



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/0722

Re: Property at 8 King Street, Carstairs Junction, Lanark, ML11 8RJ (“the Property”)

Parties:

Mrs Isabella McDonald, 17 Pettinain Road, Carstairs Junction, Lanark, ML11 8RF (“the Applicant”)

Mrs Amanda Shaw, 46 Murray Terrace, Carnwath, Lanark, ML11 8JA (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make a payment order in the sum of Four thousand six hundred and thirty eight pounds and sixty nine pence (£4638.69) Sterling

Background

- 1 By application to the Tribunal the Applicant sought a payment order in the sum of £4768.69 in respect of unpaid rent arrears, heating oil, boiler reinstatement and replacement window glass. In support of the application the Applicant provided:-
 - (i) Copy tenancy agreement between the Applicant, John Shaw and the Respondent as guarantor dated 31 December 2019;
 - (ii) Copy email from the Applicant to the Respondent dated 18 December 2022 requesting payment of the outstanding sum;
 - (iii) Copy letters from the Applicant to the Respondent;

- (iv) Copy letter from John Shaw to the Applicant undated;
 - (v) Copy excerpt from bank statement showing a payment of £130 from the Applicant to the Respondent's bank account;
 - (vi) Copy bank statement showing payments received to Applicant's account from John Shaw during the period October 2019 to June 2021;
 - (vii) Copy estimate from a gas engineer for reinstatement of boiler in the sum of £260;
 - (viii) Copy email from Bryce Oils to the Applicant confirming delivery of oil in the sum of £254.63;
 - (ix) Copy email from Universal Credit to the Applicant dated 25 June 2021;
 - (x) Rent Statement; and
 - (xi) Copy decision of the First-tier Tribunal for Scotland Housing and Property Chamber in case reference FTS/HPC/EV/21/1338.
- 2 By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for the 7 June 2023.
 - 3 The Applicant subsequently submitted copy paperwork from the Crown Office and Procurator Fiscal Service ("COPFS") and confirmed that charges had been brought against her for unlawful eviction together with an email from Andy Aitchison who had previously let his property to John Shaw.
 - 4 A copy of the application paperwork together with notification of the date and time of the Case Management Discussion was served upon the Respondent by Sheriff Officers on 3 May 2023. The Respondent subsequently sent an email to the Tribunal on 16 May 2023 advising that she had spoken to Citizens Advice and that her paperwork relating to the case was currently with COPFS in relation to the ongoing prosecution against the Applicant.
 - 5 On 24 May 2023 the Respondent emailed the Tribunal again to request an extension to provide written representations on the basis that her paperwork was being held by COPFS. She further stated that Andy Aitchison had a grudge against her son John Shaw and that an eviction order had been granted against John Shaw by the Tribunal without his knowledge. The Respondent explained that her son had paid cash on occasion towards the rent and these payments were not recorded. The broken windows were the fault of friends of the Applicant and the Applicant had refused to call the Police. The Applicant had advised that she had received a payment of £150 from the culprits for the window repair. The oil had been siphoned from the tank by a third party and the damage to the boiler had been caused by the Applicant and her friend. The Respondent went on to

list a number of issues that she claimed was evidence that the property did not meet the Repairing Standard. John Shaw had been advised to withhold his rent until the repairs were carried out.

The Case Management Discussion

- 6 The Case Management Discussion took place on 7 June 2023. The Applicant was present. The Respondent was in attendance and accompanied by her son John Shaw, the former tenant of the property.
- 7 The Legal Member explained the purpose of the Case Management Discussion and asked parties to address her on their respective positions. For the avoidance of doubt, the following is a summary of what was discussed and does not constitute a verbatim account of what was said at the Case Management Discussion.
- 8 The Applicant confirmed that she sought an order for payment in respect of rent arrears and damages. She outlined the claim in respect of the latter, and confirmed that in respect of the damage to the window, it had been broken whilst the Respondent's son was in occupation. The Respondent was the guarantor under the terms of the tenancy agreement between the Applicant and the Respondent's son.
- 9 The Respondent advised that in respect of the various aspects of the Applicant's claim, her position was as follows:-
 - (i) With regard to the rent arrears, the Respondent disputed these were due as the property did not meet the tolerable standard throughout the tenancy. The Respondent's son had also made payments in cash during the tenancy and these were not reflected in the rent account provided by the Applicant;
 - (ii) With regard to the broken window, this had been damaged by the son of the friend of the Applicant. The Respondent's son had been advised that the cost would be met via a deduction from his rent and he had used this money to pay a contractor to replace the glass;
 - (iii) With regard to the boiler, the Respondent advised that she had evidence that her son had not damaged this. However the evidence was currently with the Procurator Fiscal in relation to ongoing criminal proceedings therefore she did not currently have this to hand; and
 - (iv) With regard to the oil, the Respondent's position was that there was oil in the heating system when her son left the property and it was working fine. There was also some evidence that someone had been siphoning off oil from the system. Again, there was evidence to support this which was currently with the Procurator Fiscal.

