Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/CV/21/3231

Re: Property at Haugh Farm Cottage, Dollar, FK14 7PY ("the Property")

Parties:

Mrs Lucy Poett, Hill House, Harviestoun, Dollar, FK14 7PX ("the Applicant")

Ms Caroline McKenzie, 18 Frederick Street, Tillicoultry, FK13 6AN ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted the Application and made a Payment Order in favour of the Applicant against the Respondent in the sum of £4,324.00 together with interest on that sum at the rate of 4 per cent per year from today's date, being 20 July 2022 until payment.

Background

The Applicant seeks a Payment Order against the Respondent in the sum of £4,324.00, said to have been accrued by the Respondent under a tenancy between the parties.

A Case Management Discussion (CMD) took place on 27 April 2022. At this CMD the Respondent was in attendance and set out a potential defence to the Application. There was no dispute that the sum of £4,324.00 had not been paid by the Respondent, but the Respondent had put forward certain reasons why this sum was not lawfully due. The

Respondent had said that she had paid for a porch that had been installed at the Property and that the Applicant had agreed to reimburse her for this. The Respondent also claimed a similar arrangement had been made in respect of replacement carpets at the Property. The Respondent had also made reference to the Property not having been wind and watertight during the tenancy. The Tribunal made a Direction obliging the Respondent to set out the detail of this defence in writing in advance of the Evidential hearing that would be assigned.

The Hearing

The Application called for an Evidential Hearing by conference call at 10 am on 20 July 2020. Nicholas Poet, who is the Applicant's son and who chiefly manages the Property on behalf of the Applicant, was present on the call together with the Applicant's representative, Mr Alex Robertson, solicitor, from Gillespie McAndrew LLP. The Respondent was personally present.

Preliminary Matters.

The Tribunal began by considering preliminary matters. Both parties indicated that they were content to proceed. The Tribunal also ensured that both parties had received all the representations which had been submitted.

The Respondent had attempted to satisfy the terms of the Direction made by submitting several different attachments to the Tribunal in a number of emails. These attachments contained an assortment of photographs, transcripts of conversations which the Respondent alleged had taken place between herself and both the Applicant and separately with Nicholas Poet. The Respondent had also included various other documents which comprised brief accounts of certain events and statements of third parties which appeared to relate to other properties allegedly also managed by the Applicant. Mr Robertson had received all of these.

The day before the Tribunal, the Applicant had lodged further documents which comprised a varied assortment of photos purporting to show a damp meter being used, a rent statement, an invoice relating to skip hire and other miscellaneous documents. The Respondent had received these but informed the Tribunal that she hadn't had time to read them properly.

The Tribunal noted that much of this further documentation submitted by the Applicant appeared irrelevant but the Tribunal decided to adjourn for 15 minutes to allow the Respondent to review the documentation and to advise the Tribunal as to whether there was any objection to it being received at this late stage.

Prior to adjourning, the Tribunal also confirmed that the Respondent intended to call one witness, Mr Alex McKenzie. On behalf of the Applicant, it was confirmed that only

Mr Nicholas Poet would give evidence. The Tribunal raised with both parties that as Mr Nicholas Poet was not a party to the Application, then as a matter of procedure he would typically not be allowed to participate in the Hearing until such time as his evidence was concluded. It was discussed however that as Mr Nicholas Poet was effectively the main individual managing the Property, his presence throughout the entirety of proceedings would be allowed to ensure Mr Robertson was appropriately instructed. The Respondent had no difficulty with this approach.

It was also suggested by Mr Robertson that, given the nature of the dispute, it may be appropriate to have the Respondent give evidence first. This was on account of the Respondent's acknowledgment of the existence of the rent arrears but her intention to persuade the Tribunal that there were valid reasons as to why it should not be paid. The Respondent indicated they would have no objection to this.

The Tribunal adjourned and reconvened around 15 minutes later.

