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 of the Housing (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1332

Re: Property at 203 Copland Road, Flat 1/1, Glasgow, G51 2UR ("the Property")

Parties:

Miss Serena Valeruz, Flat 1/1, 203 Copland Road, Glasgow, G51 2UR ("the Applicant")

Mrs Sara Matheson, [redacted] ("the Respondent")

Tribunal Members:

Ms H Forbes (Legal Member) and Mr M Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment should be granted in favour of the Applicant in the sum of £2039.25.

Background

1. This is an application for an order for payment lodged in the period between 15th June and 22nd September 2020, made under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Rules"). The Applicant was seeking an order for payment in the sum of £900 in respect of excess heating costs at the Property. The Applicant lodged email and text message exchanges between the parties, photographs, tenancy agreement and copy energy bills. The tenancy agreement in respect of the Property commenced on 15th December 2018.

2. Case Management Discussions ("CMD") took place by telephone conference on 26th November 2020, 19th January, 22nd February, 22nd March and 15th April 2021.

3. On 19th January 2021, an application dated 12th January 2021 was allowed, to amend the sum sought to introduce new issues, namely problems with the

buzzer and the washing machine in the Property, and to increase the sum sought to £6980.50.

4. Written representations and productions were lodged on behalf of both parties.

The Hearing

5. A hearing took place by telephone conference on 7th June 2021. The Applicant was in attendance and was represented by Ms Claire Cochrane, Solicitor. The Respondent was not in attendance and was represented by Ms Lorna Anderson, Solicitor.

Preliminary Matters

6. Agents informed the Tribunal that the text messages and emails lodged were accepted as true copies.

Evidence of the Applicant

Examination in Chief

The Boiler

7. The Applicant informed the Respondent on 9th January 2019 (Production 6), that a radiator and the heating were not working. The Applicant said she had been asked to bleed the radiators a couple of days after moving in. There was a text message exchange between the parties referring to a plumber attending for the third time on 12th April 2019 (Production 7a). There were further exchanges of text messages stating that the boiler was not working again on 12th May 2019 (Production 7b) and 26th and 27th October 2019 (Production 9b). The Applicant said a friend of the Respondent came to adjust the pressure on the boiler. There was mention of a leak somewhere in the system. The Applicant informed the Respondent by email on 10th January 2020 (Production 10) that she was adjusting the pressure almost every week. By response on 11th January 2020, the Respondent asked the Applicant to check the pipes in and out of the radiators to see if there was a leak. The Applicant said she did not do this as she would not know where to look.

8. By email dated 28th January 2020 (Production 17) the Applicant mentioned a new boiler to the Respondent because she felt the issues with the boiler should not be occurring. There was also an issue with the shower when the pressure dropped and the water would run cold. She would wake up, or come home, to a cold flat. The windows were single glazed and that made the problem worse. There was a text message exchange between the parties dated 25th September 2020 (Production 28e), where the Respondent mentioned a plumber having found a leak in the return hoses of the boiler. Asked whether problems continued after this matter was addressed, the Applicant said she still has to adjust the pressure in the boiler herself. She has

done this on one occasion in February 2021. This means the flat is often very cold and not pleasant.

The Windows

9. The Applicant said she noticed at the start of the tenancy that there was a new window in the bathroom, but the other windows were single glazed. She asked why all the windows had not been replaced, but this was ignored. She discovered bit by bit that these were not the best windows. The ropes were cut, the paint on the windows was cracked, they did not open as fully as they should and there were massive drafts in winter. On 25th October 2019 (Production 9a), the Applicant informed the Respondent that a piece of wood came off the window in the kitchen. The Applicant said it fell off when she tried to open the window. The Respondent did not do anything to address this.

