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) Act 2016

Chamber Ref: FTS/HPC/CV/24/2415

Re: Property at 9 Craigevar Crescent, Garthdee, Aberdeen, AB10 7DE ("the Property")

Parties:

Mrs Qianqian Xu, Mr Kwok Shun Ho, 18 Dunlin Crescent, Aberdeen, AB12 3WJ ("the Applicant")

Ms Dahlia Barnes, 639 Harrow Road, London, NW10 5NU ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to make an order for payment in the sum of One hundred and twelve pounds and fifty pence (£112.50)

Background

1 This is an application for a payment order under section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 and rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017. The Applicants sought an order for payment in the sum of £2069.50, being unpaid rent, costs for replacing keys, and costs for a replacement boiler. The application was conjoined with a separate application under reference FTS/HPC/CV/24/0529.

2 The application was referred to a case management discussion ("CMD") to take place by teleconference on 15 November 2024. The Tribunal gave notification of the CMD to the parties in accordance with Rule 17(2) of the Rules.

3 Prior to the CMD the Tribunal received written representations from the parties in respect of the conjoined application which were also relevant to this application.

4 The CMD took place on 15 November 2024. All parties were in attendance. Having heard submissions from the parties the Tribunal determined to fix a hearing. The Tribunal identified the issues to be resolved at the hearing as:-

(i) Was the Respondent entitled to vacate the property without giving notice under the terms of the tenancy agreement?
(ii) During which period was rent due to be paid by the Respondent?
(iii) What was the cause of the boiler failure? Why did the boiler require to be replaced?
(iv) Did the Respondent return the keys for the property?

5 The Tribunal issued a Direction to the parties requiring evidence to be submitted in advance of the hearing. In particular the Direction required the Applicant to provide evidence as to the cause of the boiler failure and any service documentation dating back to the installation of the boiler. The Direction also required the Respondent to provide evidence that there was a chemical odour in the property and that said odour caused her health to deteriorate.

6 On 17 April 2025 the Tribunal received an email from Mr Ho advising that he would be unable to attend the hearing and that he authorised Mrs Xu to represent both Applicants. On 28 April 2025 the Tribunal received a response to the Direction from the Respondent by email.

The hearing

7 The hearing took place on 16 May 2025 by teleconference. Mrs Xu appeared on behalf of both Applicants. The Respondent joined the call.

8 The Tribunal proceeded to hear evidence from the parties. The following is a summary of the key elements of the evidence and does not constitute a verbatim account of the discussion.

9 The Tribunal noted that the Applicants had not submitted any response to the Direction. Ms Xu confirmed this was correct. She advised that she had been unable to obtain any proof as to the cause of the boiler failure, and could not find any service documentation. She acknowledged that she was unable to prove that the boiler replacement was a result of the Respondent's actions.

10 The Tribunal heard evidence regarding the termination of the tenancy. Ms Xu advised that the Respondent had not given notice as required under the terms of the tenancy agreement. She acknowledged that the Respondent had made comments about an alleged chemical odour in the property and the problems it was causing. However, the Respondent had not cooperated in allowing the Applicants to investigate the issue. The Applicants had spoken with the other occupants of the property but had found no evidence of the alleged odour. The Respondent's room had been re-let to a new tenant on 10 February 2024 and

she had reported no issues. The Respondent had paid rent up to the 30 January 2024. The Applicants were therefore seeking the sum of £112.50, being rent due for the period from 1 February 2024 to 9 February 2024.

11 The Tribunal noted that it appeared no evidence had been submitted to confirm the existence of a chemical odour, nor to establish that the Applicants were at fault. The Tribunal also noted that no medical evidence had been provided to establish any causal link between the Respondent's health problems and the alleged odour. The Respondent explained that she did not have any evidence in that regard. The Respondent pointed to the documents she had submitted which she believed clearly showed she was suffering as a result of the odour in her room. She had purchased goggles and a mask. She had moved out of the property and into a hotel to escape the problem. She would not have taken such action if no odour existed. No medical evidence had been submitted because she was only affected by the odour when in her room. The Applicants had a duty to fully investigate the issue in accordance with their responsibilities as landlords. The Respondent had received advice to this effect from Shelter.