The Respondent confirmed that she had now reviewed the late documentation submitted by the Applicant. The Tribunal sought to confirm with the Respondent whether she objected to the documentation being received. The Respondent did object on what the Tribunal assessed as being grounds of relevance. It did seem apparent that some of this documentation was extremely likely to be irrelevant. Mr Robertson conceded that the skip invoice was not central to the sums claimed. The Tribunal decided to allow the documentation to be received under reservation. The Tribunal would start hearing evidence and take steps to ensure that witnesses did not become bogged down in irrelevant matters should that need arise.

The Tribunal also agreed that the Respondent should give evidence first for the reasons previously advanced.

The Respondent- Caroline McKenzie

Ms McKenzie gave evidence about the installation of a porch at the rear of the Property. She stated that when she first took occupation of the Property in 2009, there was a run-down porch at the back of the Property. Around six months into the tenancy, the Respondent asked the Applicant whether she could knock it down. The Respondent's evidence was that she then asked for permission to build a new porch.

This permission was subsequently given and the porch was then constructed. The Respondent herself did not contend that any specific agreement was reached before the construction of the porch. There was nothing said by the Respondent that pointed to any firm commitment having been made by the Applicant to meet the costs of installing the porch.

The Respondent made reference to an encounter with Nicholas Poet in around 2016 in which Nicholas Poet, after having had cause to attend the Property and when shown the porch, is alleged to have said: "…*I will pay something towards it but I will not pay all of it.*" This comment was supposedly made some four or so years after the porch itself was built.

The Respondent had typed up a transcript of this conversation and also another conversation that she alleged had taken place between the Respondent and the Applicant. The Respondent explained that she kept a diary and wrote down what was said at the time. In this transcript, the Respondent alleges that the before the porch was built, the Respondent asked the Applicant in a conversation:

"*Will you pay for the porch*?"

The Applicant is alleged to have responded:

"I will discuss this once the porch is complete, an itemised bill will be required."

The Respondent's position is that these two conversations are the complete extent of the evidence that support the notion that the costs of building the porch should be deducted from the rent due.

The Tribunal could not help but immediately note that this appeared to fall way short of the position adopted by the Respondent at the CMD, where it was contended that the Applicant had positively agreed to remunerate the Respondent for the costs of installing a porch. The evidence however, even taking the Respondent's position at its highest, could not possibly support that contention.

There was nothing to suggest that there was any specific agreement at all.

The Tribunal did note that it was odd that a tenant would personally fund the installation of a porch on a property that they did not own, but there was no basis for finding that the Applicant had agreed to reimburse the Respondent for the costs in this situation.

It seemed apparent that relations between the parties had been fine up until a dispute between the Respondent and a neighbour in another property owned by the Applicant that caused the Applicant to serve a Notice to Leave on the Respondent on 14 May 2021.

The evidence was clear that up until that point there was nothing to suggest that the issue of the porch would have ever been raised had personal relations not soured between the parties.

The Respondent's case regarding carpets was substantially the same as with the porch. At the CMD, the Respondent had contended that there had been an agreement that the Applicant would reimburse the Respondent for the costs of replacing carpets in the Property during the tenancy. There was however no evidence to support this whatsoever and the Tribunal could not consider that there was any merit in this at all.

The Respondent also sought to argue that rent should not be lawfully due on account of the Property not being wind and watertight.

In support of this position, the Respondent had produced certain photos of inside the Property that supposedly demonstrated this. These photos however had either been taken at some point in 2009 and, whilst the Respondent did state that some were more recent, she was unable to explain when each photo was taken. In short, there was insufficient evidence to support the position that rent might not be lawfully due on account of the Property not being wind and watertight.

One matter that did appear established, was that throughout the tenancy there were certain times when the water in the Property was off and there was no running water at all. The Respondent explained that on these occasions, she would decamp temporarily to a local hotel. The water was often off for a few hours or potentially a full day or over night.

The Respondent suggested that her hotel costs should be deducted from the sums claimed and produced a table setting out these costs and the dates of each hotel stay.

Whilst it was not disputed that there were occasions when the water was off, it was clear that almost all of these costs were incurred without reference to the Applicant. There was one occasion when the Applicant appears to have agreed to reimburse the Respondent for hotel costs and this was shown on the rent statement produced. The Respondent explained that she "*didn't see the point*" in telling the Applicant about subsequent occasions. The Tribunal could not consider that there was any basis for determining that the Applicant had agreed to reimburse the Respondent for these expenses.

