



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

Chamber Ref: FTS/HPC/CV/19/0567

Re: Property at 337 Fulton Street, Glasgow, G13 2TA (“the Property”)

Parties:

Miss Elizabeth Murray, 0/1 40 Herma Street, Glasgow, G23 5AR (“the Applicant”)

Mr John Nash, 337 Fulton Street, Knightswood, Glasgow, G13 2TA (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for payment of the undernoted sum to the Applicant:

Sum of FIVE THOUSAND ONE HUNDRED AND SEVENTY-FIVE POUNDS (£5,175) STERLING

- Background
- 1. An application was submitted under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) dated 8 February 2019. Said application sought a civil order for payment in respect of damages relating to stress and inconvenience arising from the Respondent’s breach of contractual duty and failure to comply with his duty to meet the Repairing Standard in terms of the Housing (Scotland) Act 2006.

2. A Case Management Discussion (“CMD”) was held on 24 June 2019. The Applicant was represented by Messrs Brown & Co Legal LLP. The Respondent was personally present and represented himself. He indicated that he intended to oppose the application. The CMD was adjourned to allow the Respondent to seek legal advice and for further information to be lodged by parties. A Direction in terms of section 16 of the Rules was issued by the Tribunal dated 24 June 2019 directing the Respondent to lodge written answers to the Applicant’s claim, and the Applicant to clarify a number of matters in relation to the terms of the application.
 3. On 11 July 2019 the Applicant lodged further written submissions in compliance with the Direction. Nothing was lodged by the Respondent.
 4. A further CMD was fixed for 6 August 2019 which was adjourned at the request of the Respondent to 16 September 2019. Thereafter a further adjournment request by the Respondent was allowed by the Tribunal to 21 October 2019. A further adjournment request was made by the Respondent in advance of the CMD of 21 October 2019, which was refused by the Tribunal.
 5. The CMD took place on 21 October 2019. The Applicant was personally present and represented by Messrs Brown & Co Legal LLP. The Respondent was personally present. The Respondent indicated that he had been unable to find a solicitor to represent him but wished to oppose the application. The CMD was adjourned to a full Hearing on 9 December 2019, with the Respondent to lodge written answers to the application together with any documentation he wished to rely on in advance of the Hearing. No documentation was lodged by the Respondent. The Applicant lodged an Inventory of Productions on 14 November 2019.
- The Hearing
6. The Hearing took place on 9 December 2019. The Applicant was personally present and represented by Ms Nelson of Messrs Brown & Co Legal LLP. The Respondent was personally present and representing himself.
 7. As a preliminary matter, the Tribunal sought to clarify whether or not there was any dispute by the Respondent as to the terms of the Repairing Standard Enforcement Order (“RSEO”) which had been lodged by the Applicant in her Inventory of Productions. The Respondent confirmed that he did not dispute that RSEO had been issued, he did not dispute the terms of the Order and he did not dispute that he had failed to carry out the works directed in terms of the RSEO.
 8. The Respondent indicated that he wished to lodge and rely on written statements from friends which he had brought with him to the Hearing but which had not been previously lodged. These statements were not signed, nor were the providers of the statements present to give evidence in relation thereto. The Applicant’s solicitor opposed the statements being allowed on the basis that

there had been no fair notice of same, no prior lodging despite the opportunities that the respondent had been given to do so, and the writers of the statements were not present to give evidence in any event. The Tribunal considered matters and refused the Respondent's request to lodge the unsigned statements on the day of the Hearing.

