



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

Chamber Ref: FTS/HPC/CV/23/1012

Re: Property at 10 Flat G/1 Kincaid Court, Greenock, PA15 2BX (“the Property”)

Parties:

Ms Aileen Anderson, 57 Bathlin Crescent, Glasgow, G69 0NE (“the Applicant”)

Ms Mhairi Louise Murphy, 26 Starforth Road, Greenock, PA16 0WJ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicant in the sum of ONE THOUSAND NINE HUNDRED AND FIFTY EIGHT POUNDS AND FORTY TWO PENCE (£1958.42) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. This is an action for recovery of rent arrears in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. The Tribunal proceeded with a Case Management Discussion (“CMD”) on 30 November 2023 by way of teleconference. Mr Livingstone from Landlord Specialist Services Scotland appeared for the Applicant. Ms Murphy, the Respondent appeared on her own behalf.

3. Mr Livingstone moved the Tribunal to grant an order for payment of arrears of £1509.24. He explained that the tenancy had ended on 28 March 2023 when the Respondent moved out by which time arrears had increased to £1958.42.
4. In response Ms Murphy disputed the arrears. She accepted she did not pay rent from December 2022 until she left the Property on 28 March 2023. Her position was she had paid rent in full throughout the tenancy despite there being an intermittent fault on the boiler which meant that she was not always able to get hot water and had to adjust the water pressure on the boiler. By December 2022 she had had enough. She submitted there were issues with the washing machine and the dishwasher, and that the Property was cold. She submitted that she thought the tradesman that came to inspect the boiler in December 2022 was going to repair the washing machine and the boiler. He did not do either. She emailed Mr Livingstone on 14 January 2023 to complain about the lack of repair and stated that once all the repairs were carried out they could discuss rent. She had taken advice from Legal Services Agency who sent her a letter on 2 December 2022 which gave her advice about the disrepair of the Property. She referred to the gas safety certificates lodged. The Tribunal examined these and noted the most recent certificate stated there were no faults to report. Ms Murphy referred the Tribunal to the gas certificate of 24 October 2019 and submitted this showed there was water leaking and that there was an issue with the heat exchanger. She submitted the Applicant had not repaired this as the Applicant had been told the cost of replacing the exchanger would be over £600 otherwise, she would have to replace the boiler. The Respondent submitted the Applicant had done neither.
5. Ms Murphy's submission was she should not have to pay the full rent due to the lack of repair, but she was not able to advise the Tribunal what reduction in rent she felt she may be entitled to, if the Tribunal were to find she was entitled to an abatement of rent.
6. The Tribunal made the following findings in fact after the CMD –
 - i. The parties entered into a Private Residential Tenancy Agreement on 16 August 2018 with a start date of 17 August 2018. In terms of Clause 7 the Respondent agreed to pay rent of £545 per month.
 - ii. The gas appliances at the Property were inspected on 12 October 2018, 24 October 2019, 31 January 2021 and 12 December 2022.
 - iii. The Respondent emailed the Applicant's agent on 14 January 2023 to complain about the lack of repairs and in particular the lack of hot water at times.
 - iv. The Respondent did not pay rent from December 2022 to 28 March 2023 when the tenancy terminated.

7. The Tribunal continued the application to a Hearing for the following matters to be considered –
- i. The nature and dates of any complaints made by the Respondent to the Applicant or any agent acting on behalf of the Applicant in relation to disrepair of the Property and in particular complaints concerning a lack of hot water, heating and the boiler.
 - ii. Whether and how the Applicant responded to any complaints of disrepair, and in particular complaints concerning a lack of hot water, heating and the boiler, within a reasonable period of time of being notified of the need to repair.
 - iii. Whether and when the Respondent first put the Applicant on notice that she would not pay rent until repairs were attended to.
 - iv. Whether any rent is lawfully due to be paid by the Respondent between December 2022 and 28 March 2023.
 - v. If any rent is lawfully due to be paid between these dates, the amount of rent lawfully due, the amount of any abatement in rent and amount of arrears.

The Tribunal issued a Note on the Case Management Discussion.

