Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/CV/24/0379

Re: Property at Flat 3/1, 171 Finnieston Street, Glasgow, G3 8HD ("the Property")

Parties:

Dylan Clark, Vee Thomas, both residing at Flat 3/1, 171 Finnieston Street, Glasgow, G3 8HD ("the Applicants")

David Wilson, The Barn at Lavender Cottage, Woodbury Lane, Worcestershire, WR5 2PT ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

1. This was an application by the Applicants for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended ("the Rules"), namely an order for payment of damages by tenants for an alleged breach of the Tenancy Agreement by the landlord. The tenancy in question was a Private Residential Tenancy ("PRT") of the Property by the Respondent to the Applicants commencing on 1 June 2018.

2. The application was undated but lodged on 22 January 2024 with the Tribunal. It was originally raised by only the first named Applicant but a motion was made, and granted, at the case management discussion ("CMD") to include the second named Applicant as the Applicants were named as joint tenants in the Tenancy Agreement.

3. The application referred to a prolonged period (still ongoing at the date of lodging the application) without a working boiler at the Property, and thus a lack of hot water and central heating. The sum of £649, being one month's rent, was sought as damages.

4. In advance of the CMD, the Respondent lodged an email with submissions containing four main points:
   a) A dispute about the means of "service" of the intimation of the application and CMD upon him, on the basis that he was in France during the date that a Process Server instructed by the Tribunal deposited the papers at his address on 1 August 2024.
   b) That a previous claim for "compensation for distress for the same issue earlier this year" had been "abandoned". Reference was made to a repairing standards application under reference RP/24/0355 but no copy of the application was lodged by the Respondent.
   c) That "there was little or no delay in responding to maintenance issues" and any "delay for completing necessary work was in fact caused on multiple occasions by" the second named Applicant.
   d) That consideration should be given to the rent being only £649/month "inclusive of bills" when, in the Respondent's submission, market rent was £900/month "excluding bills".

The Case Management Discussion

5. On 4 September 2024 at 10:00, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote conference call, there was appearance by the first named Applicant only.

6. I was satisfied that, further to his correspondence, the Respondent was aware of the CMD and had the papers. The written submissions contained a clear request that the Tribunal should "stop this claim for compensation" and, having waited until 10:05 to commence the CMD, I was satisfied to consider the application in the Respondent's absence but with consideration of his written submissions. (Neither the Respondent nor anyone on his behalf attempted to call into the teleconference by the time of its conclusion around 11:10.) I did not consider his submissions regarding service further than this. The intimation at the Respondent's home address was standard and he received it.

7. I had instructed correspondence to be made to the first named Applicant prior to the CMD to ascertain whether the second named Applicant was intentionally excluded from the application. In response the second named Applicant provided written authority for the first named Applicant to speak on her behalf but did not make her position clear on whether she sought to be a joint Applicant. At the CMD, the first named Applicant confirmed that they had both been in the Property during the period when the boiler was not properly functioning and the application had been drafted solely in his name because he had submitted the papers. He confirmed he wished them to be joint Applicants but otherwise sought no further change or amendment. I granted the amendment to bring in the second named Applicant as a joint Applicant and noted that the first named Applicant was representing their joint interests.

8. The first named Applicant had considered the Respondent's submissions and confirmed that the damages figure of £649 was still sought. In regard to the Respondent's submissions, I did not seek submissions on the issue of service (which was not a matter for the Applicants) and no submissions were made on whether or not the rent was a market rent. In any case I was satisfied that this would have no bearing on whether or not there was a breach of contract and, if there was, what damages may be appropriate.

9. In regard to the second point – the raising and dropping of application RP/24/0355 – the first named Applicant confirmed that this had been an application for a Repairing Standards Enforcement Order, in regard to the failure to have the boiler repaired, but that this was dropped by him after the boiler was replaced. This explanation was consistent with the Respondent's submissions (even if the Respondent came to a different conclusion on its relevance). I was satisfied that the dropping of the repairing standards application did not preclude an application under Rule 111.

