make adequate findings in fact and give adequate reasons was an error of law.

[28] As regards the disrepair of the boiler, no starting point for disrepair is identified (only that it was in September). Neither are there any findings in fact as to when that was reported to the landlord, what exactly was wrong, whether the fault was continuous (boiler unusable) or intermittent (boiler out of operation for short periods from time to time), cause of disrepair, what repairs were needed, the effects on the tenant and what was a reasonable period of time for repair. Without proper explanation for the disrepair and effect, proper assessment of liability for repair, and damages, is problematic. However, it does appear that there was no dispute as to the existence of disrepair to the boiler whatever the cause was and that the boiler was repaired. The landlord accepts liability for that, though he disputes the tribunal's award of abatement of rent in that respect in ground 5. Thus, the significance of the lack of findings in fact relates principally to the lack of findings and reasons as to the extent and effect of the disrepair and reasonable time to repair.

[29] There are separate grounds of appeal considered below as regards quantification of damages for these items.

[30] *Grounds 2, 3, 4 and 7.* I consider Grounds 2, 3, 4, and 7 together. Abatement of rent and damages for inconvenience are separate remedies. The tenant has claimed both from the tribunal and the tribunal has made an award for each. In principle, a tribunal is entitled to make separate awards in respect of each heading: see for example *Zhao v Dunbar* 2022 UT 25. However, it is important that when a tribunal does so, it recognises the nature of an award for abatement of rent being an equitable remedy (as explained in *Gray)*. As such, that award needs to take account of the whole circumstances when assessing an appropriate award. A tribunal also needs to make clear findings in fact as regards the basis for the abatement.

[31] When a tribunal considers also whether a separate award should be made in respect of inconvenience, it is also important that it clearly and accurately sets out those factors which go towards the assessment of the inconvenience caused and demonstrate that the factors going

toward abatement on the one hand and inconvenience on the other are distinguished, so as to avoid the risk of double counting.

[32] The tribunal explains its reasons for the assessment of inconvenience at paragraph 28 and 29 (and paragraph 32 as regards CO monitors). It refers to the tenants being impacted by the stress and inconvenience of multiple repair issues throughout the tenancy including lights, initial cleanliness, the carbon monoxide monitors, wood burner and decking. However, it appears that the tribunal has taken into account the stress and inconvenience claimed by the tenants in respect of alleged disrepair where the tribunal did not find there to be a breach of the landlord repairing obligation (such as the electrical installations, lights, cleanliness at the commencement). Half of the complaints of disrepair were rejected by the tribunal. All of the claims for actual financial loss were rejected. It is not at all clear whether the tribunal in its assessment of the overall award of inconvenience has allowed for these facts or whether it has taken account of unproven complaints of disrepair and alleged consequences in assessing inconvenience. The inconvenience must relate to repair work not done in breach of a landlord's repair duties. Repairs done timeously do not produce an entitlement to damages for inconvenience. Neither do unfounded reports of disrepair. The reasons are inadequate in that respect. Certainly, there is no explicit recognition that the unsupported nature of a number of claims was taken into account by the tribunal. Neither are there clear findings in fact as regards exactly what the effects of the disrepair on the tenant were, although there is limited reference to that in the reasons. The lack of reasoning and findings in fact is particularly notable given the sizeable award of £3,000 under that head of claim.

[33] In addition, since this Tribunal also finds that the tribunal's assessment of disrepair as regards the bifold doors, boiler and decking lack adequate reasons, reconsideration of those questions will also require reconsideration of the assessment by the tribunal of the global inconvenience award. This ground of appeal is upheld as regards the tribunal's assessment of the award in respect of inconvenience. The tribunal's awards in respect of abatements of rent are dealt with further below.

[34] The landlord submits that the allegation of inadequate CO monitors had previously been the subject of tribunal proceedings in 2024 at the instance of the tenant which was unsuccessful: see ground of appeal 7. In other words that issue had already been determined by another tribunal and was *res judicata*. No copy of that decision was supplied however and the only other decision concerning this property on the website of the tribunal is FTS/HPC/RP/23/4439. That decision makes no mention of CO monitors. This issue remains relevant because of the tribunal's findings in fact xxiii that the CO monitors did not comply with Scottish Government "guidance" from February 2000 until April 2024. That finding was, said the tribunal at paragraph 32, a serious matter and constituted "a breach of the statutory regulations". That was a matter taken into account by the tribunal in its assessment of the award of inconvenience and must have had a significant effect on calculation of the size of that award.

[35] There are some difficulties with that finding in fact. The basis for it is not explained anywhere in the decision. Further, the tribunal appears to confuse regulations with guidance. Third, neither the regulations referred to nor the guidance are specified or explained. Fourth, the legal relevance of that finding is unexplained. If the tribunal relies on section 13(7)(g) of the 2006 Act, the difficulties mentioned above as regards the enforceability of the statutory repairing standard arise and its relevance to considerations of damages at common law needs to be considered. If the legal basis for the finding is common law or contractual liability, that should have been explained. Accordingly, in that respect too, the tribunal has erred in failing to provide adequate reasons in so far as the CO monitor issue influenced its assessment of inconvenience.