10. There was an exchange of emails on 10th and 11th January 2020 (Production 10), whereby the Applicant referred to the windows, stating that that there were cold drafts and it was annoying to come home to a cold flat. The Applicant said that the Respondent did not carry out any investigations at that time to ensure that the windows were wind-tight. On 1st May 2020, the Applicant emailed the Respondent (Production 19) stating that the Applicant was unable to open any window and pieces of wood from the frame fall off every time she tried. There was no response and the email was sent again on 13th May 2020. The Applicant said that no window repairs were carried out at that time. There was an email exchange between parties on 5th September 2020 (Production 22), whereby the Applicant mentioned issues with the windows again. The Applicant confirmed that was her first report to the Respondent of water ingress from the windows.

11. There was an exchange of text messages between the parties dated 11th September 2020 (Production 27b). The Applicant reported that she opened a window and could not close it. The Applicant said a joiner came the following day to do an emergency repair. At a later date, he changed all the window handles and fixed the side panels. There was no more water ingress after that. All the windows could be opened. There are now two windows with a space that might allow in drafts in poorer weather. Asked whether she had experienced recent drafts, the Applicant said it had been a cold May this year, but it was difficult to say. One window was beside the washing machine and she did not spend a lot of time there. The window does not look 100% shut.

12. Referring to a video lodged on behalf of the Applicant, the Applicant confirmed that it was recorded in the Property on 9th January 2021. It showed ice on the inside of the window in the Property, which the Applicant had discovered on getting up in the morning. The Applicant said that no further investigations had been carried out since this was provided to the Respondent's agent.

13. Production 34a was an energy bill for the Property dated 19th May 2020. The Applicant confirmed that it stated her annual gas projection would be £736. Production 35a was the energy bill for 15th February 2021. The Applicant

confirmed that her annual energy projection was £75. Asked to explain the reduction, the Applicant said she had been using a lot of heating, but she had started to use a hot water bottle, as she could not afford to use the heating so much. Asked what her energy costs were for 2019, the Applicant said they were too much.

The Door Buzzer

14. There was an email exchange between parties on 26th and 28th December 2018 (Production 3), whereby the Applicant informed the Respondent that the buzzer did not work. The Applicant said the buzzer was not fixed until the spring of 2021. It was her position that the Respondent addressed the issues with the buzzer much later and blamed the Factor for the building and a problem with the control panel outside. The Factor sent someone to the Property and they said the problem was inside the Property. The Applicant could hear no sound from the street. There was an exchange of messages between the Applicant and the Respondent's husband dated 23rd January 2020 (Production 9d), whereby the Applicant mentioned that the buzzer had not been working for a year. The Applicant said that no steps had been taken by the Respondent to check the buzzer inside the Property.

15. Production 33 showed a letter referring to access required to replace the intercom system on 16th November 2020. The Applicant confirmed that the intercom system was replaced. She said she and a neighbour had further problems with the system two months ago. During the problems with the buzzer, the Applicant said she lost money and time. She had to stand at the window and await deliveries. This was the case for two years.

The Washing Machine

16. There was a text message from the Applicant to the Respondent, dated 25th October 2019 (Production 9a), stating that the washing machine was losing water after every wash. The Applicant said no action was taken by the Respondent other than to suggest that the Applicant find someone to repair the machine. She said that was not her job. There was an exchange of emails on 10th and 11th January 2020 (Production 10) between the parties, where the Respondent asked whether the Applicant would like the machine replaced. Asked whether she had responded, the Applicant said she honestly could not remember, but she hoped the replacement would happen. She said the washing machine leaked every time it was used.

17. The Applicant confirmed that a new machine was delivered and fitted on 18th September 2020, and the old machine removed. She said it was very difficult to cope with the leaking machine as she had to use towels to mop up the water and then she would have wet towels which were difficult to dry in the winter. It was her position that the washing machine should have been checked before she moved in.

The Hoover

18. The Applicant confirmed that Production 2a was the inventory provided to her at the start of the tenancy. A Dyson hoover was listed on the inventory. The Applicant said the hoover did not work so she had to buy another. Asked whether she had informed the Respondent that the hoover was faulty, she said she could not remember, as there was something happening in terms of issues with the Property every month. She said she seemed to remember telling the Respondent at a later date. Referred to Production 30a, an email to the Respondent dated 29th September 2020, the Applicant confirmed that she had informed the Respondent at that time. The Applicant said the effect of not having a working hoover was just another thing to add to the long list of things that did not work.

