



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/20/0864

Re: Property at 9c Hanover Court, North Street, Glenrothes, Fife, KY7 5SB (“the Property”)

Parties:

Fife Property Investment Limited, Dean House, 191 Nicol Street, Kirkcaldy, Fife, KY1 1PF (“the Applicant”)

Ms Sylvia Martin, Ms Charlie Ross, 9c Hanover Court, North Street, Glenrothes, Fife, KY7 5SB (“the Respondents”)

Tribunal Members:

Jan Todd (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.

- **Background**

- (a) This was a hearing to consider the application made by the Applicant Fife Property Investment Company Limited under Rule 109 for an order for eviction of the Respondents from the Property.
- (b) The Application had been lodged on 9th March 2020 but due to the Covid 19 pandemic the first case management discussion (CMD) took place on 17th August 2020 at 2pm by teleconference.
- (c) The following papers were lodged with the application:-
 - a. The Tenancy Agreement between the Applicant and Respondent dated 15th February 2019
 - b. A rent statement showing the sum of £2500 outstanding as unpaid rent on 29th February 2020
 - c. Notice to Leave dated 3rd February 2020 stating an application will not be lodged with the Tribunal prior to 5th March 2020.

- d. Copy s11 Notice to the Local Authority dated 9th March 2020
- (d) Further evidence of proof of service of the Notice to Leave was sent to the tribunal on 30th April being a copy of proof of posting dated 3rd February and track and trace receipt dated 4th February 2020.
- (e) At the first CMD the case was continued as the Respondent Ms Ross had indicated just prior to it that both she and her mother Ms Sylvia Martin the second Respondent were suffering with physical health issues and her mother was struggling with stress. She advised her mother wished to get legal representation and narrated that there were ongoing repair issues with the Property that the Landlord had not addressed. In particular Ms Ross alleged that the Property is damp and mouldy with wet patches on the living room roof and leaks in bedrooms and the hallway with no ventilation and gas flues from downstairs properties polluting the air that blows into the windows.
- (f) The outcome of that CMD was that as the Respondents had advised that they were withholding rent due to the lack of repairs to the Property which they had requested and could be implying that rent is therefore not lawfully due, it was agreed that the application would be continued to another CMD to allow the Respondents time to seek legal representation, to see if the Respondents attended and to allow their claim to be clarified after they have sought legal advice and representation. A Direction was sent to both parties requesting:-

The Respondent is required to provide:

1. *The Respondent has asked for time to get legal representation. They require to advise the Tribunal as soon as possible if they obtain such representation and the details of their Representative so that can be noted and the Tribunal can correspond with the Representative.*
2. *The Respondent should lodge any evidence of any payments that they have made in respect of the rent due since October 2019 and require to confirm how much rent has been retained by them, if any, to try and ensure repairs are carried out.*
3. *The Respondent is required to state how many repairs are outstanding and how much rent they feel they are entitled to withhold for each repair and why.*
4. *The Respondent should lodge copies of all e-mails or other messages they are seeking to rely on complaining about the condition of the Property or requesting repairs to be carried out to the Property to the Landlord and any response from the Landlord throughout the period of the lease.*
5. *The Respondents should lodge any reports they have from any other party such as a letter from their doctor or other party who has visited the Property supporting their position.*
6. *The Respondent should lodge a short summary of why they believe the repairs they allege are outstanding mean they are not due to pay the rent that was agreed.*
7. *The Respondent should also confirm how much they are holding in a separate account as withheld rent.*

The Applicant requires to lodge:-

8. *The Applicant requires to lodge a revised rent statement showing the rent due, rent paid and balance outstanding to date.*
9. *The Applicant's Ms Muir should lodge all correspondence, e-mails and reports for the last few months that she is seeking to rely on to show what complaints were made and how they were responded to by herself or her agents relating to any issues raised by the Respondents.*
10. *The applicant should lodge any reports from Environmental Health or tradesmen employed to attend the Property to fix any issues reported and their response to those issues.*