Notice of Direction

8. On 11 January 2024 the Tribunal issued a Notice of Direction to parties. The Applicant was directed to lodge all correspondence showing or tending to show when the Respondent gave notice to the Applicant or to the Applicant's agent that repairs were required to the boiler, lack of hot water, washing machine and the dishwasher and all corresponding documents in relation to these items and in particular any documentation showing whether the Respondent's reports relating to these items were or were not attended to and when any such repairs were completed.
9. The Respondent was directed to lodge all correspondence showing or tending to show when she gave notice to the Applicant or to the Applicant's agent that repairs were required to the boiler, lack of hot water, washing machine and the dishwasher.
10. In accordance with the Notice of Direction, the Applicant's agent lodged an Inventory of Productions comprising a summary of events, the Applicant's statement on the dishwasher, text messages dated 6 July 2021 regarding the dishwasher, an excerpt from a letter dated 5 December 2022 from Legal Services Agency ("LSA") regarding the dishwasher, an undated letter from Landlord Specialist Services to the Respondent, a witness statement from Caroline Parris dated 12 February 2024, the Applicant's statement on the boiler, text messages dated 4 November 2021 regarding the boiler, payment

to gas engineer dated 5 November 2021, text messages dated 28 June 2021 regarding the boiler, gas safety certificated dated 12 December 2022, an invoice dated 31 January 2023 from Omega Plumbing and Heating Solutions, a statement dated 23 January 2024 from Tito Levy of Omega Plumbing and Heating Solutions, a letter dated 7 June 2023 from Jones Whyte solicitors to the Applicant, an email dated 3 January 2024 from Jones Whyte to the Applicant, the Applicant's statement on the washing machine, text messages dated 28 November 2022, an excerpt from a letter dated 5 December 2022 from LSA regarding the washing machine, screenshots from Gumtree dated 15 and 16 February 2023, a further two undated letters to the Applicant from Landlord Specialist Services Scotland, a photo of the washing machine drawer, the Applicant's statement on other items with various receipts and invoices, text messages from 17-21 December 2021 regarding the fridge, a mortgage valuation report dated 3 November 2022 from Walker Fraser Steele, Chartered Surveyors and a Home Report dated 31 October 2022 from Walker Fraser Steele, Chartered Surveyors.

11. The Respondent lodged written representations regarding the boiler and hot water issues with a screen shot from Vaillant.co.uk, a gas safety report dated 24 October 2019, a statement of a meeting with the Applicant on 1 March 2020 with text messages dated 1 March 2020, a gas safety report dated 31 January 2021, a statement of a meeting with Caroline Parris on 28 January 2022 with text messages dated 17 and 28 January and 28 June 2022, a statement that in April 2022 the Respondent had taken a video of the boiler and that it was becoming unusable, a statement with text messages with Caroline Parris and the Applicant dated 28 June 2022 regarding the boiler, a statement regarding a text message dated 30 June 2022 regarding the boiler, a statement regarding a visit by a gas engineer on 12 December 2022 with text messages dated 2-12 December 2022, a statement regarding receipt of a letter on 14 January 2023 from Landlord Specialist Services Scotland with a copy of the letter, an email to Landlord Specialist Services dated 14 January 2023, a statement regarding receipt of a letter on 4 February 2023 from Landlord Specialist Services Scotland with a copy of the letter, a statement that in February 2023 the Respondent had taken a video of the boiler, an email dated 4 February 2023 to Landlord Specialist Services Scotland, Agency, emails dated 16 and 20 February 2023 from Landlord Specialist Services Scotland, an email dated 4 March 2023 to Landlord Specialist Services Scotland, the Respondent's statement on the washing machine with a screen shot of the kitchen floor, an undated text message regarding the gas safety engineer's visit in December 2022 and the Respondent's statement on the return of the deposit.
12. On 13 February 2024 the Applicant's representative Landlord Specialist Services lodged an application to amend the arrears from £1509.24 under the original application to £1958.42. They attached a rent statement to 28 March 2023 when the tenancy had ended showing arrears of £1958.42.
13. The Respondent made further written responses to the Applicant's Inventory of Productions. These included disputing the dishwasher was not included as

part of the tenancy, disputing the veracity of the invoice from Tito Levy from Omega Plumbing and Heating Solutions and that a problem with a heat exchanger would not show up on a gas safety certificate. She also disputed that the purchasers of the Property would have found fault with the boiler within 5 days.