- 10 The Tribunal therefore noted that there were facts in dispute between the parties and on that basis determined to fix a hearing in the matter.

The Hearings

- 11 The first hearing was scheduled to take place on 15 September 2023. On 16 August 2023 the Applicant emailed the Tribunal to advise that the criminal case was due to call in court on 18 October and 23 November 2023. The Applicant requested postponement of the hearing on that basis. The Tribunal also received an email from the Respondent on that same date requesting a postponement on the same terms. The Tribunal therefore allowed the request for postponement and the hearing was rescheduled for the 28 November 2023.
- 12 On 23 November 2023 the Applicant emailed the Tribunal to advise that the criminal case had been postponed and new dates set for the 9th January, 24th January and 23rd February 2024. The Applicant stated however that she wished the hearing to go ahead on the 23 November 2023. The Respondent emailed the Tribunal on 24 November 2023 to advise of the postponement of the criminal case and stated that COPFS would retain her evidence for a period of one month after the determination of the case after which point it could be returned to her.
- 13 The first hearing took place on 28 November 2023. The Applicant was present. The Respondent was in attendance and accompanied by her son John Shaw. The Tribunal noted correspondence from the Respondent in advance of the hearing which indicated that the criminal proceedings had not yet concluded. The Respondent expanded upon this at the hearing. She advised that she had been unable to lodge documents in support of her defence as these were currently being retained by the procurator fiscal. The documents related to the alleged theft of oil from the boiler and the damage to the property. The Respondent confirmed that the criminal proceedings were against the Applicant and she had been called as a witness. The case had been postponed until 23rd February 2024. The Applicant confirmed that this was accurate.
- 14 The Respondent further advised that she had not appreciated the hearing was taking place that day and was unprepared as a result.
- 15 Having heard from the Respondent the Tribunal determined to adjourn the hearing. The Tribunal considered that there would be little prejudice to the Applicant in doing so. The Tribunal agreed that it would be appropriate for the Respondent to have a further opportunity to obtain the documents currently with the procurator fiscal as part of the ongoing criminal proceedings, as they may be relevant to the Tribunal's determination of the matter.
- 16 On 6 February 2024 the Applicant submitted further written representations in the form of an email from the heating engineer who had carried out work to the boiler, confirming that no evidence of malicious damage had been found and the problems were due to the boiler having not been running for a period of time and a lack of oil. On 8 February 2024 the Applicant emailed a photograph of the

boiler timestamped 10 November 2021 purporting to show the lack of oil. On 14 February 2024 the Applicant emailed a copy letter from Mr Gary Walker who had purchased the property from her in February 2022 confirming that he had found no issues in the home report and no problems with the property since taking up occupation. On 27 February 2024 the Applicant emailed the Tribunal to confirm that the criminal proceedings had concluded with no adverse impact upon her.