12 The Tribunal noted that correspondence had been produced between the parties, in which the Applicants were proposing to come back out to the property with the police to investigate the odour. The Respondent explained that the police had become involved following a different complaint she had made. The Respondent did not know why the Applicants were liaising with the police regarding the issue. The Respondent stated that she believed the source of the odour may have been another tenant in the property, with whom she understood the Applicants were acquainted. She thought the other tenant had taken a dislike to her. She did not want any other tenants to be in the same situation. The Tribunal noted that the Respondent had contacted environmental health and queried why they had not attended the property. The Respondent advised that she had subsequently decided to leave due to the impact of the odour.

13 Mrs Xu explained that the Applicants had attempted to investigate the alleged odour. They had spoken with the other tenants in the property, none of whom were experiencing the same issues. They had a gas engineer out to the property who could not identify any chemical smell. They had tried to engage with the Respondent regarding the issue but she had made things difficult. The police had attended the property on 5 January 2024, however they could not gain access to the Respondent's room. The Respondent was present in the property at the time but did not answer when they knocked on her door. The police had not found anything untoward elsewhere in the property.

14 The Tribunal heard evidence regarding the return of the keys. Ms Xu advised that the Applicants had not received these from the Respondent and therefore had to pay for new keys to be cut.

15 The Respondent stated that she had returned the keys by post on 28 February 2024. She had produced a screenshot of the envelope containing the keys, which was addressed to the Applicants. She was not responsible if the keys had been lost in transit.

Findings in fact

16 The Applicants and Respondent entered into a tenancy agreement in respect of the property, which commenced on 1 November 2023.

17 The tenancy between the parties was a private residential tenancy under section 1 of the 2016 Act.

18 On 25 December 2023 the Respondent contacted the Applicants by text message to inform the Applicants that a gas engineer had attended the property and had detected an odour in the room of a fellow tenant. The Applicants contacted the fellow tenant by text message that same day. The fellow tenant advised that he did not know what was causing the smell.

19 On 5 January 2024 the Respondent contacted the police to report an "*unknown substance within the property that was causing harm to individuals that came into contact with it"*. The police were unable to contact the Respondent in response to the report. The Applicants also attempted to contact the Respondent by telephone to discuss. The police attended the property that day with the Applicants. The police carried out a search and spoke with the fellow tenant about his use of tea tree oil, which they concluded was the source of the odour.

20 On 7 January 2024 the Applicants contacted the fellow tenant by text message to advise that the source of the odour appeared to be his tea tree oil. The Applicants asked the fellow tenant to consider alternatives. The fellow tenant responded to confirm that he would stop using tea tree oil.

21 On 7 January 2024 the Applicants emailed the Respondent with an update regarding the odour. The Respondent disputed that the source was tea tree oil. The Applicants advised that they would contact the police to ask them to come back out to the property, and requested the Respondent allow access to her room. The Respondent responded on 8 January 2024 to state that "*it would make no sense for the police to inspect my room today"* and "*the police need to come when the odour/symptoms are present".*

22 Between 7 January 2024 and 10 January 2024 the Applicants were in communication with the Respondent by email regarding her complaint. The Applicants suggested various approaches to address the issue, which were declined by the Respondent. The Applicants recommended the Respondent contact the police if the odour re-occurred, and to seek medical help if she felt unwell.

23 The Applicants made several attempts to discuss the Respondent's complaint with her in person or by telephone. The Respondent did not wish to discuss the issue with the Applicants, preferring to communicate only by email or text message.

24 The Respondent reported her complaint to the local authority's environmental department. The environmental health department did not visit the property as the Respondent had subsequently decided to move out.