14. On 13 March 2024 the Respondent advised the Tribunal that due to personal reasons she would not be attending the Hearing on 18 March 2024.
15. On 13 March 2023 the Respondent also submitted additional information regarding her alleged obstructiveness, the gas safety certificates with text messages she had previously lodged dated 17 and 28 January and 28 June 2022, rent arrears at the beginning of the tenancy with various text messages between parties dated 11 August 2018 to 14 September 2018, an application to the Council dated April 2020 and the tenancy deposit with an email dated 14 September 2018 from the Applicant and an email dated 25 January 2024 from Safe Deposits Scotland. She also lodged the gas safety reports she had previously lodged for the CMD dated 12 October 2018, 24 October 2019 and 31 January 2021.
16. After consideration of the Respondent's email of 13 March 2024 that she would not be in attendance, in terms of Rule 29 of the Regulations the Tribunal decided to proceed with the Hearing. The Tribunal noted the Respondent had not requested a postponement of the Hearing. The Tribunal had the Note from the CMD fully setting out the Respondent's position together with her full written submissions and documents lodged in support of her case as set out in paragraphs 11, 13 and 15 above. The Tribunal was conscious of the overriding objective. It determined that it could deal with proceedings justly on the materials before it. In doing so the Tribunal was dealing with the matter flexibly and proportionately to the complexity of the matter. In doing so further delay was avoided. Parties were both advised the Hearing would proceed.

Hearing

17. A Hearing was assigned to proceed in person on 18 March 2024 at 10 am in the Beacon Arts Centre, Greenock. The Applicant appeared with Jeff Livingstone from Landlord Specialist Services Scotland. There was no appearance by or on behalf of the Respondent.
18. In addition to the documents lodged by both parties as set out in paragraphs 10, 11, 13 and 15 above the Tribunal also had before it a copy of the tenancy agreement between the parties, the rent statement to 28 March 2023, a gas safety certificate dated 27 October 2022, a text message dated 8 November 2022 from "Callum" regarding a valuation of the Property on 8 November 2022, a letter dated 2 December 2022 from Legal Services Agency, a copy letter dated 21 December 2022 from Landlord Specialist Services Scotland, an email dated 28 March 2023 from Landlord Specialist Services Scotland together with a response from the Respondent on 28 March 2023, an email from the Applicant dated 10 November 2023 which set out that she had been

awarded the deposit and that this had been applied towards the cleaning and redecoration of the Property and a text from Safe Deposits Scotland dated 21 June 2023 that showed no response had been made by the Respondent to the Applicant's claim for the return of the deposit. The Tribunal considered all these documents.

19. The Tribunal took evidence from the Applicant.

The Dishwasher

20. The Applicant advised that the Property had been advertised as unfurnished as per the tenancy agreement. There were white goods in the Property including the dishwasher, washing machine, fridge freezer and cooker. The Applicant gave evidence that she advised all prospective tenants including the Respondent that the dishwasher was not included in the tenancy as it was a non-essential item, but that the Respondent was welcome to use it. She made it clear at the viewing however that if it did break down, she would not pay for it. The dishwasher was in working order at the start of the tenancy. She had considered taking it out but did not want to leave a gap in the kitchen and had decided to leave it in situ. On being questioned by the Tribunal she accepted she had not specified what white goods were in the tenancy and that the tenancy agreement simply stated it was unfurnished.
21. The Applicant went on to give evidence that on 6 July 2021 the Respondent texted her friend Caroline Parris to advise the dishwasher had broken. The Tribunal noted the content of the text messages lodged by the Applicant dated 6 July 2021. Ms Parris helped her with the Property. Ms Parris reminded the Respondent that the dishwasher was not part of the tenancy agreement. The Respondent did not press the point. No further correspondence was received regarding the dishwasher.
22. On 10 December 2022, the Applicant gave evidence she received a letter from LSA, solicitors on behalf of the Respondent which stated the Applicant owed the Respondent £150 for repair of the dishwasher. The Applicant gave evidence that she had never had any correspondence from the Respondent which showed that she had paid for a repair.
23. LSA also challenged the validity of a Notice to Leave the Applicant had served on the Respondent on 4 November 2022. The Applicant explained she then instructed Jeff Livingstone from Landlord Specialist Services Scotland to act as her agent. She explained Mr Livingstone sent the Respondent a letter offering to pay half of the £150 if the Respondent sent proof of payment. The Tribunal noted the undated letter from Mr Livingstone addressed to the Respondent which had been lodged by both parties in which this offer was made.