- (g) The day before the second CMD the Tribunal received a further request from Ms Charlie Ross of the Respondents requesting a further postponement of this second CMD claiming that her mother, the joint respondent was suffering from mental health issues, had only recently realised the date of the CMD and was seeking support from Frontline Fife in relation to her housing issue and to support them in understanding the paperwork and preparing for the discussion.
- (h) The Applicant strongly opposed this request and the Tribunal after weighing up the interests of both parties and taking account of the fact the Respondents had previously been given a month to seek legal advice and to prepare for the CMD felt on balance it was too late to postpone without substantially prejudicing the applicant and would not be in accordance with one of the overriding objectives which is to manage matters expeditiously. Both parties were informed by e-mail that the CMD would proceed.
- (i) At the second CMD neither of the Respondents attended. Miss Brady spoke to the application and explained that the arrears of rent had increased since the Application was lodged and they now stood at £5000. Ms Brady confirmed that her client was seeking eviction based on over 3 months' rent arrears. It was noted that the Respondents in their written representations had raised the issue that they were withholding rent due to a lack of repairs to the Property therefore rent is not lawfully due. Ms Brady submitted that as the Respondents had failed to respond to the Tribunal's direction and had failed to get legal advice or attend today's CMD, that the Tribunal had ample evidence to allow an order to be made for eviction today and should make one. She referred to the substantial evidence consisting of 5 pages of submissions and over 30 numbered productions, some consisting of hundreds of text messages between the parties, that had been lodged timeously on behalf of the Applicant and invited the Tribunal to make an order for eviction today based on these submissions that she averred showed the landlord had responded timeously to requests for repairs.
- (j) Ms Brady also commented on the strain that these proceedings and the constant messaging Ms Muir is receiving from the tenants, are putting on her client.
- (k) The legal member noted both the Applicant's submissions and the stress the proceedings are having on her and the representations by the Respondents who are Mother and daughter that Ms Sylvia Martin is suffering from mental health issues and is seeking assistance and support from Frontline Fife. It is clear from the copies of the text messages included in the productions lodged

by the Applicant, and the e-mails from the Respondents that they are in dispute over whether the rent is lawfully due.

The Tribunal concluded that it was unable to determine the matter at the CMD because the facts were in dispute and the overriding objective as set out in the Rule of the Tribunal's rules requires that the matter should be dealt with justly, this means remitting the dispute to a Hearing where all the evidence can be considered by two Tribunal members.

The Tribunal noted that the Applicant had lodged a substantial amount of evidence and it would be reasonable to allow the Respondent time to seek assistance in understanding the paperwork and to allow them to present evidence at a full hearing. The Tribunal also appreciated the Applicant wished to have this hearing as soon as possible to try and resolve the dispute and so the Tribunal agreed it was appropriate that the case was remitted to the Hearing which was then scheduled for 10am on 5th November 2020.

Prior to the date of the hearing the Applicant lodged a third list of productions being a statement from Iain Brown painter and photographs; a fourth list of productions consisting of 5 affidavits from different tradespeople she had instructed and from a previous tenant of the Property and a further rent statement showing the current balance to be £5,900 as of 2nd November 2020.

- **The Hearing**

1. The Hearing took place by teleconference given the need for social distancing due to the Covid 19 pandemic. The Tribunal had been advised that the Respondents had appointed a representative namely Ms Shona Morison of Frontlinefife and had received a copy of the authorisation from both Respondents which was dated 16th September 2020 but was only sent to the Tribunal on 3rd November.
2. Ms Morison explained that neither of the respondents felt able to be at the Tribunal or present their case and she advised that she was there as a representative but would not be making a lot of representations she just wanted to be there for the respondents.
3. Ms Brady of Charles Wood & son solicitors was in attendance on behalf of the Applicant and had her client Ms Muir, who is a Director of the Applicants and manages their properties, with her to provide oral evidence.
4. The Tribunal invited Ms Brady to provide her submissions in respect of the principal ground of the application that there is rent outstanding. Ms Brady referred to the latest rent statement lodged and confirmed that this means the total outstanding is now showing as £5900 as at 2nd November 2020.
5. Ms Brady then confirmed that the landlord is asking for an order for eviction on the basis of Ground 12 of the 2016 Act namely that the tenant was in 3 months arrears at the date of the Notice to Leave and is still well over 3 months arrears at today's date; that the Notice to leave was served in the correct manner and as more than 3 month's rent is due and owing the grounds are met.

