

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 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/19/0810

Re: Property at 2 Laurie Place, Forestmill, Alloa, FK10 3QH (“the Property”)

Parties:

**Mr Adam Kindreich, 3 rua Nossa Senhora do Carmo, Bemposta, 3250-024
Almoester AVZ, Portugal (“the Applicant”)**

**Mr Brian Kindreich, 71 Ashley Terrace, Alloa, Clackmannanshire, FK10 2BB
 (“the Respondent”)**

Tribunal Members:

Alastair Houston (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment of SIX HUNDRED AND
EIGHTY POUNDS (£680.00) STERLING be made in favour of the Applicant.**

1. Background

- 1.1 This is one of three conjoined applications in relation to the same tenancy. The third of the applications, reference FTS/HPC/CV/19/1918 was lodged following the adjournment of the Hearing. In this application, the Applicant seeks an order for payment of £680.00 in terms of unpaid rent due under the tenancy agreement.
- 1.2 The application was accompanied by a copy of the written tenancy agreement and a substantial quantity of supporting documentation pertaining to an agreed increase in the rent payable and issues surrounding repairs at the property.
- 1.3 The Respondent had lodged a written response, also accompanied by supporting documentation. Further supporting documents relating to repairs were lodged by the Applicant in advance of the Hearing.

2. The Hearing

- 2.1 The Hearing took place across two days, on 2 July 2019 and 26 September 2019. The Applicant took part via conference call. The Respondent was personally present and accompanied by his daughter, Sophie Kindreich, as a supporter, on both occasions.
- 2.2 The Tribunal firstly heard from the Applicant. He advised that there was no valid reason for the Respondent to have withheld rent in March and April 2019. His position was that he had not breached any repairing duties in respect of the tenancy agreement.
- 2.3 The Tribunal then turned to the Respondent. The Respondent accepted that rent of £340.00 per month was contractually due, however the condition of the property rendered the rent not lawfully due. There had been issues with a lack of heating and hot water in the property. The heating had been ok since February 2016, when the central heating system was replaced. The Respondent did still require to use an electric heater to heat the property. There had been periodic problems with the hot water since then. These problems had been reported to the Applicant. He accepted that repairs would need to be reported to the Applicant. He had been left without hot water from February 2019 until leaving the property in June 2019.
- 2.4 Prior to the central heating system being replaced, tradesmen required to attend on a number of occasions to repair the central heating system. These repairs were done after a number of weeks. There was no heating or hot water in the property between October 2014 and January 2015 specifically. Rent had been paid during this period. The Respondent began withholding the rent following a telephone conversation with the Applicant in February 2019. The Respondent had been in Australia from 18 January 2019 until 18 February 2019. He advised the Applicant of this prior to going. He was notified, via his sister, of a burst pipe within the property whilst in Australia.
- 2.5 The Respondent advised he was not aware if there was a thermostat in the property but believed he kept the property at around 18 or 19 degrees Celcius. He did not query the operation of the new central heating system within the property with the Applicant. Whilst in Australia, he had arranged with a neighbour to turn the heating system on each day. He had not removed any of his belongings within the property that were wet as a result of the water leak nor had he arranged for anyone to do this for him whilst he was away. A neighbour had turned off the mains water. He believed the neighbour who he had arranged to turn the heating on or off to be using discretion as to the length of time the heating was turned on. Following the leak in February

2019, he had not reported to the Applicant that the property was without hot water. He did not see the point due to the Applicant's attitude to carrying out repairs. The Applicant had bought the property specifically for the Respondent to reside in as a tenant. It had been purchased in consultation with the Respondent.