- Applicant's Evidence

9. The Applicant said that she had moved into the property, a two bedroom flat, on 11 December 2011. She referred to her production 19, which was a copy of the tenancy agreement between the parties ("the Lease"). She confirmed that the Lease said that the deposit was £350 but she had in fact paid £495. She had not received her deposit back and a separate application had been made to the Tribunal in this regard. She moved out of the property on 31 October 2017. Her brother had chosen the property for her as she was relocating from England. When she first viewed the property, the Respondent had showed her the boiler. There was a large hole in the floor which he said would be fixed. It was so large a human could fall down it. It was never fixed and she had to place boxes over it to prevent any accidents. The Respondent had showed her the shower, which didn't appear to work. She said it needed a new crawler. The Respondent went to the kitchen to retrieve a hammer and he started hitting it. After that, the shower never worked.
10. The heating had worked fine when she first moved in. At the end of 2013 it stopped working from time to time. Scottish Gas came out to inspect and condemned the boiler and dismantled the pipes from the boiler. They said they couldn't fix it as it was in too bad a condition. A letter was issued to the landlord advising that it had been deemed unsafe. It was never repaired.
11. In her first week in the property, she went to plug in the microwave and noticed that one of the sockets was missing on the wall. She got an electric shock from it. She also got an electric shock from using the main light switch.
12. There was a large hole behind the toilet, which was never fixed.
13. There was a leak under the sink and she had to put a jug in there and empty it regularly. There was a leak in the kitchen window and also the living room window and when there was heavy rain there would be water ingress. There was dampness in the kitchen and in her co-tenant's bedroom.
14. She was very patient with the Respondent and gave him almost 5 years to fix the boiler. She had also given him a leaflet on how he could possibly get a grant to fix the boiler, but nothing was done.
15. Issues had been reported to him verbally over the phone .as well as verbally when he regularly attended the property to retrieve his mail.
16. The Applicant made an application to the Private Rented Housing Panel ("PRHP"). The Applicant referred to a report she obtained from an architect

(her production 18) which confirmed that the heating provision within the property had been condemned and the Applicant now required to use portable electric heaters to heat the property. This was an expensive and uncontrollable form of heating. There was no provision for mechanical extract ventilation in the kitchen or bathroom, nor background ventilation in the property. The windows were old and in very poor condition. Dampness was noted on all windows. Externally the property was in poor condition. It is affected by dampness and mould growth. It is not wind and watertight.

17. The Applicant referred to the Determination of the PRHP issued on 27 May 2016 (her production 12). Following an inspection and hearing (at which the Applicant was present but not the Respondent), the PRHP found the following:

- a) The electrical sockets, switches and light fitting in the kitchen appear to be faulty;
- b) The gas boiler has been disconnected and is not operable;
- c) There is a large hole in the floor of the cupboard housing the gas boiler;
- d) The bath hot water tap flows at a trickle and the wash hand basin cold water tap does not work;
- e) The shower appears not to be an electric shower and, in any event, does not work;
- f) There are two large holes in the walls in the bathroom, one at the wash hand basin and one at the toilet;
- g) There is evidence of water ingress in the ceiling at the external corner. An inspection of the outside wall shows that the roughcast render at the kitchen window lintel is defective and that the common down pipe is badly decayed;
- h) There are no smoke or heat detectors in the property and the carbon monoxide detector in the property appears not to be working.

18. The PRHP found that the Respondent had failed to comply with his duties under the repairing standard in terms of section 14 of the 2006 Act. The decision was unanimous. A RSEO was accordingly made (lodged as Applicant's production 10) and which requires a list of works to be carried out by the Respondent by 30 July 2016.

19. The Applicant stated that the Respondent had not contacted her after the RSEO was issued. No works were carried out by the Respondent.

20. The Applicant referred to her production 4, being a determination by the PRHP that the Respondent had failed to comply with the RSEO, and that a decision was made to issue a Rent Relief Order of 75% of the rent.

21. The Applicant had to purchase a number of electric fires, some of which cost £19 and some £35. She bought around 10, as they did not last very long due to their level of usage. She bought one for £123 from a catalogue. It cost her a lot of money to heat the property with the electric fires. She had to borrow money from her brother to help pay for the fires and the electricity costs.