24. Mr Livingstone explained that he was concerned that if any repair had been done that it had been done by a competent engineer. However, the Respondent has never provided proof that she had paid for the dishwasher to be repaired.
25. The Tribunal questioned the Applicant on whether Ms Parris had been at the viewing as this was disputed by the Respondent. The Applicant gave evidence Ms Parris had been at the viewing. On further questioning by the Tribunal about whether the Respondent's son had been at the viewing the Applicant explained he had not been and that she had never met the Respondent's son.

The Washing Machine

26. The Applicant gave evidence that the first complaint about the washing machine was made on 2 December 2022 when the Respondent sent her a text to say it was making a squeaking noise. The Applicant arranged for Omega Plumbing and Heating Solutions to check the washing machine on 12 December 2022 when they had also been instructed to check the boiler. The Tribunal noted the text messages lodged by both parties dated 2-12 December 2022 regarding the report about the washing machine making a loud squeaking noise and the boiler cutting off. The engineer attended on 12 December 2022, inspected the washing machine and reported to her that the machine was working but that it was making a slight noise.
27. The Tribunal noted the Respondent's submission that the engineer had told her he had no authority to check the washing machine, that he thought it was the belt causing the noise and that she heard nothing again about the washing machine. The Tribunal also noted a contrary statement by the Respondent in her submission that the engineer had checked the washing machine and had placed his hand in the drum.
28. The Applicant gave evidence that she had received LSA's letter on 10 December 2022 stating that the washing machine was in disrepair. The first notice that there was an issue with the washing machine was on 2 December 2022 after the Respondent had texted her. The engineer had only reported the washing machine made a slight noise and was in good working order. The Tribunal noted the email from Tito Levy of Omega Plumbing and Heating Solutions dated 31 January 2023 that the washing machine was in good working order and that his invoice had been paid.
29. Despite the engineer reporting the washing machine was working the Applicant went on to give evidence that the Respondent continued to complain about the washing machine and the boiler. The Tribunal noted the Respondent's email dated 14 January 2023 to Mr Livingstone disputing the engineer had been told to check the washing machine or the boiler on 12 December 2022. The Tribunal also noted Mr Livingstone's undated reply lodged by both parties that the washing machine was in working order at the inspection on 12 December 2022

and the Respondent's email of 4 February 2023 stating the washing machine was making a noise, pushing the lino up and causing black marks on her clothes. The Applicant was referred to the photo lodged by the Respondent of what she claimed showed a damaged skirting board. The Applicant gave evidence that at the end of the tenancy she found no issue with the skirting board or the lino. If the lino had been pushed up her evidence was that it could just as easily be pushed under the machine again.

30. The Applicant gave evidence that by this time she felt harassed by the Respondent who was not able to accept the washing machine had been inspected and was in good working order. She wanted to be reasonable and started to look for a replacement machine which she sourced. However, there was an issue with arranging access which Mr Livingstone had tried to arrange. The Tribunal noted the content of the emails from Mr Livingstone to the Respondent dated 16 and 20 February 2023 attempting to arrange access and the Respondent's email of 4 March 2023 regarding access.
31. The Applicant gave evidence that when she went into the Property after the tenancy had terminated, the washing machine drum, seal and drawer were covered in mould as shown in the photograph lodged.