- 2.6 The Tribunal heard again from the Applicant in response. The Applicant advised that the Respondent had not notified him of the need for repairs. The Respondent had told him he wished to organise repairs himself. He had not told the Applicant about buying an electric heater and did not respond to a letter sent by the Applicant. During the course of the tenancy, the Applicant had replaced a corroded water tank. The issue with this and the heating system may have been in the home report available at the time of purchase. The heating system had an "F" energy rating and had some defects. He had instructed tradesmen to attend in response to notification that it was not working. On one occasion, the tradesman attending found the heating system to be switched off. The documentation he had provided to the Tribunal showed evidence of repairs being carried out throughout the tenancy.
- 2.7 With regards to the repairs needed following the escape of water, the Applicant had difficulty in getting responses from tradesmen. It took 4 weeks to obtain a quote in one instance. There was a wide divergence in the quotes obtained for an insurance claim. He emailed the Respondent on 18 February 2019 asking for full details of repairs needed. This was not responded to. The Respondent had also previously refused access for an electrical inspection. The Applicant had lodged a Skype call log which was evidence of the tradesmen he had attempted to contact.
- 2.8 The Respondent clarified that he was seeking to withhold rent due to the repairs not carried out. In addition to the issues with the heating and hot water system, there were also longstanding repairs to the guttering, loft hatch and the eaves needing carried out. These were not done. The Respondent advised he was not withholding rent for a failure to carry out repairs associated with the escape of water in 2019.
- 2.9 The cause of the escape of water was a broken speed fitting. The Applicant advised he was told, verbally, by the plumber that the speed fit connection was most likely to have failed as a result of the very cold weather. However, despite the Applicant's repeated requests, the plumber did not confirm that in a written report. The Respondent advised that the failure to carry out repairs was part of plan of the Applicant to force him from the property.
- 2.10 On the second day of the Hearing, the Tribunal heard evidence from Sophie Kindreich, the Respondent's daughter. She resided in Glasgow. She would visit her father at the property around 4 times per year, staying overnight at the property, usually for one night on each

occasion. She believed the tenancy to have commenced in 2013. She could not recall the date of her first visit to the property but would have visited within the first year of the tenancy commencing. She last visited around Christmas 2018. She recalled the Respondent boiling kettles for hot water. The Respondent had an extra electric heater but she was not aware if this was due to the central heating not working. She described the property as a bit cold but situated in a cold rural area. There was no other disrepair visible to her. The Respondent had to go to extra lengths to heat water. She recalled the deterioration in the relationship between the Applicant and Respondent. She could not remember specific dates of her visits as she was not expecting to have to give evidence at a Tribunal hearing.

- 2.11 The Tribunal then heard further evidence from the Applicant and Respondent in relation to the third application lodged after the first day of the Hearing. The Applicant referred to documentation he had lodged relating to his new tenant reporting a broken lock on the front door of the property. The Applicant submitted that this was evidence of the Respondent failing to notify him of necessary repairs as the lock would have been broken at the time the tenancy ended. The decision of the Respondent to withhold rent was based on bitterness and anger, evidenced by the threat contained in a message from the Respondent to report the Applicant to the police. The Respondent had not taken any pictures of water damage at the property following the escape of water earlier in 2019. The Respondent failed to communicate his insurance details despite these being requested by the Applicant. The Respondent had changed his position with regards to rent being due. The Applicant referred to a number of documents that he had lodged. The Respondent had failed to respond to a letter of 17 February 2019 and ignored notification that the Applicant was visiting Scotland. The Respondent did not believe reporting repairs was his responsibility. The Applicant had spent over £9000.00 on the property since the tenancy commenced.
- 2.12 The Applicant submitted that the property had quickly been re-let through letting agents. This would not have happened if the property was not up to standard. The Applicant complied with his duties to register as a landlord and lodge the tenancy deposit with a deposit scheme. The Respondent simply had a grudge against the Applicant. The statements by witnesses within the Respondent's response were not verified. The parties mother had never visited the property. Any repairing issues referred to in the Respondent's response were either unnecessary or not notified to the Applicant. The Applicant had brought issues with the paving stones to the Respondent's attention. No report of the Respondent tripping had ever been received. No report of birds nesting in the eaves was ever received. The Respondent was trying to create the impression the Applicant did nothing with regards to repairs. The Applicant had no knowledge of the Respondent suffering pneumonia or if it had anything to do with the property. Documents lodged by the Applicant demonstrated there was loft insulation at the

property contrary to the Respondent's position. The Respondent had not notified the Applicant of any issue with the attic hatch. The Respondent had not paid Stirling Electric for any repair to the central heating, rather for the set up of a modem. The Respondent failed to use the heating system properly. Documents lodged showed that, when there appeared to be fault, it was in fact not switched on and the timer was not being used. The Respondent failed to allow access to the property for the electrical installations to be inspected following the water escape in 2019. This caused the electrics to become unsafe.

