



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 58 and 71 of the Private Housing (Tenancies) (Scotland) 2016 Act**

**Chamber Ref: FTS/HPC/PR/23/2407**

**Re: Property at 22 Whitehall Road, Aberdeen, AB25 2PR (“the Property”)**

**Parties:**

**Omar Odeh, Leen Al Kailani, 73 Queens Highlands, Aberdeen, AB15 4AR (“the Applicants”)**

**Margaret Kelsey, Rocksley, 252 Queens Road, Aberdeen, AB15 8DP (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that payment in the sum of £485 be granted against the Respondent.**

- 1) This was an application by the Applicants under rule 110 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), for a wrongful termination order, though the application included, under two heads of claim, claims that amounted to civil proceedings in relation to a private residential tenancy in terms of Rule 111 of the Rules. The application was processed throughout as a Rule 110 application but nothing turns on this, and I was satisfied that all three claims raised by the Applicants were properly made, intimated, and before me for consideration.
- 2) The wrongful termination order sought an award of the maximum of six times the monthly rent. The two other heads of claim were:
  - a) For full repayment of the deposit, on the grounds that deductions had been made in regard to cleaning costs which the Applicants took issue

with, in consideration of the condition of the Property when they took possession.

- b) Compensation (with no amount specified) in regard to “all the months” when the “landlord repeatedly refused to fix the boiler”.
- 3) The application was dated 19 July 2023 and lodged with the Tribunal on that date. Supporting papers, in particular the lease, and email and text communication, was lodged. In advance of the case management discussion (“CMD”) the Respondent’s agent lodged written submissions and an inventory of productions in response.

### **The Hearing**

- 4) The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 7 December 2023 at 10:00. I was addressed by the first Applicant (Mr Odeh) on behalf of both of the Applicants. The Respondent was present but was represented by Stuart Cairnie, Lettings Director, Aberdeen Property Leasing. The Respondent’s husband, Simon Kelsey, was also present and provided further information during the CMD.

### *Return of deposit*

- 5) At the CMD, I asked the first Applicant to confirm whether the claim in regard to the deposit was still insisted upon, as I noted from the Respondent’s submissions and productions that there had been an Adjudication process under the tenancy deposit scheme arrangements which appeared to have fully attended to the deposit (with much of the deposit now having been returned to the Applicants, and the issues regarding cleaning having been considered during the adjudication process). The first Applicant, after some consideration, provided no authority regarding the matter still being live and accepted it was now concluded. He withdrew that claim.

### *Wrongful termination*

- 6) In regard to the wrongful termination claim, I sought further information from the first Applicant as to the basis for his claim. He said that the claim was based on the Respondent not replacing or fixing the boiler and, in particular, the Respondent’s letting agent writing on 10 May 2023 by email of 15:57 to say that no further work would be carried out to the boiler as the Respondent was satisfied that – though the Applicants may require “to reset the appliance on a regular basis” – it could produce hot water if it ceased to work, and in any case in the event that the boiler did not operate, the Property had electric heaters available and had an electric shower in the Property. The Notice to Leave was also dated 10 May 2023 (and served upon the Applicants around that date) and sought to terminate the Tenancy on the basis of the Respondent seeking to refurbish the Property. (No information as to the nature of the planned refurbishment was provided with the Notice to Leave.) The first Applicant stated that, being new to the country and unaware as to their rights, and with a

toddler, they felt they needed to obtain new accommodation prior to the expiry of the Notice and arranged to vacate voluntarily. He said that they needed to be “proactive”. After having vacated, however, they noted that the Property was back on the market for reletting in a matter of weeks, and at a higher rent.