The Boiler

32. The Applicant's evidence was that the Respondent had complained twice in the four and a half years she had lived at the Property about the boiler. The first complaint was on 4 November 2021 when she arranged for the boiler to be inspected the following day. The engineer advised the boiler was in working order and just needed pressurised. The second complaint was made on 28 June 2022. The engineer inspected the boiler on 5 July 2022 and reported no faults. The Respondent advised she would keep an eye on it. The Tribunal noted the text messages dated 4 November 2021 and 28 June to 5 July 2022. The Tribunal also noted the gas safety certificate dated 27 October 2022 which showed no faults.
33. The Applicant advised there were no further complaints about the boiler until 2 December 2022 when the Respondent texted her to complain the boiler was cutting off again. The engineer from Omega Plumbing and Heating Solutions attended on 12 December 2022 and reported no faults. The Tribunal noted the Respondent's submission that the engineer had not been asked to inspect the boiler but was only asked to do a gas safety check and queried this with the Applicant. The Applicant gave evidence that the gas safety check by its very nature includes an inspection of the boiler. She disputed that the engineer had not inspected the boiler. She disputed the Respondent's submission on 27 February 2024 that there was no "legal invoice" from Tito Levy showing what works were carried out on 12 December 2022 and referred the Tribunal to his email with Omega's email address of 31 January 2023 confirming the Applicant had paid £120 and that Mr Levy had carried out an inspection of the boiler and the hob and had checked the washing machine and found all to be in good

working order.

34. The Tribunal questioned the Applicant about the Respondent's claim that she had no hot water for months. The Applicant advised she was unaware of any suggestion that the Respondent had had no hot water or heating for months. She had never been told by the Respondent that that was the case and had never been advised by the Respondent that she had had to buy heaters. There was nothing lodged to show that the Respondent had ever complained about no hot water or heating or that the Respondent had had to buy heaters. Mr Livingstone advised that the shower was electric so there would have been hot water. When also questioned about the Respondent's claim that the Property was damp the Applicant referred the Tribunal to the original Home Report carried out by Walker Fraser Steele, Chartered Surveyors on 31 October 2022 which showed no dampness in the Property. The Tribunal noted that that report showed the internal walls had been randomly tested by a moisture meter for dampness with no sign of dampness noted.
35. The Tribunal queried why all the repairs were towards the end of the tenancy. The Applicant explained that a Notice to Leave had been served on the Respondent on 4 November 2022. This was the main concern in LSA's letter to her of 10 December 2022. The Applicant went on to explain the Respondent was not happy that she was being asked to move out of the Property. Throughout the tenancy the Applicant advised there had been very few issues and those issues which were reported such as the light pendant, oven, taps, electric shower switch and fridge as detailed in her submission were attended to within a few days. The fridge had been found to be working and only needed a bulb replaced. There had been no complaints about the carpets smelling. However, after the Notice to Leave was served the complaints did not stop.
36. The Applicant explained gas servicing cannot be carried out without the boiler being inspected. The Tribunal referred the Applicant to the gas safety report of 24 October 2019 and noted that the engineer had commented that there was some water leakage from the heat exchanger. The Tribunal also referred her to the gas safety report of 31 January 2021 and noted the engineer had commented again that there was some water leakage from the heat exchanger and that the pressure was low. The Tribunal queried whether she thought she should attend to the heat exchanger. She gave evidence that at no point was she ever told it needed replaced or repaired. If she had been advised that anything was in disrepair she would have repaired or replaced it. If there had been any item that was in need of repair she knew from experience she would have had a phone call when the engineer was on site to seek authorisation to repair or replace an item otherwise the system would not pass the gas safety certificate. The system had been inspected on 27 October 2022 as shown on the gas safety certificate lodged and showed no faults. The inspection on 12 December 2022 of the boiler also confirmed that there was no issue with the boiler. Mr Livingstone also referred to the email from the Applicant's solicitor Jones Whyte on 3 January 2024 which advised that the purchasers of the Property did not report any issue with the boiler and that they understood the

purchasers had moved in after the sale. The Tribunal noted the Respondent disputed that a fault in the boiler would be found within 5 days unless the purchasers ran a bath. The Tribunal also noted the Respondent's submission in her email of 26 February 2024 to the Tribunal that she was just off the phone with the gas safe register who "*confirmed that the heat exchanger problem would not show up during a gas safe inspection as it is not a gas safe concern.*"

37. The Tribunal questioned the Applicant as to whether the Respondent had put her on notice that she would withholding rent before she actually stopped paying rent. The Applicant explained the Respondent had not and the first she knew that the Respondent was not paying rent was in December when the rent was not paid. She did not know the reason for this at the time. Mr Livingstone explained that throughout this period he did not believe the Respondent was withholding rent. The Respondent never advised that she had put the rent in a separate account so the rent could then be paid after repairs were carried out. He made the point that as the Respondent had been getting advice from LSA she would have received good advice to put the Applicant on advance notice that unless the repairs were attended to she would withhold rent and was putting rent in a separate account. She did not do that. The first time she mentioned that she would discuss the rent after repairs were carried out was in her email of 14 January 2023 at which stage there were no outstanding repairs to the boiler or the washing machine and she was already two months in arrears as shown in his letter to the Respondent. The Applicant gave evidence she thought the Respondent had simply decided not to pay rent after the Notice to Leave had been served.