22. The Applicant suffers from epilepsy. Her fits increased because of the stress. She was prescribed medication from her doctor to help with the stress.
23. When she left, she cleaned the whole property. She left a coffee table and a heater. In cross-examination, the Respondent put to the Applicant that she had left the property in a mess, that she hadn't cleaned and he had to spend a considerable amount of time cleaning the property and removing items she had left. This was denied by the Applicant.
24. When the heating broke down, they had to boil kettles for hot water to wash and have a bath.
25. In cross-examination the Applicant was asked why she didn't just move out if the property was in such a bad state. She replied that she had relocated from England to move into the property and this had been very stressful. The issues in the property arose over time, not all at once. She had no alternative accommodation available and simply wanted the landlord to repair the issues. He failed to do so. She eventually had to leave as her co-tenant got pneumonia and they had to leave for the sake of his health.
- Evidence of Hugh Conway (witness for the Applicant).
26. Mr Conway confirmed that he lived in the property along with the Applicant. They moved into the property in December 2011.
27. There was a hole in the bathroom wall behind the cistern. They told the Respondent about the hole but he said he didn't know it was there, but didn't fix it.
28. The central heating broke down after a few weeks and they had to purchase electric fires to heat the property. The heating was never fixed. The immersion broke down after that and they had no hot water for over a year. They had to boil kettles for a bath. The shower didn't work the whole time they were in the property. When they reported it to the Respondent, he hit it with a hammer rather than fix it.
29. No repairs were carried out during the time they lived in the property. They couldn't move out as neither he nor the Applicant had the money for another deposit.
30. When they eventually moved out the Applicants cleaned the whole property, and the Respondent refused to give their deposit back. No belongings were left behind. There had been a bag of clothes in the wardrobe that were there when they moved in.
- Respondent's evidence
31. Prior to giving his evidence, the Respondent requested that his partner be allowed to give evidence as a witness. She could give evidence as to the state

of the property when the Applicant left. There had been no witness list lodged by the Respondent in advance of the Hearing. The Applicant's representative opposed this request on the basis of no prior notice having been given. Following a short adjournment to consider matters, the Tribunal refused the Respondent's request due to the lack of real relevance of the proposed witness' evidence to the application at hand, and his having had sufficient opportunity to give notification of any intended witnesses prior to the Hearing, and no good reason given as to why this was not done.

32. The Respondent submitted that he regretted leasing the property to the Applicant. One time when she had reported repairs to him, she had said to him "this is my house." The Respondent submitted that he had told her in reply that it was his house, he paid the mortgage and that "you are just a tenant."
33. If he'd known, he'd have given her money to move out of the property earlier to enable them to raise a deposit. He had a tenant for around 6 months prior to the Applicant moving in, and had no problems with her.
34. The first problem reported to him was the central heating breaking down. The Respondent indicated that he considered that the Applicant could have got a new boiler fitted as she was in receipt of benefits, but failed to do so. He reduced the rent to £450 per month to compensate her for the cost of having to use electric heaters.
35. He had previously issued the Applicant with a Notice to Quit. She took advice and was told the Notice to Quit was not competent and she did not require to leave.
36. He had a mortgage to pay and following the RSEO and Rent Relief Order issued, he had to cover that himself due to lack of rent. He had no money to pay for the repairs required. All he wanted was his house back so that he could move back into it, get the repairs done over time when he had the money to do so, and thereafter sell it.
37. The Respondent accepted that the central heating system broke down a couple of weeks into the tenancy. He disputed that the shower was broken and maintained that it worked fine and still does, as he lives in the property now. His friend loaned him the money required to replace the boiler so that the heating could be fixed.
38. The Respondent disputed that the property was clean upon the tenant vacating. He stated that the property was "disgusting." There was debris throughout the property, the floor beneath the couch was very dirty. All of the floors were dirty and the Applicant had left a coffee table, units, clothes, and dirty underwear in the property. All of the paintwork was stained with nicotine. It has taken him two months to paint the property and bring it back to a reasonable standard. He had not given the deposit back as it had cost him more than what was held to clean the property. No Inventory of Condition was done at the start of the tenancy as he did not think it was necessary.