Cross-examination of the Applicant

19. The Applicant said she had been a tenant since 15th December 2018, and that she had been in another flat on the same street prior to moving in. She confirmed that the Property was let fully furnished and that she had her own furnishings. Some belongings of the Respondent were stored in the hall cupboard after moving in. Asked whether she had a hoover of her own, the Applicant said a hoover was an appliance and it was included on the inventory. The Applicant agreed that she had asked the Respondent where to put the hoover by email in September 2020.

20. The Applicant said she had a flat mate from August 2020 to February 2021. This was a friend. Asked whether she had advertised for a flatmate, the Applicant said she could not remember as she has a busy life. Responding to questions as to whether she had asked the Respondent for permission to have a flat mate, she said she had emailed the Respondent and had taken the lack of response as permission. She had not intimated that her friend was staying with her. Her friend was unemployed. Asked whether she was in the Property all day, the Applicant said her friend went to the library as the flat was too cold and the heating was restricted to six hours each day.

21. The Applicant accepted that she had told the Tribunal at a case management discussion in November 2020 that all repairs had been carried out.

22. Asked whether she had viewed the Property before moving in, the Applicant said she had. She had asked about the sash and cord windows and why they had not been changed. She did not accept this was to keep the property in character with the rest of the street, stating that many properties in the street had new windows. It was her position that the Property needed modern windows to stop heat loss. The Applicant accepted that it had been made clear to her from the start that the windows would not be changed.

23. The Applicant was asked about her statement that pieces of wood fell from the windows. She said that three pieces of wood fell off the windows, falling to the outside. This happened with every window every time it was opened.

Asked whether the joiner might have noticed this issue, the Applicant said that he changed the window handles and re-roped the windows.

24. Referred to Production 20a, an email from the Respondent to the Applicant dated 13th May 2020, the Applicant was asked why she had not responded to the Respondent's offer to have a joiner overhaul the windows when Covid-19 restrictions would allow, the Applicant said it was not an emergency at that time. She did not have a big need to open the windows, given the problems with drafts.

25. Referred to Production 22, an exchange of emails between parties dated 4th and 5th September 2020, the Applicant accepted that she had only contacted the Respondent to mention water ingress as a result of the Respondent contacting her regarding the lack of response to the email of 13th May 2020.

26. Referred to Production 27b, which showed text messages between the parties dated 11th September 2020, whereby the Applicant informed the Respondent that she had opened a window and could not shut it, the Applicant accepted that the Respondent had mentioned the need to close the window due to anticipated torrential rain. Asked why she had stated 'You can't blame me' in her message, the Applicant said she was upset about the situation. The window was not in its frame anymore. Asked whether she had rejected a call from the Respondent, the Applicant said she had done so, preferring to send an email with pictures. The Applicant accepted that serious steps were taken by the Respondent when necessary, stating that something almost tragic had to happen first, and the situation could not be ignored any more.

27. The Applicant was asked about the situation with the boiler and whether there are ongoing issues. She said the boiler lost pressure once after it was repaired. This happened on 27th February 2021. Asked whether this had happened again, the Applicant said she was not using the heating now. She accepted she was using the shower, and that the water is heated by the boiler, and said the water goes cold when the pressure goes down. Asked whether she could reset the pressure, the Applicant said she didn't see why she should. She learned how to do this because she had to. She agreed that the system worked when the pressure was readjusted.

28. Asked why she had not checked the radiator pipes when requested, the Applicant said this should have been checked before the tenancy commenced and she was not an expert on these matters. The Applicant agreed that three plumbers had attended at the Property to address the pressure issue – two were organised by the Respondent and one by the Applicant. A repair was carried out, but an issue with the pressure has rearisen on one occasion.