38. The evidence concluded. Mr Livingstone moved the Tribunal to amend the arrears from £1509.24 under the original application to £1958.42 as per his email of 13 February 2024 and as shown in the rent statement. He moved the Tribunal to grant an Order for payment in the amended sum.

Findings in Fact

39. Clause 4 of the tenancy agreement states that the tenancy is unfurnished. The Property had a dishwasher, washing machine, fridge freezer and cooker. The Applicant made it clear at the commencement of the tenancy that although the dishwasher was in situ it was not included in the tenancy and that she would not pay for any repairs to the dishwasher.

40. The arrears of rent at the end of the tenancy on 28 March 2023 were £1958.42. The Respondent last paid the monthly rent of £503.08 on 11 November 2022. The rent in terms of Clause 7 of the tenancy agreement was originally £545 but this had been reduced to £503.08 in May 2020 and had been paid by the Respondent up until 11 November 2022 as per the rent statement lodged.

41. The Respondent did not advise the Applicant that she intended to withhold rent in advance of her doing so in December 2022. The Respondent did not produce any evidence that she held the withheld rent in a separate account. The

Respondent had no right to withhold rent from December 2022 until termination of the tenancy on 28 March 2023.

42. The boiler was inspected on 12 October 2018. A Gas Safety Certificate was issued.
43. The boiler was inspected on 24 October 2019. A Gas Safety Certificate was issued. The Certificate noted some water leakage from the heat exchanger. The Certificate does not state heat exchanger had to be replaced or repaired. Had the heat exchanger needed replaced or repaired a Certificate would not have been produced. The Applicant was not advised to either repair or replace the heat exchanger.
44. The boiler was inspected on 31 January 2021. A Gas Safety Certificate was issued. The Certificate noted some water leakage from the heat exchanger and that the pressure needed to be adjusted. The Certificate does not state the heat exchanger had to be replaced or repaired. Had the heat exchanger needed replaced or repaired a Certificate would not have been produced. The Applicant was not advised to either repair or replace the heat exchanger.
45. On 6 July 2021 the Respondent texted the Applicant's friend Caroline Parris to advise the dishwasher was broken. Ms Parris texted the Respondent to remind her the dishwasher was not part of the tenancy. The Respondent made no further complaints about the dishwasher until a letter was received by the Applicant from LSA on behalf of the Respondent on 10 December 2022.
46. The Respondent did not complain about the boiler from the start of the tenancy on 17 August 2018 until 4 November 2021. On 4 November 2021 the Respondent complained the boiler was not working. A gas engineer inspected the boiler on 5 November 2021. The boiler was in working order but needed repressurised.
47. On 28 June 2022 the Respondent complained that the boiler was not working. A gas engineer inspected the boiler on 5 July 2022. The boiler was in working order. No faults were reported. The Respondent confirmed the boiler was working when the engineer attended and told the Applicant she would keep an eye on it. The Respondent made no further complaints about the boiler until 2 December 2022.
48. The boiler was inspected on 24 October 2022. A Gas Safety Certificate was issued. No faults were noted.
49. The Property was inspected on 31 October 2022 by Walker Fraser Steele, Chartered Surveyors. No dampness was found in the Property.