39. The Respondent has had open-heart surgery and the proceedings have been causing him stress and making him ill.
40. When the RSEO was issued he did not take legal advice. He just wanted the Applicant to move out of the property so he could sell it.
41. In cross-examination, the Respondent accepted that he had obligations under the lease which included "maintaining the property in a good state of repair, wind and watertight with plumbing operational...carry out any extraordinary repairs within a reasonable period of time." He accepted the findings of the PRHP in the main. He did not accept that the shower did not work, despite this being a finding of the PRHP. He accepted that some of the sockets were faulty and stated that the tenant just shouldn't have used them. He accepted that the boiler had been condemned and said the boiler was "ancient" and he had no money to replace it, nor any insurance cover or warranty. He accepted that there was no extractor fans in the property but stated that the tenant should simply open a window.
42. The Respondent indicated that he had lived in the property since he was eleven years old. He stated that "nobody has died" in the property, and so it "wasn't that bad." He accepted that the property had damp and poor windows but said that the houses in that area are all prone to dampness. When his family moved into the house in the 1970s they had to move out at one point for the damp to be treated by the council.
43. The Respondent accepted that he did not appeal the RSEO, despite having the opportunity to do so.
- Applicant's submissions
44. The Applicant moved the Tribunal to grant the order in the sum of £9,775, or any other sum as deemed appropriate by the Tribunal as compensation for the stress and inconvenience of living in the property with the repairing issues.
45. The Tribunal was referred in brief to a number of authorities, namely: *Renfrew District Council v Gray* 1987 S.L.T (Sh Ct) 70; *Key-Lets v David Hunter*, Tribunal Reference FTS/HBC/CV/18/0449; and *Quinn v Monklands District Council* 1996 Hous. L. R. 86.
46. The Applicant's damages had been quantified on the basis of £1,600 per each year of tenancy. The Applicant had quantified this on the basis of identifying the compensation awarded in *Quinn v Monklands District Council*, and applying inflation to that compensation, to come to the figure of £1600 per year as being an appropriate one.
47. The Applicant's representative submitted that the Rent Relief Order issued should not be taken into account. This was a penalty against the Respondent rather than damages to the Applicant.

48. It was submitted that no defence had been stated by the Respondent. The only breach of tenancy referred to by the Respondent was of the Applicant having cats in the property in breach of the lease. This was denied by the Applicant, who said there had been a verbal agreement to this. In any event, the Respondent could have taken his own separate action in that regard and had not done so. It was irrelevant to the question of an award of compensation due to repairing standard breaches.

49. The condition of the property at the end of the tenancy was not relevant. The Respondent had not lodged any vouching or evidence of any costs incurred by him at the end of the tenancy, nor photographs of the state of the property at that time.

50. The Respondent's lack of ability to pay for the repairs was not a defence to the application. The lease he provided and signed with the tenant set out his obligations, and he should have been aware of his legal obligations as a landlord. There is nothing in statute which says that inability of a landlord to pay for repairs dissolves his responsibilities.

51. Regarding the Respondent's position that the Applicant should just have moved out, the Applicant submitted that there is no authority to state that a landlord can absolve himself of responsibility for repairs by requiring the tenant to move out. The Applicant is not obligated to rescind the contract where there are repairing issues, and there is no duty to mitigate loss by rescinding on that basis. The Applicant is entitled to insist that the Respondent implement the terms of the contract and carry out repairs.