- 7) I sought the first Applicant’s comments on the productions and submissions of the Respondent in which the Respondent detailed having carried out refurbishment works at the Property after the Applicants had left. The submissions and invoices showed a new boiler being fitted, along with work to fit lights and general decoration. The first Applicant was aggrieved that, having been told no further work would be carried out to repair the boiler, a new boiler was fitted shortly after they moved out. He believed that the Respondent could have worked with them to arrange refurbishment works, in particular fitting the new boiler, while they were in occupation (perhaps with them moving out of the Property for a short period).
- 8) The first Applicant said that they had not known what works were planned by the Respondent when moving out. I asked the first Applicant if they had asked the Respondent or her agent for further information as to the planned refurbishment when receiving the Notice to Leave. He said that they had not. I asked if they had sought any advice from any of the potential sources of advice set out in the Notice to Leave. He said that they had not.
- 9) The Respondent’s submissions on this matter principally came from Mr Kelsey. He said that the Notice to Leave was issued when they had a real intention to refurbish. (I took it from the tone of Mr Kelsey’s submissions that, though in the Respondent’s name, he and the Respondent managed the Property together.) He described the Property as “traditional” and at least 100 years old. He said that the Respondent had let out the Property for 9.5 years and, based on information from the Home Report when the Property had been purchased, it was believed that the boiler was around 19 years old at the time of being replaced (and so around 18 years old at the commencement of the Tenancy). He said that prior to issuing the Notice to Leave, consideration had been given to discussing with the Applicants arrangements to replace only the boiler but there were a number of issues with repair and renewal at the Property and he and the Respondent thought it best to do them all at once, rather than piecemeal. They were also keen that the work was done during the Summer months, to avoid issues with pipes freezing when the heating was turned off during the works. He submitted that the Respondent had been a good landlord, in communication with the Applicants, and using reputable trade-people throughout the Tenancy.
- 10) In regard to the work undertaken after the Applicants vacated, Mr Kelsey was adamant that the work could not have been done with a young family still in residence. He described the following work:
  - a) The replacement of the boiler. This took only a few days, but during that time the Property had no water or heating.
  - b) A chemical flush of the radiators.
  - c) A new time clock fitted.
  - d) A check of the plumbing.

- e) New lights fitted in the kitchen. For this, he described the issue at length. He said that the kitchen had been quite “dark” and “gloomy”, with dark-coloured cabinets and flooring, and old lighting which was dim. There was a plan that perhaps the lighting, cabinets and flooring would all need changed but they first had eight new LED lights fitted. This left the room brighter and they stopped at that. This work, however, still involved material disruption with 25 holes being cut in the kitchen to remove the lights, transformers and old wiring, generating significant dust and dirt. There was then a need for re-plastering and several coats of paint to the new plaster. He said that the kitchen was not usable for around two weeks, with the cabinets and surfaces covered during the course of the works.
  - f) There was repainting around the house. For this (and the painting in the kitchen) he and the Respondent undertook the work themselves, as they lacked the funds to employ a contractor. They undertook the work during their free time, so the final completion was not until September 2023 (some three months after the works commenced).
- 11) In regard to remarketing, he accepted it was remarketed soon after the Applicants left, but said it was not commenced until 19 days later (being slightly longer than the Applicants’ submissions of a couple of weeks). He said that the Property was remarketed prior to the works being completed, using old photographs from before the work commenced. He said that this was because of the Aberdeen housing market being “tight” and their understanding that, even if a new tenant was quickly identified, there would be some weeks before all formalities were complete. Their view was that, if necessary, he and the Respondent could speed up completion of the work if a new tenant was found quicker than expected.
- 12) In reply, the first Applicant said that he could not dispute the work that the Respondent said had been undertaken but that was a choice by her for her own investment in the Property. He said that the Applicants were only really concerned about having a working boiler, as they had accepted the kitchen (with the existing lighting) as it was.

*Compensation regarding the issues with the boiler*

- 13) The first Applicant, and the supporting papers from both sides, detailed repeated complaints about the boiler during the Tenancy. In particular there was an issue with the boiler tripping off, and ceasing to function. The Respondent’s papers showed her position to be that repairs were frequently undertaken and that their engineer’s view was the boiler did function if reset after tripping off. The engineer also suggested that the reason that the boiler kept tripping off was that the Applicants were filling it to too high a pressure (and, if kept to 1 bar, it would work, or at least be easily reset if it tripped off).
- 14) The first Applicant disputed the Respondent’s position on the boiler. He accepted that his family had never lived in a property with such a boiler before, and had sought (but also received) guidance from the Respondent on how to

work it and to top up the pressure. He said, however, that it did not function if the pressure was only at 1 bar, and it only operated if the pressure was higher.