50. The Applicant served a Notice to Leave on the Respondent on 4 November 2022 on the ground she wanted to sell the Property.
51. The Respondent met with LSA on 29 November 2022 to consult about the Notice to Leave and repairs.
52. On 2 December 2022 LSA wrote to the Respondent to advise her on the Notice to Leave and on various items of disrepair including the dishwasher, the washing machine and the boiler.
53. There were no outstanding repairs to the dishwasher, washing machine or boiler on 29 November 2022 when the Respondent met with LSA. The Respondent had made one complaint about the dishwasher on 6 July 2021 and had been reminded it was not part of the tenancy. She had made no further complaints about the dishwasher by 29 November 2022. The Respondent had never complained about the washing machine. The Respondent had last complained about the boiler on 28 June 2022. She had made no further complaints about the boiler by 29 November 2022.
54. On 2 December 2022 the Respondent complained the washing machine was making a loud squeaking noise and that the boiler was cutting off. The Applicant arranged with the Respondent for a heating and plumbing engineer to attend to inspect the washing machine and the boiler. The Respondent was amenable to giving access and access was arranged for 12 December 2022. The Applicant responded to the report about the washing machine and the boiler within a reasonable period of time.
55. On 10 December 2022 the Applicant received a letter from LSA stating the Applicant owed the Respondent £150 for repair of the dishwasher and that the washing machine was broken.
56. On 12 December 2022 a heating and plumbing engineer from Omega Plumbing and Heating attended at the Property. He inspected the washing machine and the boiler and found both to be in working order.
57. On 12 January 2023 the Applicant's agent Landlord Specialist Services Scotland wrote to the Respondent about her being in two months rent arrears. The Respondent emailed the Applicant's letting agent on 14 January 2023 to complain about lack of repair to the boiler and washing machine following on the engineer's visit on 12 December 2022 disputing he had inspected the washing machine and boiler, an unhygienic shower with a photograph, a broken door handle, poor heating, the smell of cat urine from the carpets and to complain the Applicant owed her £150 for a repair to the dishwasher. She stated that once all repairs had been carried out, she would discuss the rent. The Respondent's complaints about the washing machine, heating and the boiler were unfounded, the washing machine and the boiler having been inspected on 12 December 2022 after her complaint on 2 December 2022.
58. Landlord Specialist Services Scotland replied to the Respondent by way of an undated letter and reiterated the dishwasher was not included in the tenancy

but that the Applicant was willing to cover half the cost of the repair to the dishwasher on production of proof of the repair. The Respondent did not produce any proof of repair or that she had paid for any repair to the dishwasher. They advised the washing machine and the boiler had been inspected and were found to be in good working order, that it was the Respondent's responsibility to keep the shower clean and that the Applicant was not aware there were issues with pet odours in the carpets. They asked how the door handle came to be broken.

59. On 4 February 2023 the Respondent insisted that repairs were required to the washing machine and boiler. She did not specify what was wrong with the boiler. She wanted to see the engineer's report from December 2022 and insisted there were long standing issues with the boiler. She complained the washing machine was staining her clothes black and making a banging noise. She complained of missing grout and mould in the shower, that a door handle had come off three years previously, that the Applicant told her to fix it and that the Applicant knew about the smell of cat urine from the carpets which had been caused by the previous tenant's cats. No complaint had been made by the Respondent throughout the tenancy about the smell of cat urine in the carpets.
60. On 16 February 2023 Landlord Specialist Services Scotland emailed the Respondent to advise the Applicant would replace the grout, fix the door handle and install a new washing machine on 19 February 2023. No response was received from the Respondent.
61. On 20 February 2023 Landlord Specialist Services Scotland emailed the Respondent to ask the Respondent to give them a date and time by 25 February 2023 to attend to the repairs and replace the washing machine. No response was received from the Respondent.
62. On 4 March 2023 the Respondent emailed Landlord Specialist Services Scotland. She stated the boiler issue needed to be resolved and to advise that due to family issues she was not able to give access as the request was late. She advised she was leaving the Property. Access was not arranged prior to her leaving the Property on 28 March 2023.
63. Throughout the tenancy the Respondent did not complain about having no heating or hot water for months or about dampness in the Property.
64. The boiler was found to be in good working order after the Respondent vacated the Property. The mashing machine was covered in black mould. After the Applicant sold the Property there were no complaints from the purchasers that the boiler was not working.

65. The Respondent was not entitled to withhold rent. The Respondent is not entitled to any rent reduction. The Applicant responded to all reports of repairs within a reasonable period of time.

Reasons for Decision

66. The Tribunal considered the Applicant's motion to amend the sum of the arrears to £1958.42. The Tribunal allowed the amendment noting that at the CMD the Respondent accepted she did not pay rent from December 2022 until she left the Property on 28 March 2023. The rent statement lodged showed how the arrears of £1958.42 had accrued between December 2022 and the termination of the tenancy.