6. The Tribunal asked Ms Morison if she had any representations she wished to make about the Notice to Leave or technical aspects of the application and she advised she did not as she had looked at it and it appeared in order.
7. Given the Respondent's written representations, the Tribunal confirmed that the principal matter in dispute on which they wished to hear evidence was the matter of whether the rent is lawfully due or whether the Respondents were entitled to withhold rent, which they claimed they had withheld, in respect of repairs and issues with the property that they claimed had not been attended to. The Tribunal indicated that both members had read the large amount of productions that the Applicant had lodged and was looking for a summary of the position and if there were any items the Applicant wished to highlight from their productions.
8. Ms Brady then proceeded to lead her client through the parts of evidence that she wished to cover.
9. Firstly she asked her client to confirm her relationship with the Applicant company and Ms Muir confirmed she was Director, had managed properties for about 8 years and currently managed about 41 properties for the company including several at Hanover Court. Ms Muir advised Hanover Court was a block of properties that had been divided into flats about 5 years ago.
10. Ms Brady asked how the current respondents came to be tenants in the Property and Ms Muir advised that the previous tenant Mr James Doyle had asked if a friend of his Ms Martin and her daughter Ms Ross could come and stay with him in the Property and he asked for Ms Muir's permission although they were not tenants at that point. Ms Muir confirmed she gave permission for that. Mr Doyle then moved into another house in Hanover Court and Ms Brady referred the Tribunal and Ms Muir to statement no 29 of the second list of productions by the Applicant and an affidavit by Mr Doyle dated 26th October 2020 and lodged as production number 36 in the fourth list of productions by the Applicant. In both the statement and affidavit Mr Doyle confirms that he has known Ms Muir since on or around 2015 when he took up a tenancy at 15 Hanover court, that he moved into 9c Hanover Court in 2017 when he required a bigger property for his son to come and stay with him, and that he has since moved to another bigger property at 14 Hanover Court where he still resides. Mr Doyle confirms in his affidavit that Ms Martin and Ms Ross came to live in the other bedroom at 9 C Hanover Court in 2018 as "Ms Martin told me she was experiencing financial and mental health issues at this time and I wanted to help her out." Mr Doyle then decided he should move out and Ms Martin and Ms Ross entered their own tenancy with Ms Muir and he has had no contact since then. Ms Muir confirmed that this information was correct and an accurate explanation of how she came to know the current tenants and Respondents. Mr Doyle also states that in his time at 9c Hanover Court the property was in immaculate condition and that all the properties in Hanover Court were finished to a very high standard. He recalls having a minor issue with the boiler in his current property approximately 6 months ago and when he reported it to Ms Muir she arranged for an engineer to attend the Property and fix the issue the next day. He goes on to say that in his opinion Ms Muir is an excellent landlord, who does all she can to help tenants, lets them pay up their deposit and was willing to come to an arrangement about payment of rent when Mr Doyle

had an accident and was unable to work as a self-employed joiner for a short while.

11. Ms Muir confirmed that she does try to ensure that all repairs are dealt with as soon as possible. She advised that of course it depends on the problem but if it is an emergency she would call someone to come out straight away or if it can wait until morning she would ask for them to go then.
12. Ms Muir advised that the Respondents entered into their own tenancy agreement with Fife Property Investment Company Limited on 15th February 2019 and she advised the rent payments from the Respondents were haphazard and she kept having to remind them to pay. It was after 30th October the rent suddenly stopped being paid. Ms Martin's position was that the property wasn't liveable in and she wasn't paying rent. Ms Brady referred to a text message lodged in the second list of productions and numbered 5/49 where Ms Martin says "I don't think this flat is fit enough to pay £500" and asked Ms Muir is that what you thought she meant by saying you owed her money? Ms Muir replied yes and explained "that tenants can withhold rent if not meeting the repairing standard. Some things are out of our control but we do endeavour to fix things as soon as possible."
13. Ms Brady drew the Tribunal's attention to the Tenancy Agreement where the repairing standard is set out.
14. Ms Brady then asked Ms Muir why she contacted Environmental Health department of Fife council and referred to Ms Muir's e-mail to Environmental Health of 30th September 2019 where she asked someone if they could go and check out the Property as she had sent Kilmaron Electrical Company to check out complaints of mould on the bathroom ceiling and they had advised it needed a new fan because it was not working correctly and had advised someone was brushing mould on the ceiling. So Ms Muir had tried to send a cleaner to look at the bathroom for Ms Martin but when the cleaner visited the Respondent would not let her in and she wanted someone to look at it. Ms Muir explained she had contacted Environmental Health to try and have someone allay Ms Martin's fears that the condensation mould was dangerous. She advised that Ms Martin thought the mould was in her brain. Ms Muir confirmed that the bathroom does not have a window in it, the fan needs to be used to dispel steam but it takes time and condensation mould can be wiped down which is why she asked the cleaner to go out.
15. The cleaner asked to visit the Property to clean the bathroom ceiling and look at it is Mrs Yvonne Malcolm or Hodge who has provided an affidavit sworn on 27th October 2020. In her affidavit Ms Hodge confirms she was asked by Ms Muir to visit the Property to inspect the bathroom ceiling as Ms Martin and Ms Ross had complained of possible condensation mould. She attended on 28th September 2019 and Ms Martin let her into the hallway of the flat but not into the bathroom because "I was not wearing a white suit and mask and she told me the bathroom was unsafe and would damage my health". Ms Hodge advised if it was condensation mould it would wipe off easily and is common in bathrooms. She confirms in her affidavit that Ms Martin did not listen when she was trying to explain it would not harm anyone's health and that she could see from the hallway that someone had tried to scrub the ceiling with a brush which would just spread it around the ceiling. When Ms Hodge tried to leave she reports that Ms Martin chased her down the stairs telling her to stop and look at her as Ms Martin tried to show her skin to Ms Hodge. Ms