10. Submissions thereafter focused on the issues of any problems with the boiler and the timeline from reporting the issue to the Respondent until full repair. The application papers contained a lengthy chronology and between the papers and the submissions, I noted the following from the Applicants' submissions:
    a) The Property shares a gas boiler with a neighbouring property. The Applicants understand that the Property and the neighbour property are a sub-division of an originally larger flat. The boiler is housed in a cupboard off an entrance area reached from the original main door of the flat. From the entrance area, a door leads into the Property and another into the neighbouring flat.
    b) The Property has gas central heating and the boiler also supplies hot water. There is no electric shower in the Property. When the boiler was not functioning, the Applicants had no central heating nor hot water, but they did personally own a small electric heater which they were able to use.
    c) The boiler ceased to work on 28 December 2023 and was reported to the Respondent. A contractor visited on 28 or 29 December 2023 but said that parts were needed and they would not be available until at least 2 January 2024. The Applicants appreciated that the new year period would cause a delay of this type.
    d) On 29 December 2023, the Respondent said he was investigating whether he had an alternative property for the Applicants to move into but nothing came of this. (The Applicants remained at the Property throughout the period though they did at times mention to the Respondent that they were considering moving into a hotel and would expect to be compensated for such costs, which costs the Respondent did not offer to repay. The Applicants did not in fact seek hotel accommodation.)
    e) On 5 January 2024 a "faucet" was delivered, further to the Respondent's order. The Applicants understood that this was an electric water heater but it required to be plumbed into the Property and never was. The "faucet" remains unused at the Property.
    f) On 10 January 2024, an engineer managed to restore service on the boiler but by 11 January 2024 the boiler had again failed.

g) Between 11 January and 23 January 2024 there was material contact between the parties on when a repair would be scheduled, what options were available, and what options were being considered. Amongst this communication, on 18 January 2024 the Respondent emailed the first named Applicant stating that an "operator… stated that they could get the parts" but "[t]hey've advised they now can't fix it and will be sending an estimate for a replacement". Further emails on that day included the Respondent confirming that a replacement of the boiler was being considered and an expression of a regret for not replacing the boiler earlier as "it would've been easier and a lot less hassle 'in the long run' to change the boiler" rather than have it serviced in 2023.

h) On 24 January 2024 an engineer attended but left again. This was an incident relating to the second named Applicant which was clearly in dispute. The chronology detailed that the second named Applicant asked to film the contractor explaining what he had been instructed to do. The first named Applicant explained at the CMD that the Applicants wanted to have a record of what work was being planned. The first named Applicant accepted that the contractor had left after this request, and acknowledged that a contractor may not be satisfied with being filmed. The Applicants, however, disputed that the second named Applicant's behaviour would have been "aggressive" as the Respondent's submissions stated. Further, the chronology did not list "multiple" occasions when a visit by a contractor was curtailed and I noted that the Respondent's submissions provided no detailed submission on this beyond a general allegation.

i) On 27 January 2024 there was contact about the terms under which contractors may return to the Property. A visit was arranged for 29 January 2024 and the first named Applicant took the day off to be at the Property.

j) On 29 January 2024, the Property was attended by the Respondent and a contractor whom the first named Applicant believed to be a general handyman (previously engaged by the Respondent for work at the Property and not believed by the Applicants to be a boiler engineer). During the visit the Respondent stated to the first named Applicant that there would be a repair of the boiler.

k) The boiler worked again after 29 January 2024 for around two days.

l) On 10 February 2024 contractors commenced a replacement of the boiler, with the work completed on 12 February 2024. The new boiler has worked since.

11. The first named Applicant understood that the reason parts were not possible to source for the boiler was due to its age. He believed that this problem would have been known by the Respondent at the outset and the first named Applicant made reference to historic problems with the boiler which he believed showed that the age, and state of repair, was known prior to 28 December 2023. No detail of these issues were within the application nor any vouching of this provided. Understandably, therefore, there was no comment on this allegation within the Respondent's submissions.

12. I noted the terms of the Tenancy Agreement contained a standard provision (here at clause 17) referring to the Repairing Standard and obliging the Respondent to ensure that "installations for supplying… space heating and heating water must

be in a reasonable state of repair and in proper working order" and that "[o]n becoming aware of a defect, the Landlord must complete the work within a reasonable time". The Applicants held that the provision was breached and that one month's rent was a reasonable compensation for the approximately 45 days without hot water and heat during mid-winter.

13. No motion was made for expenses or interest.

Findings in Fact

14. The Respondent let the Property to the Applicants under a Private Residential Tenancy commencing on 1 June 2018 ("the Tenancy").

15. The Tenancy Agreement at clause 17 required the Respondent to ensure that "installations for supplying… space heating and heating water must be in a reasonable state of repair and in proper working order" and that "[o]n becoming aware of a defect, the [Respondent as] Landlord must complete the work within a reasonable time".