25 On 11 January 2024 the Respondent texted the Applicants stating "*I would like to get the hell out of this toxic environment, your property, by the end of today at the latest…"*

26 The Respondent vacated the property on or around 24 January 2024. The Respondent paid rent up until 31 January 2024.

27 The tenancy between the parties terminated on 11 February 2024.

28 In terms of Clause 18.3 of the said tenancy agreement "*If the Tenant moves out before the tenancy end date, he is still liable for the rent to the end of the fixed term unless a replacement has been found."*

29 The Applicants re-let the property on 10 February 2024.

30 The Respondent returned the keys for the property to the Applicants by mail on 28 February 2024.

Reasons for decision

31 The Tribunal took into account the application, all documents received from the parties and the evidence from the hearing in reaching its decision on this application. It should be noted that the Respondent submitted further written representations to the Tribunal on 19 May 2025, which have not been considered by the Tribunal as they were received after the hearing had concluded.

32 The Tribunal concluded that there was insufficient evidence to make any findings with regard to the boiler. Ms Xu had accepted that she was unable to prove that the Respondent caused the boiler to break, and therefore the Tribunal did not find the Respondent liable for the costs of the boiler replacement.

33 With regard to the unpaid rent, the Tribunal considered it could accept the Respondent's text message of 11 January 2024 as notification that she wished to end her tenancy. Whilst she had continued to reside in the property thereafter, it was clear that she had intentions to leave. The Tribunal could therefore treat the tenancy as having terminated one month following that date as per the terms of the tenancy agreement. The Applicants sought rent for the period from 1st February 2024 to 9th February 2024, having re-let the property on 10 February 2024. The Tribunal considered they were entitled to receive this in the sum of £112.50.

34 The Tribunal had regard to the Respondent's position and her reasons for leaving the tenancy. Having considered the evidence before it, the Tribunal considered it was unable to accept the Respondent's position on this matter. The

Tribunal took into account the fact that the Respondent had bought items that suggested she had been dealing with an odour during her time at the property, such as goggles and a mask. The Tribunal also had regard to the fact that the Respondent had paid for alternative accommodation as evidenced by the receipts and invoices produced. However, the Tribunal was unable to make any findings regarding the source of the odour in her room. She believed this was a result of a deliberate act by a fellow tenant. She had produced no evidence to support this claim, other than her own suspicions and a newspaper article from the USA, which highlighted conduct by a tenant of a similar nature. The Respondent had also failed to produce any evidence to establish that the cause of her health problems was the alleged odour, despite stating in her written representations that her "*chest and lungs…seem to be permanently damaged*".

35 The Tribunal was also unable to make any findings to attribute the alleged chemical odour to any failure on the Applicants' part. The Tribunal accepted that they had carried out inquiries following the Respondent's complaint of an odour in another tenant's room. The documentary evidence showed they had investigated and had initially concluded, following police involvement, that the source of the odour was tea tree oil, which was in use by a fellow tenant. That was a reasonable conclusion for them to reach. They had received no reports of a chemical odour from any other residents in the property and had not witnessed it themselves. The Respondent's expectations may have differed from the action the Applicants had taken and she may have disagreed with the outcome of their investigations, and their approach. Nonetheless, the Tribunal did not find that they had failed to fulfil their obligations as landlords. The evidence showed that they had been responsive upon being made aware of the issue by the Respondent and were willing to work with the Respondent to reach a satisfactory conclusion to the matter.

36 Finally, with regard to the replacement keys, the Tribunal accepted based on the evidence before it, that the Respondent had posted these to the Applicants on 28 February 2024. The Tribunal therefore concluded that she had fulfilled her obligations regarding the keys. The Tribunal accepted that the Applicants had not received the keys, but concluded that this was due to errors in the postal system as opposed to any fault on the Respondent's part.

37 The Tribunal therefore made an order in the sum of £112.50.

38 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.

Ruth O'Hare

9 June 2025

Legal Member/Chair **Date**