

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/1631

Re: Property at 48 Hillcrest Avenue, Coatbridge, ML5 3NU (“the Property”)

Parties:

J&M McDonald Properties Ltd, 2 Imperial Place, Bothwell, G71 8NR (“the Applicant”)

Ms Nicola Young, 48 Hillcrest Avenue, Coatbridge, ML5 3NU (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant made an application to the Tribunal dated 18 May 2023 seeking an order for eviction in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules and Procedure) Regulations 2017 (“the 2017 Rules”).
2. This application came before the Tribunal for Case Management Discussions (“CMDs”) on 16 November 2023 and 15 December 2023. The Tribunal issued a Note and Notice of Direction following each of those CMDs. The Tribunal assigned a Hearing for 13 March 2024.

3. The Tribunal received additional information from the Applicant on 1 February, 7 February, 6 March and 8 March 2024 and from the Respondent on 26 January and 9 February 2024.
4. On 12 March 2024, the Tribunal granted the Respondent's request to postpone the Hearing. A new Hearing was assigned for 13 June 2024.

The Hearing – 13 June 2024

5. The Hearing took place in person at Glasgow Tribunal Centre. The Applicant was represented by Mr Michael McDonald. The Respondent was personally present and was represented by her father Mr David Young.
6. Mr McDonald indicated that he intended to give evidence. Mr Young indicated that he and the Respondent intended to give evidence. The evidence given by the parties is summarised below. The summary is not a verbatim account of what was said at the Hearing but rather an outline of the matters relevant to the Tribunal's consideration of the application. At the conclusion of the evidence, the Tribunal gave the parties an opportunity to discuss matters to explore settlement. The parties returned to advise that they could not reach agreement. The Tribunal adjourned the Hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to them.
7. The purpose of the Hearing was to determine whether the ground for eviction was established and whether it was reasonable to grant an order for eviction. The Respondent claimed an abatement of rent.

Summary of evidence

Mr Michael McDonald

8. The Respondent has been a tenant since 2018. She had accrued rent arrears prior to the Notice to Leave ("NTL") being served on 20 January 2023. Following service of the NTL the Respondent stopped paying rent for several months. Most of the communication the Applicant had was with the Respondent's father, David Young, regarding payment of rent. The Respondent's father made a lump sum payment towards the rent account in January 2024, which brought the rent arrears to £2,998.88. The Respondent raised little to no issues with the Applicant about repairs until after the NTL had been served. There was a repair issue raised 3 of 4 years ago which required a beam to be replaced in the property. The Respondent and her family could not properly use the property

during the repair. There were discussions with the Respondent about when suited her best to have the repair carried out. The repair was arranged at a time when the Respondent was going on a caravan holiday. Nothing was raised with the Applicant about the cost of the caravan stay until these proceedings were raised. There were regular payments to the rent account before and after that repair. On 18 September 2023, the Applicant received notification from the Respondent that the boiler was not working. The Applicant had experienced problems in accessing the property and suggested to the Respondent that she should arrange for a gas engineer to attend on the basis that the Applicant would pay for it. On 22 September 2022, the engineer condemned the boiler. The Applicant suggested to the Respondent that she could arrange a new boiler at her own cost on the basis that the cost would be deducted from the rent arrears owed by her. The Respondent did not agree to that. The Applicant had a new boiler fitted on 22 October 2023. Around 2 months later, the Respondent reported that a pipe from the boiler was still draining into a bucket. . The repair was completed on 3 February 2024. The Applicant experienced problems in arranging access to the property. Whenever a repair was required, the Applicant gave contractors the contact details for the Respondent in order to arrange access. The feedback the Applicant received was that visits had to be rearranged regularly. Although Mr McDonald did not criticise the Respondent about that, he explained that was a reason why there was sometimes a delay in repairs being effected. There are some small repairs required to the property and they will be effected when the Respondent allows access. The repairs outstanding include replacement of electrical sockets, movement of one electrical socket, the installation of an extractor fan and the installation of vents in the windows, these latter two items following an inspection of the property by an independent dampness/rot specialist.

9. After service of the NTL, the indication from the Respondent was that she would find alternative accommodation and move out by 15 April 2023. On 12 April 2023, the Respondent's father told the Applicant that the Respondent had not sourced alternative accommodation. The Applicant applied to the local authority for direct payments of rent. Direct payments were received from July 2023, but there was a shortfall, so the payments did not cover the full rent charge. Mr McDonald could not recall a conversation with the Respondent's father in April 2023 about rent being withheld, but by that time the NTL was active and no prior notice was given about rent being withheld. The issue of repairs was only raised by the Respondent after service of the NTL. He told the Respondent's father in December 2022 that the Applicant's intention was to serve an NTL, so that it would not be a surprise. Up until service of the NTL, the Applicant had a working relationship with the Respondent's father to discuss rent arrears. He accepted that there were occasions when repairs could have been dealt with quicker. The Applicant was prepared to accept that something could be

deducted from the rent arrears by way of an abatement but did not accept that the equivalent of 4 months' rent was justified.

10. In relation to payment of rent, the Respondent failed to pay rent for April, November and December 2019 and January 2020. All of these dates pre-date the pandemic. These historic missed payments of rent have been forgotten about and the Respondent is now contending that rent has been lawfully withheld. Given all the circumstances, the Applicant still sought an order for eviction of the Respondent.