- 15) In regard to the email of 10 May 2023 (referred to above), when the Respondent's letting agent declined to carry out further work and stated that the boiler was able to function (if reset), he referred to his email of 14 May 2023 in response where he disputed this. He said that in May 2023 the boiler simply could not be used to produce hot water for a two-week period up to that email. There was also a long-weekend without heating, which he recalled to be the Coronation Weekend (thus around 6 May 2023) when his family had moved into a hotel, where they could also enjoy hot water. He recalled the cost was about £100 and he held the receipt but had not yet lodged it.
- 16) Generally, he accepted that they did not suffer due to lack of heating because the weather was reasonable in May 2023 and they used the electric heaters (but thus incurred higher electricity costs). In regard to hot water, he and his wife used the electric shower but it was not convenient to use it to fill a bath tub for their two-year old child. Therefore, during the two-week period in May, they had to fill the bath using kettles mixed with cool tap water to the correct temperature. He thought they did this around three times during that period.
- 17) The application did not specify the amount of compensation sought in regard to the boiler issues. When pressed, the first Applicant suggested one month's rent (so £1,050).
- 18) The Respondent's position regarding the hot water was that repairs had been carried out; that the boiler could function if reset; and that in any case the Applicants had use of electric heaters and an electric shower if needed.

#### *Further procedure*

- 19) I sought the parties' submissions on further procedure, providing them with the option – should they think that a further evidential hearing would not result in any material new information to that already provided – that I consider their submissions to date and make a Decision at the CMD. On consideration, both sought for a Decision to be made at the CMD without any further continuation or further evidence. No motion was made for expenses or for interest.

#### **Findings in Fact**

- 20) On or about 3 and 5 July 2022 the Respondent let the Property as a Private Residential Tenancy to the Applicants under a lease with a commencement date of 5 July 2022 ("the Tenancy").
- 21) In terms of clause 8 of the Tenancy Agreement, the Applicants required to pay rent of £1,050 a month in advance on the 5<sup>th</sup> day of each month.
- 22) In terms of clause 18 of the Tenancy Agreement, the Respondent bound herself to abide by the Repairing Standard and specifically noted that the

Applicants were entitled to expect that “Installations for supplying water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order”.

- 23) During the course of the Tenancy, the Applicants experienced frequent difficulties with the boiler, in particular that it would trip off and require reset and/or the water pressure topped up.
- 24) The Applicants were unable to obtain hot water from the boiler for a two week period during May 2023.
- 25) The Applicants chose to live in a hotel for a weekend around 6 May 2023 due to being unable to obtain hot water or heating at the Property.
- 26) The boiler at the Property was around 18 years old at the date of commencement of the Tenancy.
- 27) The Property had a working electric shower.
- 28) The Property had working electric heaters available for the use of the Applicants.
- 29) The Applicants lived at the Property with their two-year old child whom they bathed in the bath (rather than showered).
- 30) On or around 10 May 2023, the Respondent’s letting agent drafted a Notice to Leave in correct form addressed to the Applicants, providing the Applicants with notice, amongst other matters, that the Respondent sought to terminate the Tenancy on the ground that “Your Landlord intends to refurbish the Let Property”.
- 31) The said Notice did not detail the refurbishment that the Respondent was said to intend to carry out.
- 32) The Applicants did not make enquiries with the Respondent nor her letting agent as to the intended refurbishment works, nor seek any agreement with the Respondent on remaining at the Property while works were undertaken.
- 33) The Applicants did not seek any independent advice on the Notice to Leave nor their rights regarding the Tenancy.
- 34) The Notice to Leave provided the Applicants with notice that no application for eviction would be raised before the Tribunal prior to 4 August 2023.
- 35) The Applicants moved out of the Property voluntarily on 12 June 2023.
- 36) The Respondent advertised the Property for let in or around late June 2023.

- 37) The Respondent undertook work to the Property between 13 June and September 2023 to include:
- a) Replacement of the boiler; a chemical flush of the radiators; fitting a new time clock; and checking all the plumbing;
  - b) Removal of the existing light fittings in the kitchen, and replacement with new LED lights;
  - c) Replastering in the kitchen to repair areas damaged by the replacement of the lights;
  - d) Painting of the kitchen, including the new plaster; and
  - e) Repainting of the Property generally.
- 38) The Respondent engaged contractors to undertake the work set out at 38)a) to c). Such work took a number of weeks, during which time there were two days when the Property was without water or central heating; and two weeks when the kitchen was not readily accessible. The work generated significant dust and dirt.
- 39) Due to financial constraints, the Respondent and her husband undertook the painting set out at 38)d) to e), which they carried out in their spare time over a number of weeks.

