



## Section 71 of the Housing (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/2200

Re: Property at 1 Eagle Crescent, Bearsden, East Dunbartonshire, G61 4HS (“the Property”)

### Parties:

Mrs Lisa Archibald, 200 Duntocher Road, North Kilbowie, Clydebank, G81 3NG (“the Applicant”)

Mrs Zgozi Ibeh, Professor Kevin Ibeh, 6A Batchwood Gardens, St Albans, Hertfordshire, AL3 5SE; 6A Batchwood Gardens, St Albans, Hertfordshire, AL3 5SE (“the Respondents”)

### Tribunal Members:

Ms Helen Forbes (Legal Member)

Mr Nick Allan (Ordinary Member)

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment is granted in favour of the Applicant in the sum of £1350.

### Background

1. This is an application for an order for payment under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is seeking an order in the sum of £1350 by way of rent abatement due to being unable to use the garage that forms part of the Property during her tenancy. There had been issues with water ingress initially, and a garage door that could not be opened. Although the garage roof was partially replaced and the door repaired, there were then issues with condensation that meant the Applicant was unable to use the garage for storage or for her car.
2. Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 12<sup>th</sup> April 2019 and ended on 11<sup>th</sup> September

2020. The rent was £1025 per month. The Applicant lodged a copy of the tenancy agreement, photographs and correspondence.

3. By email dated 30<sup>th</sup> December 2020, the Respondents lodged written representations and productions. By letter dated 12<sup>th</sup> January 2021, the Applicant lodged written representations and productions.
4. A Case Management Discussion (“CMD”) took place by telephone conference on 25<sup>th</sup> January 2021. The case was continued to a hearing to take place on 3<sup>rd</sup> March 2021 by telephone conference.
5. On 19<sup>th</sup> February 2021, written representations including a timeline and email correspondence were lodged by the Applicant.
6. By letter dated 21<sup>st</sup> February 2021, the Respondent lodged written representations, including documentation and photographs.

### **The Hearing**

7. The hearing took place by telephone conference on 3<sup>rd</sup> March 2021. The Applicant was not in attendance and was represented by Mr Hugh Weir. The Respondents were in attendance.

### **The Applicant’s position**

8. Mr Weir referred to the representations lodged by the Respondent. It was his position that the Property was not in a good state when the Applicant moved in. Within days, an inventory was provided to the Letting Agent, detailing 20 issues that required attention. It was clear that basic plumbing issues, among others, had been missed. With regard to the Respondent’s table on page 2 of his submission, Mr Weir pointed out that several repairs that are marked ‘completed’ took a significant length of time to be attended to. Mr Weir had to attend to a plumbing repair two days after it was reported. Crucially, the reference to the report of the garage door not working on 9<sup>th</sup> October 2019 was incorrect as the inventory at the start of the tenancy showed the garage door was ‘non-operational’ in April 2019.
9. Mr Weir pointed out that the condensation issue with the garage roof was reported on 3<sup>rd</sup> December 2019, and that the Covid-19 pandemic had been used as an excuse by the Respondent for the fact that no work was carried out to alleviate the condensation for the remainder of the tenancy. The national lockdown commenced on 23<sup>rd</sup> March 2019; therefore, the Respondent had a significant period during which he could have addressed the issue prior to the lockdown.
10. The garage could not be used. Mr Weir said he had cleared it out at the end of the tenancy, removing buckets and tarpaulins. The fridge left by the Respondent was at the top end of the garage and was not near the area with the condensation. The Applicant lost her beneficial enjoyment of the garage.

Between the issues with the roof, the door and the condensation, she was unable to use the garage.