- 17 On 28 February 2024 the Applicant submitted further representations which included copy letter from her solicitor confirming that *"the matter was treated as "Not Called" which effectively means you have been found Not Guilty"* and a copy of the Summary of Evidence in relation to the criminal case.
- 18 On 18 April 2024 the Tribunal received an email from the Respondent with written representations including copy letter from John Shaw, photographs of the property dated 17 and 18 September 2021, a copy statement from the Respondent regarding the broken window, a copy letter from Dot Watson, advocacy support worker, to the Tribunal in respect of case reference FTS/HPC/EV/21/1338, copy excerpts from Facebook, copy HomeOptions assessment and email correspondence, copy tenancy reference from the Applicant, excerpt WhatsApp message purporting to be from the Applicant's daughter, copy letter from Nationwide to Mr B McDonald, copy handwritten rent record, Notice to Leave, copy Title Sheet for the property, excerpt WhatsApp messages between the Applicant and John Shaw, and excerpt Whatsapp messages between the Applicant and the Respondent's family members. The Respondent further requested to submit video evidence for the Tribunal's consideration and provided descriptions of the videos to assist the Tribunal in its determination of whether to accept same.
- 19 On 22 April 2024 the Applicant submitted further written representations including photographs of the property, excerpts from Facebook and copy messages between the Applicant and John Shaw.
- 20 On 23 April 2024 the Respondent emailed the Tribunal to advise that her son John Shaw would be unable to attend the hearing but she would speak on his behalf.
- 21 The hearing took place on 26 April 2024. The Applicant and Respondent were both in attendance. The Tribunal explained the purpose of the hearing and proceeded to hear evidence from both parties. For the avoidance of doubt, the following is a summary of what was discussed and does not constitute a verbatim account of what was said during the hearing.

Rent arrears

- 22 The Applicant took the Tribunal through the rent account that had been submitted with the application, highlighting the lack of payments. She indicated that some payments had been received from universal credit however these were not consistent. No payments in cash had ever been made by John Shaw.

She had not taken a deposit from him at the start of the tenancy as she believed him to be of good character and self-employed, running his own business.

- 23 The Respondent explained that she was a third party as the guarantor to the tenancy and her son John Shaw was not available to attend the hearing as he was currently incarcerated. She confirmed that her son had taken on the tenancy following a period of occupation by the Applicant's daughter, who had left it in a poor condition. The tenancy agreement had been signed in December 2019. Payments had been made on the 25th of the month. In February 2020 the windows had been damaged and the Applicant knew who the culprits were. She did not report it to the Police. John Shaw had used his rent money to repair the window. It cost him the rent for February and March 2020. In May 2020 he had paid in cash. The Respondent knew this because she had taken him to the Applicant's house in her car. There had been one other occasion when her son had stated that payment had been made in cash. The Respondent believed her son had also posted cash through the Applicant's door. The Respondent explained that a deposit had been paid for the property to the account of Brian McDonald in December 2019.

Broken window

- 24 The Applicant explained that the window had been broken in March 2020. The culprits had been looking for John Shaw at the time. The country was in lockdown. The Applicant had asked one of her contractors to carry out the repair, however he was unable to source the glass. The Applicant had told John Shaw that she would repair the window as soon as the glass was received. John Shaw had stated that he could obtain the glass from an acquaintance. The Applicant had therefore transferred him a payment of £130 on 23rd May 2020 for this purpose once the repair was complete. The rent wasn't being paid at the time. The Applicant stated it was not her fault that the windows were broken. It was a dispute between John Shaw and the two culprits.
- 25 The Respondent queried why a payment had been transferred in May when the window was broken in February 2020. That had left John Shaw without a window for a period of two months. The Respondent didn't know anything about the payment made to John Shaw in May. A neighbour had carried out the repair and had collected the money from John Shaw. The Respondent didn't know if John Shaw had a receipt for this. She couldn't track the neighbour down and didn't have much paperwork from John Shaw. She remembered that the window had broken in February and it was repaired in March. The Respondent questioned how the Applicant knew the culprits were looking for her son. He had only been in the property for a month or so. The Respondent wanted to go to the Police but the Applicant refused.

Reinstatement of boiler/refilling oil

- 26 The Applicant stated that the boiler required repair following the termination of John Shaw's tenancy. She referred to the correspondence from the heating engineer which had been submitted to the Tribunal. The engineer confirmed that

the boiler had not been kept running because it had ran out of oil. If the boiler ran dry the tenant was responsible. The boiler had been serviced in July 2019, prior to the John Shaw taking up occupation. The Applicant had subsequently been unable to access the property to carry out the annual service. John Shaw had never said there was a problem with the boiler. The Applicant did not know that he wasn't using it and presumed he was putting oil in the system. The Applicant had put oil in the boiler in November 2019 for John Shaw and he said he would repay her over a period of time, which he did not do.