29. The Applicant accepted that the buzzer was a common system to all the properties in the tenement. She said she did not know if its efficient operation relied on other owners. She paid rent and expected it to work. Referred to Productions 4 and 5, emails from the Respondent dated 6th and 7th January 2019, and Production 12a, an undated text message from the Respondent,

and Production 14, an undated message from the Factor to the Respondent, the Applicant said she did not think anyone came from the Factor to address the issue until much later. She did not deal with the Factor. The issue took too long to resolve. She had no working buzzer for almost two years. There had been contradictory messages about whether the problem was with the whole intercom system or in the Property.

30. The Applicant said she continued to use the washing machine despite the leak, because she had to. Asked whether she had answered the question posed by the Respondent on 11th January 2020 regarding the new washing machine, the Applicant said she could not remember but she may not have answered it because she was frustrated. She referred to a suggestion made by the Respondent that the Applicant buy the washing machine. Referred to Production 20a, an email dated 13th May 2020, whereby the Respondent mentioned the Applicant's failure to respond to her message of 11th January, offering a washing machine, the Applicant said there was an ocean of emails and sometimes she got frustrated with this. She wished she had a working washing machine. The Applicant said she could not say whether she had reported issues with the shower to the Respondent due to the volume of emails.

31. Responding to questions from the Tribunal as to why there was gap in correspondence from May to September 2020, the Applicant said she thought this was due to frustration at the number of emails that had been sent. She said she was unaware of where the leak in the washing machine was coming from. She had checked the drainage but there was no sign of a leak there. Asked if she had reported recent issues with boiler pressure to the Respondent, the Applicant said she had not, but may do so.

Evidence on behalf of the Respondent

Mr Andrew McGrath

Examination-in-Chief

32. Mr McGrath is a joiner with 32 years' experience. He has carried out a significant amount of work for the Respondent and her husband. They now have a relationship as friends as well as being clients. He said his evidence was not affected by the fact that he would describe the Respondent as a friend. Referred to his statement dated 13th May 2021 (Production 1 for the Respondent), Mr McGrath explained that, when he visited the Property on 12th September 2020, he found the window had fallen forwards and was hitting the window pocket. The window could not be closed. The window was still in its frame and was hanging on the rope. He likened it to a door blocked by a foot. It was not a dangerous situation, but it was causing a draught, being around eight inches open. He noted that some of the window cords had been painted over and the windows would not lift. One window cord was broken.

33. At a later date, he changed the window cords and ironmongery, as instructed by the Respondent. He made the windows into fire escapes. He described the windows as one hundred per cent wind and watertight. All windows were closing and opening fully. He showed the Applicant what he had done. The Applicant stated that she wanted him to charge the Respondent as much as possible for the work. He found this unusual.

34. Mr McGrath said it is not unusual to have ice forming on a single-glazed window in winter. It is caused by internal condensation freezing.

Cross-examination

35. Mr McGrath said the fact that the ropes were painted meant the opening of the windows was affected. The kitchen window would not close properly because the rope was painted. The weights in the windows were sticking and the windows had to be counterbalanced. It was his position that sash and cord windows cannot allow water ingress due to the overhang of the top pane, unless there is rotting of the window sills.

Summing up for the Applicant

36. Ms Cochrane outlined the requirements of section 14 of the Housing (Scotland) Act 2006 ("the 2006 Act") in respect of the repairing standard. The Respondent had failed to carry out the work required in reasonable time. The boiler issues were first raised on 9th January 2019. Only temporary repairs were carried out. The Respondent asked the Applicant to check matters herself. Clause 18 of the tenancy agreement sets out the Landlord's responsibilities in terms of the repairing standard. An application to the Tribunal under the 2006 Act was made by the Applicant in May 2020. It was September 2020 before the Respondent arranged for a plumber to attend the Property. This should have been done much earlier. The Applicant continued to experience problems because the boiler requires replacement. The repairing issues at the Property constitute failures in terms of the 2006 Act.