2.13 The Respondent advised that there was nothing wrong with the front door lock when he left the property. It was secure. The Applicant harassed him and it was not good for his health. The Applicant always sought to blame someone when things went wrong. The Respondent had always reported when the hot water was not working, the holes in the eaves, the issue with the attic hatch and the paving to the Applicant. He had advised the Applicant by telephone of his trip to Australia. They had discussed the rent increase over the telephone. He had friends carry out repairs at the property as it caused him more inconvenience and stress to go through the Applicant. The Applicant had not visited the property in the last 3 years of the tenancy due to the repairing issues. His relationship with the Applicant was toxic and he did not communicate with him often. The witnesses named in his written response were prepared to attend the Tribunal. The property had been re-let quickly as the Respondent had cleaned it thoroughly before leaving. He had even notified the letting agent of a spillage in the shed. The repairs to the heating system had been delayed for months. The Respondent advised he should have taken legal action. He had suffered from pneumonia due to a lack of heating and hot water. The loft insulation only extended around the perimeter of the loft. His ex-wife had taken photographs of the property following the water escape. The Respondent would not have put up with living with such disrepair without reporting it. The Applicant has an axe to grind with the Respondent. The Respondent reiterated that he had left instructions with a neighbour to heat the house when he was away in Australia. The heating was to be on for an hour each day. There had been a delay in the heating being fixed earlier in the tenancy as earlier described. The Respondent was seeking an abatement of the rent outstanding.

2.14 The Tribunal then heard from the parties as to their positions with regards to the sums claimed by the Applicant for the period 1 May 2019 until 3 June 2019. The Applicant confirmed the sum of £888.66 was due. The Respondent had stayed unlawfully beyond the end of the agreement. The Applicant had been prevented from renting the property out at a higher rate which was attainable. The Applicant referred to clause 15 of the written agreement. The sum sought was based on the level of rent subsequently obtained, being £430 per month. The Respondent essentially adopted his position as stated in respect of the earlier unpaid rent. He confirmed that he had read the tenancy agreement thoroughly before signing. The Applicant confirmed that he

had employed a solicitor to draw up the written agreement. He had never considered using a letting agent as he didn't like using middle men. He would rather spend such expenditure on the property. His living abroad did not impact on his ability to manage the property successfully.

3. Findings in Fact

- 3.1 The parties entered into a Short Assured tenancy agreement which commenced on 1 September 2013.
- 3.2 The Applicant served a notice to quit to terminate the tenancy on 1 May 2019.
- 3.3 The Respondent continued in occupation of the property until 3 June 2019.
- 3.4 The rent payable under the tenancy agreement was initially £320 per month, increasing to £340 per month from September 2018.
- 3.5 In terms of Clause 11 of the written tenancy agreement, the Respondent was obliged to take all reasonable steps to prevent the freezing of the water system.
- 3.6 In terms of Clause 15 of the written tenancy agreement, the Respondent was liable for payment of one month's rent, in addition to rent payable in respect of the period of further occupation, should he not vacate the property upon the termination of the contractual tenancy.
- 3.7 The Respondent failed to make payment of the rent due for the period beginning 1 March 2019 until 3 June 2019.
- 3.8 At the commencement of the tenancy agreement, the heating and hot water system within the property was not new.
- 3.9 The Respondent reported faults with the heating and hot water system on a number of occasions until its replacement in February 2016.
- 3.10 In response to these reports, the Applicant instructed necessary repairs to be effected within a reasonable time.
- 3.11 Following the installation of a new heating and hot water system, the system was, for the remainder of the tenancy agreement, in a good state of repair and in proper working order.
- 3.12 On or around 1 February 2019, there was an escape of water within the property as a result of a broken speed fitting most likely caused by freezing temperatures.

3.13 The Respondent had failed to ensure that the property was adequately heated during the period he was in Australia.

3.14 The repairs required as a result of this escape of water were carried out within a reasonable period of time.

4. Reasons For Decision

4.1 This, along with the conjoined application reference FTS/HPC/CV/19/1818, concern a dispute, in the main, regarding whether sums of rent admittedly not paid by the Respondent were lawfully due. The Applicant relied upon the terms of the tenancy agreement. The Respondent's defence, essentially, was that, as a result of a failure by the Applicant to carry out repairs within the property, he was entitled to an abatement of the rent. Both parties gave evidence and also lodged written representations which were accompanied by large quantities of documentation. The Tribunal has considered these materials when making its decision.