### **Reasons for Decision**

- 40) I was obliged to the first Applicant and the Respondent's agent and husband for the detailed submissions and clear and open responses. I was satisfied that sufficient evidence was provided by both parties to allow me to analyse the issues in full without a further hearing.
- 41) In regard to wrongful termination, the relevant provision is at section 58 of the 2016 Act:
- (1) *This section applies where a private residential tenancy has been brought to an end in accordance with section 50.*
  - (2) *An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was immediately before the tenancy ended either the tenant or a joint tenant under the tenancy ("the former tenant").*
  - (3) *The Tribunal may make a wrongful-termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the person who was the landlord under the tenancy immediately before it was brought to an end. ...*
- 42) I am satisfied that there was nothing that the Respondent did (nor was done on her behalf) that misled the Applicants into ceasing to occupy the Property. I was satisfied that she issued the Notice to Leave with a true intention to carry out refurbishment work; that the scope of work intended at the time of the Notice to Leave was of the nature and duration that the Respondent genuinely believed it would not be conducive to carry out the works with tenants in occupation; and that works of that magnitude were carried out.

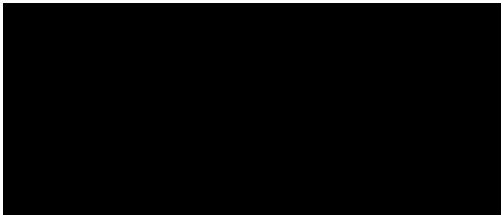
- 43) The Applicants may feel that the extent of the refurbishment was not required, or that it did not merit termination of the Tenancy, but they did not make any such enquiries at the time. There was no obligation on the Respondent to negotiate with the Applicants to arrange material works in a way that the Applicants could remain in the Property. Such an assessment of the extent and necessity of the works, their effect on continued occupation, and the lack of discussions between the parties on options may have been a relevant consideration by the Tribunal had an application for eviction been raised. The Applicants, however, did not seek to investigate or challenge matters in this way. Instead they chose to leave voluntarily.
- 44) My only consideration is whether they were misled in some way. I am satisfied that they were not. The works described by the Respondent amounted to "refurbishment" so the Notice to Leave was accurate. Furthermore, at least in the way the work was carried out by the Respondent, I am satisfied that she believed that the work would not have been conducive to the Applicants remaining in the Property with their child while the work was undertaken and that this was accurate. That there may have been other ways to undertake the work, to minimise disruption and allow continuation of occupation, is not a relevant consideration under section 58. I thus refuse the application under Rule 110 in regard to wrongful termination.
- 45) In regard to the remaining claim under Rule 111 for damages regarding the malfunctioning boiler, I am satisfied that it is within judicial knowledge that boilers may become less reliable after a number of years. Therefore, the Respondent proceeded at her own risk in letting out the Property with an 18 year-old boiler. Notwithstanding that she says she instructed frequent repairs when requested, she implicitly accepts that the boiler needed replaced (as she replaced it as part of the refurbishment works). Further, even if there was an element of 'user error' in the topping up of the pressure (which the Applicants deny), I do not think that a boiler that requires the occupier to top up pressure and frequently reset it, in order to maintain hot water can be said to comply with the provisions of the Repairing Standard no matter how responsive the landlord may be in sending out contractors to inspect.
- 46) For that reason, I do hold that damages fall due to the Applicants but I do not accept that abatement of a full month of rent is merited. The Applicants suffered a protracted period of inconvenience and a short period of significant inconvenience (during the two weeks in May) though during that whole time they enjoyed a property that was wind and water-tight, etc. and they had a source of heating and hot showers.
- 47) The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to make a decision at the CMD and I award the sum of £485 against the Respondent. This is based on my calculation of an abatement of two weeks of rent (to cover all the inconvenience regarding the boiler whether in May or otherwise), rounded up slightly.

## **Decision**

48) In all the circumstances, I grant an order against the Respondent for payment of £485.

## **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.



**Legal Member/Chair**

7 December 2023

**Date**