37. The Applicant has experienced significant distress and inconvenience through lack of heating and hot water. It has taken time and energy to address the issues. The Respondent was required to carry out a pre-tenancy check at the start of the tenancy and she ought to have been aware that some windows did not open. It was not until September 2020 that an emergency repair was arranged to the windows, despite the Applicant notifying the Respondent in October 2019 that wood had fallen off the window. She had also notified the Respondent of draughts, inability to open windows and water ingress in May and July 2020. The extent and cost of the works carried out to the windows indicate the poor condition of the windows. Although they can now be opened and closed, they are still causing draughts and water ingress, and are not wind and watertight. Referring to the Respondent's Production 3, an exchange of text messages between the parties after the video of the ice on the window had been shared, Ms Cochrane said that the Applicant meant that further repairs would not be helpful as window replacement was required. It

was clear from the message that the Applicant confirmed that there were no issues in relation to a joiner attending during the Covid-19 pandemic, so it was clear that she was not preventing a joiner from attending.

38. Referring to Production 36a to 36h, a print-out from the UKPower website, Ms Cochrane said the average annual gas usage for a 1 to 2 bedroom property is £396. Production 34a was an energy bill for the Property dated 19th May 2020. The projected annual gas usage was £736. The Respondent ought to refund the Applicant £340. There was no documentary evidence of the Applicant's energy costs for 2019, but the same amount should be paid to her to cover that year. The projected usage for 2021, as shown in Production 35a was £75. The situation has caused distress, stress and inconvenience to the Applicant.

39. Problems with the buzzer continued throughout the tenancy. The Respondent was notified just after the tenancy commenced. She failed to take action even when told that the Factor had said that the problem was inside the flat. No internal repairs were carried out and a new system was not installed until November 2020. This system now works intermittently. The buzzer is a fixture of the Property and falls within the repairing standard. This has caused distress and inconvenience to the Applicant, including the loss of parcels and the inconvenience of having to wait at the window for deliveries.

40. The Applicant accepted that she had not reported the faulty hoover, and she had purchased her own. The faulty hoover was drawn to the attention of the Respondent on 29th September 2020 and no steps were taken to repair or replace it. This was a breach of the repairing standard – section 13(1)(b) of the 2006 Act.

41. The Applicant made at least two complaints to the Respondent about the washing machine before it was replaced. The first complaint was on 25th October 2019. It was replaced on 18th September 2020. This was a breach of the repairing standard – section 13(1)(d) of the 2006 Act.

42. Although there was some delay in repairs issues due to the Covid-19 pandemic, all issues were raised prior to the pandemic.

43. Ms Cochrane directed the Tribunal to the case of *Renfrew District Council -v- Gray 1987 SLT (Sh Ct) 70* from the last paragraph on page 71 onwards, where the remedy of abatement is discussed. It was her submission that, if the Applicant did not get full performance of what she had contracted for, she should not have to pay for it. She would not have contracted to pay had she known about the repairing issues. The Tribunal was invited to find that an abatement of rent was due at the rate of 20% in respect of the boiler from January 2019 to September 2020; 20% for the windows and the buzzer, throughout the tenancy; and 5% for the washing machine from 25th October 2019 to 18th September 2020.

44. Regarding solatium, this was set out as a second remedy in *Renfrew District Council.* The problems with the windows and the boiler led to the Property being cold. The problems with the buzzer and the washing machine caused inconvenience. Items were lost due to the faulty buzzer. The washing machine flooded. The Applicant should be awarded £15 for each week that there was a failure to meet the repairing standard. From January 2019 to the present, that was 127 weeks at £15 per week, which totals £1905.

45. Ms Cochrane referred the Tribunal to the cases of *Christian -v- Aberdeen City Council 2005 Hous. L.R. 71* and *Quinn -v- Monklands District Council 1996 Hous. L.R. 86* in respect of quantification for solatium. In *Christian* the award was £2750 for a period of three and a half years in respect of dampness. In *Quinn* the award was £2500 for a period of three years in respect of dampness and mould, where the Pursuer had suffered inconvenience and depression. Ms Cochrane pointed out that the cases are all fact-specific. She noted that the Tribunal may form the view that the present case is not as severe as these cases; however, they were decided several years ago and inflation should be considered in reaching a sum in the present case. The sum sought is relatively conservative.