4.2 The repairing standard and duties applicable to the property and the tenancy agreement is found within sections 13 and 14 of the Housing (Scotland) Act 2006. These provisions were replicated in an annex to the written tenancy agreement. Included in these provisions is an obligation upon the Applicant to ensure that "*the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order*". Any fault as described by the Respondent could potentially be a breach of the statutory repairing standard.

4.3 In his written representations and his submissions to the Tribunal, the Applicant disputes that the Respondent was entitled to an abatement, stating that any withheld rent should have been held in a separate account. The Tribunal is of the opinion that the Respondent was not withholding rent to force repairs but, rather, was seeking an abatement of rent. In summary, this was as a result of alleged delay in carrying out repairs to the heating and hot water system prior to February 2019, a failure to repair holes in the eaves, a failure to repair the attic hatch to allow it to close properly and delay in carrying out repairs following the escape of water at the start of February 2019. In principle, the Tribunal accepts such an abatement to be possible and would highlight the case of *Renfrew District Council v Gray* 1987 S.L.T. (Sh Ct) 70.

4.4 In order for a repairing obligation to arise, a tenant must have either notified a landlord of the necessary repair or the landlord must have reasonably expected to have been aware of it. Any necessary work must have been carried out within a reasonable time. The Applicant's position is that, with regards to issues with the heating and hot water system, any repairs prior to the installation of a new system were carried

out within a reasonable time following notification. No notification of any issues was received following the new system being installed in February 2016. Likewise, the Respondent had not notified the Applicant of any other defects relied upon.

- 4.5 In the Tribunal's opinion, there was insufficient evidence advanced by the Respondent of a failure on the part of the Applicant to carry out repairs within a reasonable time. Whilst it was accepted by the Applicant a number of repairs were necessary to the heating and hot water system prior to its replacement, there was nothing to substantiate the Respondent's position regarding the length of time these took to carry out. The Respondent had lodged written representations which purported to include witness statements supporting his position. The Tribunal placed no weight on these. Whilst the Respondent indicated the apparent authors would have been willing to attend the Tribunal hearing, they did not. If the Respondent wished evidence from such people to be heard, arrangements should have been made to have them attend as witnesses.
- 4.6 The Respondent's position was further undermined by contrary statements made to the Tribunal. On one hand, he was certain all repairs would have been reported but, on the other, he accepted he did not communicate with the Applicant due to a deterioration in their relationship. In addition, he indicated that he was satisfied with the condition of the heating and hot water system from February 2016 onwards. He then stated that there were continuing issues with it failing to work. Furthermore, Sophie Kindreich, who did attend the Tribunal, was unable to give any specific evidence about any of the defects within the property. Whilst the Tribunal considered her to be honest and credible, she stated that there was no visible disrepair within the property and, apart from an assertion the property was cold, she could not give any evidence as to the source of this, even saying it was possibly due to the property being located in a colder, rural area.
- 4.7 Within his written representations, the Applicant had produced a summary of the repairs he instructed at the property. These included a number of, given the value, what would appear to be minor repairs to the heating and hot water system carried out by the same company. Although much of the documentation was not relevant, there were copies of reports (Files 48 and 50 lodged by Applicant) suggesting that the lack of proper functioning of the heating and hot water system in 2016 and 2017 were due to it not being turned on properly and the timer not being set. The Tribunal is unable to conclude that there was any fault to be repaired with the heating and hot water system following the replacement. Likewise, the Tribunal can not accept that the Applicant failed to take required remedial action in respect of any holes in the eaves or the attic hatch.

- 4.8 With regards to the repairs required following the escape of water, it is clear from the documentation that these took a number of weeks to effect. It is however, the opinion of the Tribunal that the Respondent was in breach of his contractual duty in terms of Clause 11 of the tenancy agreement to take reasonable steps to prevent the freezing of the system. The Applicant advised the Tribunal of the source of the water escape. The Respondent left the responsibility of heating the property with a neighbour before going on holiday for a month. The heating system had a timer which was not used. In the circumstances, the action taken by the Respondent is insufficient to discharge his contractual obligations. As this appears to have resulted from a breach of duty by the Respondent, the Tribunal can not find the Respondent to be entitled to an abatement.
- 4.9 For these reasons, the Tribunal does not consider that the Respondent is entitled to an abatement of rent. The sum of £680.00 is due for the months of March and April 2019.

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.

Alastair Houston

Legal Member/Chair

12 NOVEMBER 2019

Date