11. Responding to questions from the Tribunal, Mr Weir said the figure of £150 rent abatement per month was agreed with the Letting Agent following discussion. The amount was suggested by the Letting Agent, using a formula. It was only granted for one month, despite the garage continuing to be out of use. The Tribunal referred to the email from the Letting Agent dated 8<sup>th</sup> November 2019, whereby the Letting Agent stated that the rent abatement was to be in place 'whilst repairs to the garage door are pending'. Mr Weir said he reverted to the Letting Agent thereafter to state that the agreement was that the abatement should be in place until the garage was able to be used. Mr Weir referred to his email of 4<sup>th</sup> January 2020 to the Letting Agent stating the reduction should be reinstated until the condensation issue was addressed. Mr Weir accepted that there were other areas where cars could be parked, but said that was not the point.
12. It was Mr Weir's position that the Respondent had sought a cheap solution to the problem of the garage roof. The contractor told him that budget restrictions prohibited him from using a type of membrane that would have dissipated the condensation problem. It took six contractors and a period of over five months to have the roof repaired.
13. Responding to questions from the Tribunal, Mr Weir said that he had to regularly contact the Letting Agent for an update on matters. He had been told regularly by the Letting Agent that they were unable to contact the Respondents. There was no contact between the Applicant and the Respondents.
14. Mr Weir said he had been asked by the contractors to drive his car into the garage when the door was fixed, and he had been able to do so, stating the reason the garage was not used was because of its condition and nothing to do with the type of car owned by the Applicant.
15. Mr Weir referred to the exit report compiled by the Letting Agent at the end of the tenancy, in August 2020, which stated that there was water on the floor of the garage.

### **The Respondents' position**

16. Mr Ibeh referred the Tribunal to his written statement and photographs of the Property at the start of the tenancy, which he said indicated that the Property was in good condition. He referred to two 'car ports' within the curtilage of the Property, but he accepted that the areas referred to were, in fact, driveways, rather than what one might expect by the use of the term 'car port, which would suggest a covered area. There were two areas off the road where cars could be parked.

17. Mr Ibeh said the Respondents had always acted promptly in response to matters raised by the Letting Agent, pointing to occasions when the Letting Agent reported an issue and was told by the Respondents on the same day that contractors should be appointed. Sometimes contractors were unable to attend and he had no control over this. It was their intention to keep the Property in a good and tenable state, and to be helpful. Mr Ibeh referred to the purchase of a new washing machine, the installation of a new garage door and a new garden gate as indicating that the Respondents were not avoiding spending money. They were trying to ensure repairs were cost efficient, but they also wanted to keep the Property in good condition. Mr Ibeh felt that anyone could find fault if they wished to do so. The Respondents had satisfied the Letting Agent that the Property was fit for marketing. He said that the Respondents had to pay for a plumber to attend for a wasted visit, as the Applicant had already seen to the plumbing issue.
18. With regard to the leaking garage roof, Mr Ibeh said work was instructed on the day that they became aware of the issues. The summer period caused delays. The roof was fixed in September 2019. He was not aware that the garage door was not operational until 10<sup>th</sup> October 2019. Mr Ibeh said that the garage door had to be replaced, as parts could not be obtained to fix it. With regard to the condensation, Mr Ibeh said he told the Letting Agent to instruct someone to look at that on the day it was reported. There was discussion with the contractor, who said that the condensation may be worse during the winter. Mr Ibeh had tried to engage other contractors, then he engaged the help of a landlords' association to try and find a contractor. The Respondents stated in their written representations that the Covid-19 pandemic meant that work could not be carried out to address the condensation in the garage.
19. It was the Respondents' position that the Applicant had the use of the garage throughout the tenancy. He pointed out that the Applicant stated she could not put her car in the garage, but he believed the garage continued to be used for storage. Referring to the photographs lodged by the Respondents, Mr Ibeh said they indicated that the wall and joists within the garage were dry and fresh. He had stored a fridge freezer in the garage throughout the tenancy and it was not affected by condensation. Mr Ibeh accepted comments from the Tribunal that the photographs showed only a small portion of the garage, and could not be taken to show the state of the whole building. It was Mr Ibeh's position that a car could have been parked in the garage safely. He referred to information from the RAC, which he had lodged, stating that garages are less commonly used for car storage nowadays, mainly because they are too small for modern cars, which are now more reliable, more resistant to rust, and more secure. He felt that was the reason the garage was not being used by the Applicant, rather than because of its condition.
20. Mr Ibeh referred to the case of *Muir v McIntyre*; stating that the key question was whether or not the Applicant had beneficial enjoyment of the Property; however, no copy of this case was provided to the Tribunal. He felt that the Applicant had beneficial enjoyment of the garage, referring to Mr Weir's

statement that he cleared out the garage at the end of the tenancy. If they were not using the garage, what was cleared out?