16. The Applicants reported that the boiler was not working to the Respondent on 28 December 2023.

17. The boiler was promptly inspected but it was identified that parts were required and, by 18 January 2024, that the parts would not be forthcoming.

18. The reason parts were not easily sourced was due to the age of the boiler.

19. The Respondent confirmed on 29 January 2024 that the boiler would be replaced.

20. The boiler was replaced during 10 to 12 February 2024.

21. During the period from 28 December 2023 to 12 February 2024, the Applicants had only short periods (of a day or two) with hot water and heating.

22. The Respondent provided no alternative accommodation, no alternative means of heating, and no alternative means of hot water during 28 December 2023 to 12 February 2024.

23. A contractor visited the Property on 24 January 2024 but did not complete their work or inspection as a result of their dissatisfaction with how the second named Applicant had engaged with them.

24. The contractor's visit of 24 January 2024 was not a visit for the contractor to replace the boiler.

Reasons for Decision

25. The Procedure 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. In light of the submissions by the Applicant, and the written submissions by the Respondent but no appearance on his behalf, I was satisfied both that the necessary level of evidence had been provided through the application and orally at the CMD, and that it was appropriate to make a decision on the application. In particular, I determined that there was a lack of material dispute on relevant factual matters, and for this reason I was satisfied to consider the application at the CMD in full, rather than seek a Hearing.

26. In assessing whether there was any material factual dispute, I considered that a detailed chronology had been provided by the Applicants and the Respondent's submissions did not:
    a) provide a different date for the intimation of the problems with the boiler;
    b) provide a date as to when he said the issue was resolved;
    c) dispute that he sought to repair the boiler but then accepted the boiler required replaced; or
    d) submit that he had provided any alternative accommodation, or means of heating or hot water.

27. There was clearly a difference in views between the parties as to whether the second named Applicant's engagement with the contractor had been "aggressive" and whether there had been "multiple occasions" where behaviour had interfered with a contractor's work. As it was not actively disputed that the boiler required replaced (rather than repaired) and it was not asserted by the Respondent that any visit to replace the boiler had been curtailed or cancelled due to the second named Applicant's behaviour or requests, I was not satisfied that any issues with behaviour could be relevant even if true. It was not plausible that the visit of 24 January 2024 would have resulted in the replacement of the boiler (as it is a reasonable inference that such work takes more than a single routine visit). Further the Applicants state (and the Respondent did not dispute) that an intention to replace the boiler was not stated until 29 January 2024. The issue was not fully resolved until the boiler was replaced, and the Respondent's submissions thus do not amount to a claim that the replacement was delayed due to any issue with behaviour. I thus decline to make any findings as to whether the contractors were entitled to hold the second named Applicant's behaviour to be objectionable.

28. In regard to why the boiler required to be replaced, I accepted the Applicants' submission that it was due to the age of the boiler. This is, in any case, a reasonable inference from the lodged correspondence (the terms of which were not disputed by the Respondent) that it had taken some time to locate parts, that repairs were mooted but contractors then indicated that they could not carry them out, and that the boiler then needed fully replaced.

29. I took the Applicants' case to break down as follows:
    a) The boiler was not in proper working order, as it ceased to work on 28 December 2023, and attempts to repair it did not work.

b) The boiler was not repairable due to its age, so it was not in a reasonable state of repair (as a boiler that breaks and cannot be repaired cannot be said to be in a reasonable state of repair).
c) This situation was known of by the Respondent at least by 18 January 2024, by which time the Applicants had been materially without hot water and heating for around 22 days.
d) The situation was not fully resolved until a further period of over 22 days had elapsed.
e) No other compensation or amelioration was made by the Respondent in respect of the issue.
f) There was thus a breach of the Repairing Standard and a failure to fix within a reasonable time.

30. Simply, the Applicants were without hot water and heating for a lengthy period during the coldest part of the year and it took an unreasonable length of time to restore such essential services. I am satisfied a breach occurred and damages follow. As the Applicants endured the issue, there are no out of pocket costs (such as hotel accommodation) to consider. No claim was made for additional electricity costs but, even if these were provided, this would only compensate for the heating issue and not the lack of hot water. The Applicants were not deprived of shelter, but for 46 days it was a significantly less pleasant shelter and one without a major amenity: the ability to wash in hot water. Quantification of their losses cannot be calculated with any exactitude but I accept the £649 sought to be a reasonable amount.

Decision

31. I am satisfied to grant an order against the Respondent for payment of the sum of £649 to the Applicants.

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.

Joel Conn

4 September 2024

Legal Member/Chair **Date**