[36] *Ground 5.* The landlord asserts that another FTS made a decision on another complaint made by the tenant concerning the gas boiler not working, which bound the tribunal. In that decision, FTS/HPC/RP/23/4439, the FTS rejected the tenant's complaint that the replacement boiler was unsafe, holding that a new gas boiler had been installed on 29 December 2024 and that gas safety certificate dated 29 December 2023 confirmed that the new boiler and kitchen hob and lounge fire were all working satisfactorily. That resolved the original complaint.



Contrary to what is argued in this ground of appeal, no award of compensation was made by the tribunal.

[37] However, as the tribunal in this appeal found in fact at xiv., the tenant and the landlord's agent had agreed a three-month reduction rent by 25% to compensate the tenant. That equated to about £1,162. So, although the landlord is mistaken as to the source of the compensation for the disrepair, compensation by way of abatement there was by agreement.

[38] Nonetheless, the tribunal decided, for reasons unexplained, to award an additional abatement of £1,162 for the same disrepair. Given that abatement is an equitable remedy, based on contract, given that the parties had freely agreed compensation therefor, being the abatement of rent, the tribunal ought to have explained why, and on what basis, it was entitled to open up and innovate on the contractual agreement between the parties in the absence of an agreement to do so, there being none. It is not immediately apparent that there is any proper basis on which such a decision could have been made. Again, there is a failure to give adequate reasons which is an error of law.

[39] *Ground 6*. The award made by way of abatement in respect of the bi-fold doors amounted to 5% of the rent for 32 months making a total of £2,480, about a third of the total sum awarded by way of abatement. That decision is not well-explained. For the reasons given in relation to this issue when considering ground 1 of appeal above, the tribunal failed to make adequate findings in fact or give adequate reasons and thus was in error of law. Thus, the award for abatement is similarly vitiated and falls to be reassessed. This ground succeeds.

[40] Ground of appeal 7. This ground is dealt with in in the discussion concerning ground 4 above. It succeeds for the reasons explained therein.

[41] Ground 8. The tenant complains that the tribunal's findings and reasons concerning the faulty outdoor decking are inadequate and the award excessive. The reasons aspect is dealt with in the discussion above in relation to ground 1. To reiterate, as regards effects, there is no finding as to what effects the defects had on the tenant. The decking was used as a route to the garage and garden. Nothing is said as regards the effect that the alleged disrepair had on functionality. Nothing is said about how often that decking had to be accessed or whether that



access was prevented or hindered by disrepair. The landlord's position is that there was a minor issue as regards the condition and decoration of the decking but nothing that affected functionality. The only finding in fact is that the "decking was not in a reasonable condition" at the outset of the tenancy. The tribunal does not explain adequately why it came to the view it did about the disrepair and effects. Nonetheless the tribunal awarded £2,480 as an abatement of rent in respect of the complaint about decking. Again, especially standing the size of the abatement awarded, the tribunal was under a duty to set out fully its findings of fact and reasoning so as to properly explain and justify the award for abatement. It did not. Absent proper findings, the award may well have been excessive. This ground of appeal succeeds.

[42] *Summary.* It follows from the foregoing that some of the findings of the tribunal cannot stand. In summary, they are as follows:

42.1. the finding that the tenant was entitled to an abatement of rent of £2,480 in respect of the bi-fold doors disrepair;

42.2. the finding that the tenant was entitled to an additional abatement of rent of £1,162.50 in respect of the gas boiler disrepair;

42.3. The finding that the tenant was entitled to an abatement of rent of £2,480 in respect of the outdoor decking disrepair;

42.4. The finding that the CO monitors did not comply with regulations and/or guidance;

42.5. The finding that the tenant is entitled to an award of £3,000 in respect of inconvenience resulting from disrepair.

[43] As for disposal, this tribunal is not in a position to remake the decision of the tribunal given that fresh findings of fact, and fact and law, require to be made. The application by the tenant is therefore returned to the FTS for reconsideration by a freshly constituted tribunal. The tribunal is required to redetermine the tenant's application for damages *only* as far as those matters identified in paragraph [42] are concerned. That will require the tribunal to fix a fresh hearing in order to: (a) determine the legal basis or bases on which the tenant's application proceeds; (b) hear the parties as regards their positions on the matters identified in paragraph [42] in the light of this Tribunal's decision and reasons; (c) make a fresh determination as



regards all those matters by making fresh findings in fact (and in fact and law if need be) with reasons as regards the disrepairs alleged; (d) make fresh findings in fact (and fact and law if need be) as regards the entitlement to damages of the tenant as regards abatement and/or inconvenience.

[44] For the avoidance of doubt, the findings and determinations made by the tribunal which have not been successfully appealed to this tribunal are not affected by this decision and will not be reargued. That includes those awards by way of abatement of rent not successfully challenged in this appeal.

A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within 30 days of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.

Sheriff O'Carroll
Member of the Upper Tribunal for Scotland