- 27 The Respondent explained that John Shaw had moved into the property in January 2020. Two weeks after moving in he had contacted the Applicant to say that the boiler wasn't working. The Applicant had advised that there should be plenty of oil in the tank however John Shaw couldn't see anything. The Police were contacted and came out to the property but couldn't do anything because they did not know when the oil was taken. John Shaw had then arranged for oil to be put into the boiler. After he put the oil in, he found the boiler wasn't working. A friend had come out to look at it and said someone had turned the boiler off. This happened numerous times. The Respondent did not know how much oil had been put in. She was under the impression that the Applicant had put oil in the tank in October 2019, which would have run dry in January 2020. The Respondent didn't accept that the Applicant had told John Shaw she would put oil in the tank and he would pay her back. She did however accept that he would pay a bit every month to the Applicant. He was doing that because of the mess her daughter had left. He felt sorry for her.
- 28 The Applicant referred to her written representations which confirmed that 500 litres of kerosene had been delivered on 26 November 2019 and paid from her account. She disputed the Respondent's suggestion that John Shaw had moved in in January 2020. She would not have arranged for the tank to be filled at the end of November if he wasn't moving in till January. The oil in the tank should have lasted until February 2020. The Applicant advised that the Respondent had started moving in to the property in October 2019. He had the keys to the property. The property had new carpets which had been installed in April 2019. Her daughter was in occupation between June 2019 and August 2019. The property had not been left in a mess. The Applicant had engaged John Shaw to clean the carpets at the property two years before he took up the tenancy. John Shaw had then approached the Applicant and asked if he could rent the property. The Applicant had said she was going to sell it, however John Shaw said he was desperate. They agreed a minimum term of two years. The Applicant didn't take a deposit and didn't enter into a tenancy agreement initially. She thought John Shaw was of good character however that turned out not to be the case. The Applicant queried the lack of evidence as to police reports regarding the alleged theft of the oil which the Respondent had referred to, and lack of evidence in terms of receipts for purchasing the oil during the tenancy.
- 29 The Respondent stated that the Applicant had entered the property before she was permitted to do so and removed John Shaw's belongings and paperwork. She had destroyed it all. That was one of the reasons for the criminal prosecution. The Respondent explained that the Applicant's friend had behaved in a threatening manner towards her. The Police had been called however she

did not have a reference number. The Respondent had attended the property to remove her son's belongings however the Applicant had called the Police and accused the Respondent of breaking in. When the Police attended the Respondent showed them that she was simply packing her son's belongings. The Police had said it was a matter for the Tribunal to deal with. The Respondent confirmed that her son John Shaw was currently in prison. The Applicant had harassed the Respondent on Facebook and by email and text message. The Respondent had blocked her on the recommendation of Police. The Applicant had broadcast things regarding her son which were false and had made life hard for her.

Findings in Fact

- 30 The Applicant and John Shaw entered into a tenancy agreement dated 31st December 2019.
- 31 The Respondent signed the tenancy agreement as guarantor for John Shaw. In doing so the Respondent undertook to guarantee all payments of rent, any other obligations under the agreement and any other payments due to the Applicant which John Shaw was required to pay under the agreement.
- 32 In terms of Clause 8 of the said tenancy agreement John Shaw undertook to make payment of rent at the rate of £300 per month.
- 33 In terms of Clause 17 of the said tenancy agreement John Shaw agreed to keep the Let Property adequately heated.
- 34 In terms of Clause 18 of the said tenancy agreement John Shaw agreed to be liable for the cost of repairs where the need for them was attributable to his fault or negligence, that of any person residing with him or any guest of his.
- 35 In terms of Clause 27 of the said tenancy agreement John Shaw agreed to be liable for resetting and reinstating the heating system if he had failed to ensure that there was sufficient oil in the tank.
- 36 The tenancy between the parties terminated on 18th October 2021.
- 37 As at the date of termination rent arrears in the sum of £4124.06 were outstanding.
- 38 On or around 13 March 2020 a window at the property was broken.
- 39 The Applicant transferred the sum of £130 to the Respondent to repair the window on 23 May 2020.
- 40 The Applicant agreed to pay for the oil tank to be refilled on 26 November 2019 at a cost of £254.63. John Shaw agreed to repay the Applicant for the cost of the oil in monthly instalments. John Shaw failed to make these payments.

- 41 John Shaw failed to ensure that there was sufficient oil in the tank pertaining to the heating system. His failure caused damage to the system and resulted in the Applicant instructing a heating engineer to reinstate the system at a cost of £260.