21. With regard to the issue of the £150 abatement figure agreed, Mr Ibeh said no abatement should be granted, as it was not appropriate. He referred to discussions regarding a figure of £100 and £125, which then rose to £150. He felt £150 was too high, at 15% of the monthly rent. The garage door was fixed, and the abatement was no longer appropriate. The Applicant was now trying to change the agreement. Mr Ibeh said there was a pattern of the Applicants trying to present things in the worst possible light. He questioned why they would move in if the Property was as bad as was suggested. He pointed out that the Applicant's representative had stated in an email that the roof repair was 'a good job'.
22. Mr Ibeh referred to having lodged photographs with the Tribunal in recent days showing that the condensation and crack in the garage wall had now been attended to.
23. Responding to questions from the Tribunal, parties clarified that the photographs of the Property lodged by the Respondents as part of the Property inventory when the Applicant moved in, were an accurate representation of the state of the Property at that time.
24. Mr Ibeh said he was in constant contact with the Letting Agent throughout the tenancy, and he was available by email even when he was out of the country.

### **Findings in Fact**

25.
  - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 12<sup>th</sup> April 2019 and ended on 11<sup>th</sup> September 2020. The rent was £1025 per month.
  - (ii) The Respondent engaged a Letting Agent to manage the Property on his behalf.
  - (iii) The Applicant provided an inventory of issues that required repair within the Property to the Letting Agent on 17<sup>th</sup> April 2019. This included a faulty garage door.
  - (iv) On 7<sup>th</sup> May 2019, the Applicant reported that the garage roof was leaking. The Applicant used tarpaulins to protect belongings stored in the garage.
  - (v) The Respondent instructed the Letting Agent to ask contractors to look into issues, often instructing the Letting Agent on the same day that issues were reported.
  - (vi) A new washing machine was installed at the Property on 12<sup>th</sup> August 2019.

- (vii) A new garden gate was installed at the Property.
- (viii) The Applicant's representative contacted the Letting Agent on various occasions to chase up issues, including the repair of the garage roof.
- (ix) Six different contractors attended at different times to provide a quote for repairs to the roof. The contractors were given a specific budget by the Respondents for roof repairs.
- (x) In or around early August 2019, the Letting Agent and the Applicant agreed a figure of £150 per month as a rent abatement due to the fact that the garage could not be used due to the leaking roof.
- (xi) On 5<sup>th</sup> September 2019, the Applicant was informed by the Letting Agent that the abatement of rent was not agreed.
- (xii) On 23<sup>rd</sup> September 2019, the garage roof was repaired and partially replaced.
- (xiii) On 8<sup>th</sup> November 2019, the Letting Agent emailed the Applicant to state that the rent abatement of £150 a month would be put in place whilst repairs to the garage door were pending.
- (xiv) On 12<sup>th</sup> November 2019, the rent abatement of £150 was applied to the Applicant's rent account.
- (xv) On 3<sup>rd</sup> December 2019, the garage door was replaced.
- (xvi) On 3<sup>rd</sup> December 2019, the Applicant informed the Letting Agent of signs of condensation in the garage from the area of roof that had been repaired.
- (xvii) By email dated 4<sup>th</sup> December 2019, the Applicant was informed that the rent abatement would be discontinued.
- (xviii) On 11<sup>th</sup> December 2019, the Applicant provided photographs of the condensation to the Letting Agent.
- (xix) On 18<sup>th</sup> December 2019, the Letting Agent informed the Respondents of the issue with condensation.
- (xx) On 18<sup>th</sup> December 2019, the Respondents instructed the Letting Agent to speak to the contractor about the condensation.
- (xxi) On 18<sup>th</sup> December 2019, the Letting Agent informed the Applicant that they were awaiting a response from the contractor.