67. The Tribunal accepted the Respondent's position that there had been repairs to the Property. The Applicant's evidence and the correspondence and text messages lodged by both parties highlighted the repairs that had been required throughout the tenancy which had been attended to when reported. The Tribunal is satisfied the Applicant has complied with her duty to repair. The Applicant has a duty to comply with her obligations under the repairing standard in terms section 14 (1) (b) of the Housing (Scotland) Act 2006. She has to ensure that the tenancy meets the repairing standard at the start of the tenancy and at all times during the tenancy. The duty to repair is only imposed on the landlord when the tenant notifies the landlord or the landlord otherwise becomes aware that work requires to be carried out. Repairs have to be carried out within a reasonable time.

68. The Applicant gave clear evidence which set out when the repairs were reported, the nature of repairs, her response to the reports and when repairs were carried out. The Tribunal was satisfied that repairs had been attended to in a reasonable period of time. The correspondence and texts lodged by both parties reflect the chronology of repairs' reports and support the oral evidence given by the Applicant.

69. On 29 November 2022 when the Respondent met LSA to take advice on the Notice to Leave and the repairs, the Tribunal found on the evidence lodged by both parties that there were in fact no outstanding repairs. Yet it is clear from the letter to the Respondent dated 2 December 2022 that she had told LSA there were outstanding issues with the dishwasher, washing machine and the boiler. Nothing lodged by the Respondent supports that position. The Tribunal accepted the Applicant's position that after the Notice to Leave had been served on 4 November 2022 the Respondent simply decided she would not pay any more rent.

70. There was no evidence before the Tribunal that would indicate the Respondent was entitled to withhold rent from December 2022 to 28 March 2023. The Respondent is wrong if she thinks the mere fact repairs were required at all entitled her to withhold rent. It is normal in the course of a tenancy that repairs arise. As long as the landlord attends to these within a

reasonable period of time, the landlord will have properly complied with the obligation to repair. The Respondent had been asked to produce proof of all repairs reported throughout the tenancy. Both parties lodged by and large the same correspondence and text messages regarding repairs. That evidence showed reports were attended to timeously. The Respondent produced no evidence of reports of being without hot water or heating for months as she submitted. The Respondent produced no evidence of reports that the carpets stank of cat urine as she submitted. The Respondent produced no evidence of reports that the Property was damp as she submitted. The Tribunal accepted the Applicant's evidence that the report prepared by Walker Fraser Steele, Chartered Surveyors on 31 October 2022 showed no dampness in the Property. If the Respondent's submission were to be accepted that she reported dampness throughout the tenancy and that was ignored by the Applicant, it is hard to equate that the Property was then damp free when inspected by Walker Fraser Steele on 31 October 2022. The Respondent relied on the gas servicing reports that the heat exchanger was leaking some water to support her position that the boiler was not working, but then made a contrary submission that she had been advised by gas safety register that the heat exchanger would not form part of a gas safety inspection. She made contrary submissions with regards to the washing machine stating both that the engineer who had attended on 12 December 2022 did not inspect it and that he had inspected it by placing his hand in the drum. The correspondence between the parties shows that there were no further inspections of the boiler after 12 December 2022. Despite being repeatedly told after that inspection that the boiler was found to be in working order the Respondent continued to state there were unspecified "issues" with the boiler. The boiler was found to be in working order after the tenancy ended and after the Property was sold, but yet the Respondent's submissions continue to challenge the veracity of the evidence lodged from Jones Whyte, solicitors dated 3 January 2024 to the effect that the purchasers had not complained about the heating; the Respondent still insisted that the purchasers would not have found fault with the boiler within 5 days of moving in and that the boiler was indeed faulty. She has no basis to make such a statement as she has no knowledge of how the purchasers tested the system to ensure it worked. The Respondent's position is simply not credible. The Tribunal accepted the Applicant's evidence in the whole. She gave her evidence in a straightforward manner. She was not evasive when questioned by the Tribunal on matters that had been raised by the Respondent in her submissions. The Tribunal found the Applicant to be credible and reliable.

Decision

71. The Tribunal granted an order for payment of arrears. The decision of the Tribunal was unanimous.

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.

S Evans

23 March 2024

Legal Chair

Date