It seemed very odd that the Respondent would regularly have to go to a hotel because the water was off and not tell the Applicant about this. The Tribunal could not consider that this now presented a valid evidential basis for withholding rent. The Tribunal couldn't avoid wondering that matters might have been different if the Respondent had kept the Applicant informed about the issues and sought to have the hotel costs deducted from the rent paid at the time. But it seemed misconceived to suggest that the Tribunal, years later, could now reasonably look back in time and revisit these matters which the Respondent herself largely ignored at the time.

At the conclusion of her evidence, the Respondent confirmed that she did not wish to call any further witnesses including Alex McKenzie and brought her case to a close.

The Tribunal had assisted the Respondent in presenting her case by asking relevant questions throughout to ensure that the Respondent was not unfairly disadvantaged by the lack of legal representation. Mr Robertson was also given the opportunity to cross examine the Respondent at the conclusion of her evidence.

Nicholas Poet

The Tribunal heard from Mr Nicholas Poet who is the Applicant's son. Mr Poet is largely responsible for managing his mother's 25 or so properties which surround the farm, Mr Poet lives and works on.

Mr Poet acknowledged that he might have said the comments attributed to him by the Respondent about the porch but he couldn't really remember given how long ago it was.

Mr Poet also confirmed that his mother had told him that there was no agreement that the Applicant would reimburse the Respondent for the costs of installation of the porch.

Mr Poet also acknowledged that there were occasions when the water to the Property was off and that this could last for a few hours or longer. Mr Poet confirmed that this also affected other properties on the farm owned by the Applicant. Irrespective of the legal implications of this in respect of this Application, the Tribunal took the view that it appeared highly unsatisfactory that the Applicant let out a considerable number of properties that intermittently had no running water. That seemed an intolerable situation and one which the Tribunal considered ought to be urgently and comprehensively addressed.

Mr Poet referred to invoices which he had collated which suggested that the carpets were replaced during the tenancy and that these carpets were paid for by the Applicant. The Respondent was given the opportunity to cross examine Mr Poet and did ask questions disputing certain matters.

Findings in Fact.

Having heard evidence and having considered all aspects of the Application, the Tribunal made the following findings in fact:

I. *The Applicant let the Property to the Respondent under a tenancy agreement that commenced on 17 October 2008;*

II. *The contractual monthly rent was originally £480.00 before being increased to £530.00 and finally £590.00;*

III. *Sometime in 2012 the Applicant installed a porch at the rear of the Property at a cost of £3,658.00;*

IV. *Prior to its installation, the Respondent had asked the Applicant for permission to have the porch installed. There is nothing to suggest that the Applicant agreed to reimburse the Respondent for these costs, albeit the Applicant's Property was clearly improved by the installation of the porch which was obviously to the Applicant's financial advantage;*

V. *After the porch had been constructed, The Respondent had a discussion with Nicholas Poet in around 2016 in which Mr Poet probably said words to the effect of "I will pay something towards it but I will not pay all of it";*

VI. *There was no detailed agreement ever made regarding the Applicant reimbursing the Respondent for the costs of the porch;*

VII. *Relations deteriorated between the parties as a result of a dispute between the Respondent and another neighbour;*

VIII. *The Applicant served a Notice to Leave on the Respondent 14 May 2021;*

IX. *On receiving this, the Respondent stopped paying rent and then left the Property with rent arrears due in the sum of £4,324.00;*

X. *There is no lawful justification for the non-payment of these sums which are lawfully due as rent and remain unpaid.*

Decision

Having made the above findings in fact, the Tribunal granted the Application and made a Payment Order in favour of the Applicant against the Respondent in the sum of £4,324.00 together with interest on that sum at the rate of 4 per cent per year from today's date, being 20 July 2022 until payment.

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.

Andrew McLaughlin

Legal Member/Chair **Date: 20 July 2022**