46. Responding to questions from the Tribunal as to whether it would be appropriate for the Tribunal to make a finding that the repairing standard had not been met, when the case had not proceeded under the specific statutory regime in the 2006 Act, Ms Cochrane said there seems to be a level of agreement regarding the timeline in this case. The Tribunal is entitled to infer that necessary repairs were not carried out and that there was non-compliance with the repairing standard.

Summing up for the Respondent

47. Addressing the repairing standard point made by the Tribunal, Ms Anderson said that it had always been a concern of the Respondent that the Tribunal was being asked to determine that the repairing standard was not met without the protections of the procedures in applications under the 2006 Act. These protections were not afforded once the repairing standard application had been withdrawn. Ms Anderson said the Tribunal could not make any of the orders provided for in the 2006 Act in this case, but the landlord's common law obligations in respect of keeping the property wind and watertight, reasonably habitable and fit for the purposes of the lease continue to apply.

48. Ms Anderson said the Applicant had accepted at the CMD on 26th November 2020 that all repairs had been carried out. She reiterated that position in the text message sent in reply to the Respondent after the video of the ice on the window had been shared.

49. The expert evidence of Mr McGrath had not been challenged. The Tribunal was asked to prefer his evidence to that of the Applicant. His evidence was given in a measured and informed manner, whereas the Applicant was rather evasive and prone to exaggeration. The windows were not rotten. There were

no bits falling off the windows. Mr McGrath's explanation regarding ice on the window was not challenged.

50. The Applicant did not intimate a fault with the hoover to the Respondent. She only asked the Respondent what to do with the hoover. There was no evidence regarding the cost of a replacement hoover and it was not credible that the Applicant did not have her own hoover, when she had used her own items in the Property, storing the Respondent's inventory items.

51. The washing machine was functioning despite the water loss. The Applicant failed to respond to the Respondent's offer to purchase another washing machine. A new machine was provided when the Applicant responded.

52. It was clear that the problem with the buzzer was a problem with the whole system, despite what the Applicant may have been told. This is a common repair that is exempt in terms of section 16(4) and (5) of the 2006 Act.

53. The central heating system was attended to by three plumbers. The Applicant did not have to be an expert to check the pipes as requested. She did not do this and did not respond. There has been no intimation of problems with the system since the last repair, and no intimation of problems with the shower. The Respondent attended to repairs as quickly as possible. Repressuring of the boiler ensured that the system worked. There is no evidence that there is an ongoing issue with the boiler.

54. The situation with the windows had been clear at the start. The Applicant wanted double glazing, but the Respondent had no plans to do that. As soon as there was a serious issue, it was attended to. The Property is a flat within an old tenement building. Section 13(3) of the 2006 Act provides that regard must be had to the age and character of a building when considering whether it meets the repairing standard.

55. In respect of quantification, Ms Anderson stated that little information could be drawn from the energy bills lodged. They only showed projected figures. If the Applicant was only using heating for six hours a day, that would affect the projected use. The Applicant had a flat mate that contributed to costs. There was insufficient information regarding average energy costs. There was no accredited report and it was not clear what was used as an average. It would be quite unsafe to try and use the purported figures. The cases referred to by the Applicant could be distinguished on their facts. They referred to damp, mould and water running down walls. There was virtually no evidence of any significant impact on the Applicant in this case beyond inconvenience. The Respondent has dealt with the repairing standard. The case should be dismissed.

Further Discussion

56. Responding to questions from the Tribunal, the Applicant said her flat mate paid her £200 per month for a period of 8 months.

57. Responding to questions from the Tribunal regarding whether the buzzer was exempt from the repairing standard, Ms Cochrane said the Applicant had repeatedly advised that it was an internal problem, and it should have been inspected.

Findings in Fact and Law

58.

(i) The Respondent is the heritable proprietor of the Property which is registered in the Land Register for Scotland under Title Number GLA2561.

(ii) The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 15th December 2018.

(iii) The Applicant contacted the Respondent about problems with the boiler, and to discuss previous issues reported, on 9th and 10th January,12th May and 26th October 2019 and 28th January 2020.