Reasons for Decision

- 42 The Tribunal reached its decision taking into account the application paperwork, all written representations from the parties and the evidence taken during the hearing. The Tribunal considered the Respondent's request for video evidence to be admitted however based on the descriptions provided by the Respondent the Tribunal concluded that it would not be of sufficient relevance to the determination of the application.
- 43 Having considered the terms of the tenancy agreement between the parties, the Tribunal accepted that the Respondent, as guarantor for John Shaw, had agreed to be liable for any breach by John Shaw of the terms of the agreement. She had clearly signed the agreement to that effect, thereby binding her to John Shaw's obligations in that regard.
- 44 Accordingly, based on its findings in fact, the Tribunal accepted that the Respondent was liable for the sum of £4124.06 in terms of unpaid rent. Whilst the Respondent had stated that payments had been made by John Shaw to the Applicant in cash she had produced no evidence of this. The Tribunal noted that the pattern of payments at the beginning of the tenancy had been by bank transfer. There was no explanation as to why a decision had subsequently been taken by John Shaw to hand over cash, in one instance by posting it through the Applicant's letterbox with no form of receipt, which cast doubts over the credibility of the Respondent's evidence.
- 45 The Respondent had indicated that John Shaw was withholding his rent, and that he had put two months rent towards repairing the window following an agreement with the Applicant. There was however no evidence before the Tribunal to support this. If a tenant intends on withholding rent, they must retain the rent in a bank account. There was no evidence that John Shaw had done that at any point during the tenancy. Furthermore there was no evidence of any agreement between the Applicant and John Shaw whereby rent would be paid towards the window repair. The Tribunal therefore preferred the Applicant's evidence and accepted that the arrears were due and fell to be paid by the Respondent in her capacity as guarantor.
- 46 With regard to the broken window the Tribunal accepted that the Applicant had transferred the sum of £130 to John Shaw on 23 May 2020 towards the cost of replacing the window glass which had been damaged in March 2020. The Applicant had since stated that John Shaw was responsible for the damage to the window and she was therefore seeking repayment of that sum. There was however insufficient evidence before the Tribunal to find that the damage was caused by John Shaw, or as a result of his occupation of the property. In transferring the money to John Shaw, the Applicant appeared to have accepted in May 2020 that she was due to pay the costs of the replacement glass. The

Tribunal could not therefore conclude that the Respondent was liable for the cost of the replacement glass in the sum of £130.

- 47 With regard to the heating oil and boiler reinstatement, the Tribunal accepted that the Applicant had paid for the oil tank to be filled on 26 November 2019. Whilst the Respondent had stated that John Shaw did not take up the tenancy until January 2020, the Tribunal noted in correspondence from John Shaw to the Applicant that the tenancy start date was stated as 20 October 2019. The Tribunal therefore preferred the Applicant's evidence on this matter. The Tribunal also accepted that there had been an agreement between the Applicant and John Shaw regarding the heating oil. The Respondent had said during her evidence at the hearing that there had been an agreement whereby John Shaw would repay the costs in monthly increments. There was however no evidence to suggest that payments had been made. The Tribunal was therefore satisfied that the cost of the oil in the sum of £254.63 fell due to be paid by the Respondent.
- 48 Clause 27 of the tenancy agreement requires the tenant to ensure that there is sufficient oil in the tank, noting that "*if an oil tank is left the run dry, then this can cause damage and contamination of the tank/system*". The Tribunal had before it confirmation from a heating engineer who had inspected the system following the termination of John Shaw's tenancy, and had concluded that damage had been caused due to a lack of oil. The Respondent indicated that oil was being siphoned, or that the Applicant had arranged for the system to be deliberately damaged. The Tribunal found this difficult to believe. The Respondent had failed to produce any evidence to support her statement that the police had been called to investigate the issue. Furthermore it did not seem credible that the Applicant would cause deliberate damage to a property that she would then have to pay to rectify. The Tribunal found it more credible that John Shaw had simply failed to ensure that sufficient oil was present in the tank throughout the tenancy. Accordingly the Tribunal concluded that the Respondent was liable for the cost of reinstating the boiler in the sum of £260.
- 49 The Tribunal therefore made a payment order in the sum of £4638.69. 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.

R O'Hare

10 May 2024

Legal Member/Chair

Date