- Respondent's submissions

52. The Respondent submitted that there had been no medical evidence lodged by the Applicant to evidence her stress, or health issues referred to in her evidence. All he wanted to do was have the Applicant leave the property so that he could move into the property himself, effect the repairs as and when he could fund same, and then sell the property. He submitted he had no financial gain from her being there

53. The Respondent referred to the property having been in an unacceptable condition at the point the tenant moved out.

54. Findings in Fact

- i) The parties entered into a tenancy agreement which commenced in December 2011;
- ii) The Applicant resided in the property alongside her co-tenant, Hugh Conway;
- iii) The Property did not meet the repairing standard as contained within section 14 of the Housing (Scotland) Act 2006;

- iv) The Applicant made requests to the Respondent that repairs be carried out;
- v) The electrical sockets, switches and light fitting in the kitchen were faulty;
- vi) The gas boiler was disconnected and was not operable leaving the Applicant without gas central heating and hot water;
- vii) There was a large hole in the floor of the cupboard housing the gas boiler;
- viii) The bath hot water tap and the wash hand basin cold water tap did not work properly;
- ix) The shower did not work;
- x) There were two large holes in the walls in the bathroom;
- xi) There were no smoke or heat detectors in the property and the carbon monoxide detector in the property did not work;
- xii) A Repairing Standard Enforcement Order ("RSEO") was issued by the Private Rented Housing Panel ("PRHP");
- xiii) The Respondent failed to implement the terms of the RSEO and carry out the repairs required to the property by the deadline issued;
- xiv) A Rent Relief Order was issued by the PRHP due to the Respondent's failure to adhere to the terms of the RSEO;
- xv) The Respondent failed to carry out any of the repairs as set out in the RSEO prior to the Applicant leaving the property;
- xvi) The Applicant moved out of the property in October 2017.

- Reasons for Decision

The Tribunal was satisfied that the Applicant had resided in a property for a significant period of time without heating or hot water, and which did not appear to be wind and watertight. This is a serious breach of the repairing standard as contained within section 14 of the 2006 Act. The Respondent accepted that the RSEO had been issued and that he did not attempt to appeal same, despite having the opportunity to do so. The only finding of the PRHP that the Respondent disputed was the shower not working. However, the Tribunal was satisfied, on the basis of the evidence of both the Applicant and Mr Conway, and on the basis of the findings of the PRHP, that the shower was not working and that the Respondent had made no effort to fix same, in the same way he'd made no effort to fix anything else reported to him.

Throughout the hearing the Respondent indicated that he did not have the funds to pay for the repairs and this was his reason for not having done same. However, this is not a defence to the action. The Respondent chose to lease the property to the Applicant. In doing so, he took on all legal responsibilities as a landlord, including ensuring that the property met the repairing standard at the commencement of the lease, and at all times during. He failed to meet that standard, to the detriment of the Applicant. It is not sufficient to simply say that he did not have the money to effect the repairs, and that the Applicant should simply have moved out. If the Respondent was not in a position to ensure that any issues with the property could be dealt with in a timely manner during the course of the lease, then he should not have entered into it in the first place.

It is not acceptable to present a position that the Applicant should simply have moved out. This was the Applicant's home for the duration of the lease. She was entitled to reside in a property which met the repairing standard. Instead, she was left with a property which seriously failed to meet that standard. The Tribunal found the attitude of the Respondent to be dismissive and inappropriate at times during the Hearing. He said to the Applicant "you are just a tenant." He stated that "nobody has died" in the property, and so it "wasn't that bad." The Tribunal found the Respondent's attitude towards the tenant and his role as a landlord to be entirely inappropriate and concerning. It was entirely evident that the Respondent had not made any attempts at the commencement of the lease to identify his legal obligations, nor did he care much about the repercussions of his failure to meet same and the effect this could have on the tenant. It was apparent to the Tribunal that he did not consider the contractual relationship between landlord and tenant to be at all important.

The Tribunal found it entirely unsatisfactory for the Respondent to present to the Tribunal the position that the property could not possibly have been that bad if the Applicant had chosen to stay there. It was clear from the Applicant's evidence that she had no alternative accommodation available to her, nor any funds to meet a new deposit. She was entitled to insist on the contract being fulfilled by the Respondent and the repairs being effected, and she was let down by him in this regard. The Respondent's inability to pay for the repairs did not absolve him of this responsibility. The Tribunal noted that the Respondent, once he moved back into the property, managed to borrow the money to pay to repair the heating system. This would appear to show that the property wasn't in a suitable condition for the Respondent himself to reside in. On that basis, it could not be said to be suitable for the Applicant to reside in either.