Ms Nicola Young

11. She lives in the property with her 4 children. Rent arrears accrued during the pandemic. She was in contact with the Applicant and advised that additional payments would be made to bring the payments up to date. In November 2022, a handyman was to attend the property to check the boiler which had been working intermittently. Following an issue with the handyman gaining access to the property, the handyman sent a message to her father saying that she should leave the property. Prior to that, the Applicant delivered a note to the Respondent indicating that the Respondent had abandoned the property. There were some repair issues with the property. The Applicant's handyman knew that some repairs were required. There were routine repairs required and when she notified the Applicant, the repairs were undertaken. When the boiler was not working, she notified the Applicant and a repair was effected. In September 2023, the boiler stopped working. Her father arranged for an engineer to attend and he condemned the boiler. It took 4 weeks for the boiler to be replaced. During that time, there was no heating or hot water and the family were confined to living in 2 rooms with heaters on.
12. She has looked on the internet for alternative properties. She has not been in touch with the local authority. She would like to continue living in the property. Being evicted would have a significant impact on her and her family.

Mr David Young

13. In April 2023, he suggested to Mr McDonald that they should meet at the property to discuss problems and to advise him that rent would be withheld. No visit took place at the property and he exchanged messages with Mr McDonald. In November 2022, he received an instruction from his daughter to stop paying rent. He spoke to Shelter Scotland and was advised to set up a bank account and set rent aside. He accepted that he had not in fact set rent money aside but had savings of his own from which he could pay rent. The repairs outstanding included the boiler to be boxed in, sockets replaced, a socket moved, a shower screen to be fitted, damage to the ceilings because of a burst

tank and plasterwork at the front door. It was accepted that the claim for the cost of a caravan stay in September 2020 related to a time when the Respondent had a planned caravan holiday. No reimbursement for accommodation was claimed at the time.

14. Mr Young clarified that an abatement of rent is sought for the period the property had no working boiler. The Respondent has incurred costs which should be deducted from the rent arrears, including £70 for the attendance of a gas engineer, additional electricity costs of £50 and purchase of an electric heater which cost £47. Otherwise, rent was being withheld until repairs are carried out.

Findings in fact

15. The parties entered into a private residential tenancy which commenced on 15 October 2018.
16. The Applicant served Notice to Leave on the Respondent on 20 January 2023.
17. The Respondent accrued net rent arrears amounting to £5,450 at the time the Notice to Leave was served, which equated to more than 6 months' rent.
18. The Respondent is entitled to an abatement of rent to the extent of £550.
19. The costs incurred by the Respondent amounting to £167 should be offset against the rent arrears due by the Respondent.

Reasons for decision

20. There was no dispute between the parties that the rent arrears outstanding at the time the Notice to Leave was served amounted to £5,450, which equated to more than 9 months' rent. The Tribunal was therefore satisfied that the ground for eviction had been established. Although the Respondent had made payment of rent since then, there remained rent arrears of £2,998.88. The Respondent was withholding payment of that sum and also claimed an abatement of rent. It was for the Respondent to establish that she was entitled to an abatement of rent to the extent of the rent payments withheld. The main dispute between the parties related to repairs said to be required at the property. Having considered the evidence, the Tribunal was not satisfied that the Respondent had established that she was entitled to withhold rent of £2,998.88.

21. The Tribunal issued a notice of direction to parties on 16 November 2023. The Respondent was required to produce “A list of repairs she is alleging is needed at the Property and when they were intimated to the Applicant as landlord with any evidence of how and when they were intimated.” along with “Any evidence of if, when and how the Respondent advised the Applicant she was withholding rent.” A further notice of direction was issued by the Tribunal on 18 December 2023, requiring the Respondent to produce information about repairs required. No documentary evidence was submitted by the Respondent. During the Hearing, the Respondent was unable to provide details of when and how she notified the Applicant about repairs, nor the Applicant’s response. There was therefore no evidence before the Tribunal about any failures on the part of the Applicant to effect repairs.
22. The Respondent’s representative was given advice in November 2022 about withholding rent in a separate account. Retention of rent is an equitable remedy and the Tribunal has to be satisfied that it was being exercised in good faith. There was no evidence that the Applicant had been notified of repairs required and failed to have repairs carried out. The first time the Applicant was notified about rent being withheld was in April 2023, around the time of expiry of the NTL. The copy bank statement produced by the Respondent’s representative demonstrates that he had savings in a bank account from September 2023. It did not demonstrate that rent had been set aside in a separate account at the time the Applicant was notified about withholding.
23. There was no evidence of when the Respondent notified the Applicant about specific repairs required. The Tribunal was therefore unable to find that the Respondent was entitled to withhold payment of rent.
24. The Respondent was candid about reporting issues and the appropriate repairs being carried out quickly. However, the delay involved in replacement of the boiler was, understandably, the main issue for the Respondent. In that respect, the Tribunal determined that an abatement of rent was appropriate for the period there was no working boiler in the property, which was a period of one month. The appropriate abatement of rent is £550.
25. During that period the Respondent incurred costs totalling £167 in respect of the cost of a heating engineer, heater and additional electricity costs. This sum should be offset against the rent arrears due by the Respondent. The Tribunal did not accept that other items claimed for by the Respondent – temporary accommodation in September 2020 and the costs of a shower screen – were valid.
26. The messages which passed between the parties after service of the NTL indicated that the Respondent intended to remove from the property.

Notwithstanding those messages, there was little evidence about the efforts made by the Respondent to look for alternative accommodation.

27. For all of the reasons set out above, the Tribunal was satisfied that it was reasonable to grant an order to evict the Respondent from the property. Given the Respondent's family composition, the Tribunal exercised its discretion in terms of section 216(4) of the Bankruptcy and Diligence Etc (Scotland) Act 2007 and extended the period of charge specified in section 216(1) of the Act by 2 months.

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.

N. Irvine

Legal Member/Chair

Date 13 June 2024