(iv) On at least three occasions, a plumber attended at the Property to address the issues.

(v) The Applicant was required to adjust the pressure on the boiler on occasion.

(vi) The Respondent requested that the Applicant check the radiator pipes for a leak. The Applicant did not do this.

(vii) A repair was carried out to the return hoses of the boiler in or around September 2020.

(viii) On 25th October 2019, 10th January, 1st and 13th May 2020, the Applicant informed the Respondent of various issues with the windows.

(ix) On 11th January 2020, the Respondent informed the Applicant that she was not considering replacing the windows.

(x) On 13th May 2020, the Respondent replied to the Applicant's email, stating that she would arrange a joiner to check the windows but this was not possible due to the Covid-19 pandemic, requesting the Applicant to inform her if the situation was urgent, and to let her know when she might consider it safe to allow a joiner to enter the flat.

(xi) In May 2020, the Applicant made an application to the Tribunal under the 2006 Act in respect of the repairing standard. The application was later withdrawn by the Applicant.

(xii) On 11th September 2020, the Applicant informed the Respondent that she had opened a window and could not close it.

(xiii) On 12th September 2020, a joiner attended at the Property, as arranged by the Respondent, and carried out an emergency repair to the window.

(xiv) On 30th September 2020, the joiner carried out works to the windows, including dismantling the windows, re-roping all windows, fixing the beading, renewing all ironmongery, fitting new bead locks and providing a fire escape in each room.

(xv) On 9th January 2021, the Applicant recorded a video showing ice on the inside of a window within the Property. The video was provided to the Respondent through her representative.

(xvi) At some time after 9th January 2021, the parties exchanged messages whereby the Respondent mentioned arranging for the joiner to reattend to check the windows, mentioning Covid-19 restrictions. No further attendance of the joiner took place.

(xvii) On 26th December 2018 and 23rd January 2020, the Applicant informed the Respondent of problems with the intercom system in that the internal buzzer within the Property did not function.

(xviii) Investigations into the intercom system were carried out by the Factor for the tenement building.

(xix) In or around November 2020, the intercom system for the tenement block was replaced.

(xx) On 25th October 2019 and 10th January 2020, the Applicant informed the Respondent that the washing machine was losing water.

(xxi) On 11th January 2020, the Respondent asked the Applicant if she wished her to replace the washing machine, and to advise when she would be available for a delivery, if so.

(xxii) The washing machine was replaced on 18th September 2020.

(xxiii) At the start of the tenancy, the Applicant considered that the hoover in the Property was not in working order. Thereafter, she used another hoover. She did not notify the Respondent at the start of the tenancy that the hoover was not in working order.

(xxiv) The Respondent has failed in her statutory and contractual duties in respect of the Property, in that the Property did not meet the repairing standard in respect of the windows, the heating system and the washing machine. This was a breach of sections 13(1)(b), 13(1)(c) and 13(1)(d) of the 2006 Act and clause 18 of the tenancy agreement.

(xxv) The Respondent breached her duty to carry out necessary repairs as soon as is reasonably practicable after being notified of the need to do so, in respect of the boiler, windows and washing machine.

(xxvi) The Applicant did not enjoy the full benefit of what she had contracted for in respect of the windows, the heating system and the washing machine.

(xxvii) The Applicant is entitled to an abatement of rent.

(xxviii) The Applicant has suffered distress and inconvenience through lack of heating and hot water, a faulty washing machine and the poor condition of the windows.

(xxix) The Applicant is entitled to solatium for distress and inconvenience.

Reasons for Decision

59. The Tribunal considered it unfortunate that the Applicant withdrew her application in terms of the repairing standard under the 2006 Act; however, the Tribunal considered it was entitled to find that the repairing standard had not been met in respect of the heating system, the windows and the washing machine.

60. The Tribunal considered that the installations in the Property for the supply of space heating and heating water were not in a reasonable state of repair and in proper working order, thus constituting a failure to comply with the repairing standard. These issues persisted from January 2019 until September 2020. The Tribunal did not make any findings for the period thereafter, as it would appear that further problems were not notified to the Respondent and there was an insufficiency of evidence before the Tribunal to indicate that issues were ongoing.