Whilst no age or date of birth was given in evidence for the Applicant's co-tenant, Mr Conway, it was clear that he was a frail and elderly man. The Tribunal was most concerned that the Respondent would allow a property to remain in such disrepair whilst a tenant of this nature was resident therein.

No medical evidence was lodged by the Applicant. There was reference in her evidence to suffering epilepsy and having consulted her doctor with stress, but nothing beyond that was led.

The Respondent repeatedly referred to the Applicant having left the property in an unsatisfactory state at the end of the tenancy. This position was denied by the Applicant. The Tribunal did not consider that this was at all relevant to the application at hand. The Tribunal was not satisfied with the Respondent's conduct during the proceedings. He was given a number of opportunities to lodge written answers, which he failed to do. He also failed to lodge any productions, nor a witness list. There was no documentary evidence lodged whatsoever by the Respondent to attempt to evidence his position of the lack of cleanliness of the property at the termination of the lease. The Tribunal noted that the Respondent appeared to be fairly dismissive of the proceedings as a whole and made no attempt to cooperate with timescales or deadlines given to him for lodging documents. By his own actions, the Tribunal did not consider that the Respondent took the proceedings particularly seriously.

The Tribunal found the Applicant to be a credible witness, and had no reason to doubt her evidence as regards her cleaning of the property at the end of the tenancy. The tribunal was not satisfied, on the basis of the Respondent's submissions, that the property had been in any worse a state at the end of the lease than it had been at the start. The Respondent made no case for why that would be relevant to the question of whether or not the Applicant was entitled to compensation for residing in the property which fell well below the standard required under section 14 of the 2006 Act.

The Tribunal was satisfied that the property did not meet the repairing standard for the entire duration of the lease, a period of almost 6 years. To be without showering facilities, hot water and central heating for the majority of that time must have been unpleasant and difficult to reside in. In respect of the Applicant's claim for damages, the Tribunal considers that there must have been inconvenience caused to the Applicant by the Respondent's failure to effect repairs appropriately. The Tribunal notes that the claim for damages was calculated on the basis of the award in *Quinn v Monklands District Council*, with inflation applied thereon. The Tribunal has considered the said case, which concerns a damages claim relating to a property with dampness. The property in that case had black mould growing on the external and internal walls, the roof leaked and the tenant and her children required to move out of the property regularly for antifungicidal wash to be applied to the walls. The tenant's possessions were spoiled by damp and she found the subjects depressing to reside in.

The Tribunal was satisfied that the Applicant had suffered loss in terms of the cost of the heaters purchased to heat the property following the boiler breaking down. The claim made in this regard was in the sum of £175. No claim was made in respect of increased heating bills as a result, nor any evidence led in this regard. There was little evidence led by the Applicant, and her witness Mr Conway, as regards specifically the question of damp or mould in the property. In fact, the Applicant said in her own evidence that she was unaware of the presence of dampness in Mr Conway's room. The evidence focused on the broken boiler, lack of central heating system, lack of showering facilities, and having to boil kettles for hot water for washing. Very little evidence was led by the Applicant as regards the inconvenience caused, and the effect this had on them. The Tribunal accepts however, on the basis of the evidence led, that the state of the property and the Respondent's attitude towards his repairing obligations, would have caused inconvenience to the Applicant.

The Tribunal makes an award in the sum of £175 in respect of reimbursement of the loss incurred in purchasing electric heaters to heat the property following the boiler breaking down. The Tribunal finds that a sum of £5,000 would be an appropriate award of damages for the inconvenience and stress caused by the Respondent's failure to effect necessary repairs in the property, for the duration of the lease.

- Decision

The Tribunal awards the sum of £5,175 to the Applicant

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.

Fiona Watson

23 December 2019

Legal Member/Chair

Date