- (xxii) On 4<sup>th</sup> January 2020, the Applicant emailed the Letting Agent stating that the condensation had worsened and that the rent abatement should be reinstated.
- (xxiii) On 8<sup>th</sup> January 2020, the Applicant discussed matters with the Letting Agent, following up with an email stating that the rent abatement should be reinstated until the condensation was eliminated.
- (xxiv) On 10<sup>th</sup> January 2020, the Applicant discussed matters with the Letting Agent, following up with an email stating that the condensation was getting progressively worse and that, if matters had not been attended to within a week, they would take steps to recover the agreed abatement sum.
- (xxv) On 17<sup>th</sup> January 2020, the Applicant discussed matters with the Letting Agent, following up with an email.
- (xxvi) On 20<sup>th</sup> January 2020, the Respondent, Mr Ibeh, informed the Letting Agent that he had spoken to the roofer and that he had been told the condensation was due to the low external temperature, stating that the roofer would visit the Property and revert to the Respondent.
- (xxvii) On 23<sup>rd</sup> January 2020, the Applicant discussed matters with the Letting Agent, following up with an email stating that full rent would be paid and further time given to allow the matter to be attended to. The Applicant stated that a rent abatement would be claimed from December until the matter was attended to.
- (xxviii) On 30<sup>th</sup> January 2020, the Applicant discussed matters with the Letting Agent. The Applicant was informed that the Respondents were unwilling to continue the abatement of rent. The Applicant followed up with an email to the Letting Agent stating that the matter would be pursued through the Tribunal.

### **Findings in Law**

26.

- (i) The Respondents breached their contractual 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 garage roof, the garage door and the issue of condensation within the garage.
- (ii) The Respondents breached their common law duty to put the Property in a habitable and tenantable condition at the commencement of the lease, and to keep the subjects in repair throughout the duration of the lease, in respect of the garage roof, the garage door and the issue of condensation within the garage.

- (iii) The Applicant did not have full enjoyment of the Property. She did not enjoy the right to use the garage due to the state of disrepair.
- (iv) Rent paid by the Applicant to the Respondents in the sum of £1350 for a nine-month period from December 2019 to the end of the tenancy was not lawfully due as a result of the Respondents' contractual and common law failures.

### **Reasons for Decision**

27. The Tribunal took the view that the Landlord had failed in his contractual and common law duties and that the Applicant did not have full enjoyment of the Property for which she was paying rent. While the Tribunal accepted that the Landlord had often responded and instructed the Letting Agent to speak to contractors promptly about certain repairing issues, that did not constitute instruction that repairs were to be carried out promptly. It was merely the start of a process of quoting and discussion, before selecting and instructing appropriate contractors to undertake the necessary remedial work. In matters relating to the garage, there were significant delays before matters were attended to. The delays in repairing the garage roof appear to have been due to attempts by the Respondents to get a good price for the work, which appears to have involved several contractors quoting without being appointed. The budgetary restrictions then seem to have contributed to the condensation issues at a later stage.
28. The Tribunal noted that the garage door issues were known at least to the Letting Agent, and presumably to the Respondents, at the commencement of the tenancy, yet they were not addressed for almost eight months.
29. The Tribunal noted that the condensation issue was reported to the Letting Agent in early December 2019; however, the Respondent does not appear to have discussed matters with the contractor until 20<sup>th</sup> January 2020. The Tribunal was not persuaded that the Respondents could not have found a contractor before lockdown commenced on 23<sup>rd</sup> March 2020. In addition, the Tribunal noted the comments by Mr Ibeh to the effect that the problem had recently been attended to. It would seem, therefore, that being in lockdown did not prohibit works being carried out to the garage, as, at the time the works were recently carried out, the country was in another lockdown.
30. In a situation where a tenant does not have full enjoyment of the subjects, it follows that rent is not lawfully due in respect of the parts of the subjects of which the tenant does not have full enjoyment. The Tribunal considered the issue of how much rent abatement should be awarded. The Tribunal took cognisance of the fact that an experienced Letting Agent, acting as the authorised agent for the Respondents, suggested a sum of £150 per month, which was agreed by the Applicant. The agreement was reached before the issue in relation to condensation had arisen. It was reached on the basis that the garage was not in a usable condition. Thereafter, the issue with condensation arose, and the garage remained in a condition where it could



not be used. It would seem equitable, therefore, that the same principle would apply, and that the same sum would be due as an abatement of rent, until the garage was usable.

31. The Tribunal accepted the evidence of Mr Weir that the garage was not in use other than for the first two to three weeks of the tenancy. The Tribunal took the view that it did not have to make any findings in relation to whether or not the garage was suitable for housing a car, or whether the Applicant would or would not have housed her car in the garage if it had been suitable. The fact was that the garage was not usable and the Applicant did not have full enjoyment of the Property.

### **Decision**

32. An order for payment is granted in favour of the Applicant in the sum of £1350.

### **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.**

Helen Forbes

Legal Member/Chair

3<sup>rd</sup> March 2021

Date