61. The Tribunal did not make any findings in respect of section 13(1)(a) of the 2006 Act as there was insufficient information before the Tribunal to find that the Property was not wind and watertight. The Tribunal took account of the evidence of Mr McGrath in that regard.

62. The Tribunal considered that the extensive works required to the windows in September 2020 indicated that the windows were not in a reasonable state of repair and in proper working order. The Tribunal accepted the evidence of the Applicant that this was the case from the start of the tenancy. Thus, the windows did not meet the repairing standard. Issues were notified to the Respondent on several occasions over a period of almost a year, before any investigations were carried out. Although the Respondent mentioned arranging a joiner in May 2020, it was September 2020 before any work was carried out. The Tribunal accepted that some of the delay was due to the Covid-19 pandemic, however, issues were notified prior to the commencement of the pandemic and ensuing lockdown, and matters should

have been addressed at an earlier stage. Despite evidence from the Applicant that water ingress was first mentioned in September 2020, the Tribunal noted that Production 21 shows that the Applicant mentioned this by email to the Respondent on 13th May 2020.

63. The Tribunal did not make any findings for the period after September 2020, as there was an insufficiency of evidence before the Tribunal to indicate that issues with the windows were ongoing. The Tribunal gave no weight to the matter of ice on the inside of the window, accepting the unchallenged evidence of Mr McGrath in relation to condensation and single-glazed windows.

64. The Tribunal made no findings in relation to the buzzer. The Respondent appears to have attempted to address this issue through the Factor. There was an insufficiency of evidence to show whether the fault was in the entire system or in the Property, and what responsibility should be attributed to the Respondent rather than the Factor.

65. The Tribunal considered that the washing machine provided by the Respondent was not in a reasonable state of repair and in proper working order, thus constituting a breach of the repairing standard. Issues with the washing machine were reported in October 2019, yet the machine was not replaced until September 2020.

66. The Tribunal made no findings in relation to the hoover. There was an insufficiency of evidence in regard to its condition and any issues of disrepair were not properly notified to the Respondent.

67. The Tribunal made no findings in relation to the energy consumption in the Property. There was an insufficiency of evidence to show the actual energy consumption of the Applicant in 2019 and 2020. There was no expert evidence in relation to projected or average energy consumption in a building such as the Property.

68. The Tribunal took into account that the Applicant was not entirely without heating for a period of twenty months. The loss of heating and hot water appears to have been occasional, and there were periods when the system was in full working order. The Tribunal considered that an abatement of 15% in respect of the problems with the windows and the heating system for a period of 20 months was appropriate, said abatement amounting to £1410. The Tribunal took the view that both issues were addressed by September 2020.

69. The Tribunal considered that an abatement of 2.5% in respect of the problem with the washing machine for a period of 11 months was appropriate, said abatement amounting to £129.25. The Tribunal took into account that the Applicant had use of the washing machine, notwithstanding the repairing issues and the inconvenience caused due to leaking.

70. The Tribunal considered that this case could be distinguished from the cases referred to on behalf of the Applicant, as the issues in this case were significantly less serious. The Tribunal considered that solatium of £500 for distress and inconvenience should be awarded in this case.

Observation

71. The Tribunal observed a pattern whereby the Respondent attempted to 1) pass responsibility for issues relating to repairs, and 2) attribute blame for a failure to carry them out, to the Applicant. Examples of this include the Respondent asking the Applicant to check pipes, and re-pressure the system repeatedly, and mentioning instructing contractors or replacing the washing machine, and then using the Applicant's failure to respond appropriately or timeously or clearly as justification for not carrying out repairs or replacement. The responsibility for repairs and replacement lies with the Respondent, and it was incumbent upon her to address issues as and when they arose, and to progress matters to a satisfactory conclusion.

Decision

72. An order for payment is granted in favour of the Applicant in the sum of £2039.25.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

H Forbes

Legal Member/Chair

14th June 2021
Date