Hodge felt uncomfortable and left. Ms Hodge advises she did not want to return on her own but agreed to go back with a Mr John Heron who she believes is qualified in mould remediation. Ms Hodge reports they returned to the Property on 22nd October where Ms Ross let them in and Mr Heron cleaned the ceiling while Ms Hodge cleaned the bathroom as she had been instructed to do a deep clean by Ms Muir. Ms Sweeney from Fife Council Environmental Health was also there and he was happy she reports with her work and Mr Heron agreeing this was surface mould only. She advised that Ms Martin and Ms Ross agreed they were also happy with the work.

16. Ms Hodge goes on in her affidavit to mention the condition of the landing and but this is not relevant to the current application which is based on the question of rent arrears and if rent is lawfully due or is it being lawfully withheld. Ms Hodge finishes her affidavit with confirmation that in her opinion Ms Muir, for whom she has worked for 5 years over many properties, will always phone straight away if she receives a complaint from a tenant and keeps her properties in excellent condition.
17. Ms Muir confirmed that this is the same version of events that Ms Hodge reported back to her after her visits to the Property. She confirmed she asked Mr Heron to go and inspect the mould because Ms Martin did not allow Ms Hodge to look at it on the first visit and Mr Heron is an expert. She referred to production number 8 which is a certificate of achievement in Mould remediation (level one) to John Heron dated 9th July 2010 and a letter from Mr Heron confirming that he “cleaned down the bathroom ceiling with a dry chem sponge to remove mould which was due to condensation from the shower at the fan not running this was switched off at the spur. Cleaned ceiling with MILKILL PLUS to remove mould res. Wash down ceiling with hot soapy water. Wash down all hard surfaces in bathroom and recommend that the ceiling be painted with stainblock then repaint the ceiling white.”
18. Ms Brady then asked Ms Muir about the report from Mr Sweeney of Environmental Health and she confirmed that his report is shown in production no 9 a letter from Mr Sweeney of Fife Council confirming he had inspected the property on Friday 22nd October and “the mould in the shower room was caused by condensation due a faulty vent fan, the fan has now been replaced and the property now meets the Repairing Standard for rental properties”.
19. Ms Muir explained that she had instructed her usual electrician Kilmaron Electrical Company as soon as she received a complaint about the fan in or around 30th September 2019. Ms Brady asked Ms Muir to confirm that Mr Wilson’s report on his visit and findings as set out in his affidavit of 23rd October coincided with her recollection of his report of his visit. Ms Muir confirmed it did. Mr Wilson confirms in his affidavit that he was instructed to visit the Property by Ms Muir on 30th September to check the functionality of the bathroom fan as the tenants Ms Martin and Ms Ross had complained it was broken and that there was damp in the bathroom. He advised that on his arrival he could see it was broken and he replaced it with one which is compliant with building regulations and the size of the bathroom. He also states that he noticed that there was a lot of wet clothing on the heated towel rail and clothing racks and he advised Ms Martin and Ms Ross they should not dry wet clothes in the bathroom as there was no window and excess moisture could develop. He confirms when he left the fan was working.

20. He was instructed to return on 4th October due to further complaints from the tenants. He advised that the fan was still working but because of the complaints he went “over and above what he would normally do and cored a whole new system shortening the length of the ventilation run and installed a much bigger more powerful fan”. He said this was the type more typically installed in a kitchen. He hoped installing it would avoid further complaints. He once again notices and comments on the wet clothes being dried in the bathroom.
21. Mr Wilson then advises in his affidavit that he was asked to return on 30th March 2020 as Ms Muir had advised him an electrical socket was burned out in Ms Martin’ bedroom. He attended with mask and gloves and found an industrial size sun bed in the bedroom. He advised he has never in his time as an electrician seen a sun bed this size in a residential property and in his view the bed would have originally been fitted with a 16 amp fuse which meant that someone had changed it to 13 amps to use in the property. This was the reason the fuse had blown and burned the socket in his view. Ms Wilson considers such a sun bed a fire risk. Ms Martin advised him she needed it for her skin. She also advised they had other issues with moisture and he reminded them not to dry clothes in the bathroom and recommended they open windows to ventilate the property. Ms Martin he advised said they don’t open windows because spiders would get in.
22. He visited for a fourth time on 12th May while he was on furlough and only doing emergency work as Ms Muir asked him to attend the Property because of complaints about the fan not working again. He advises he visited within an hour. He checked the fan and found it to be working, “I decided to turn the bathroom shower on to the highest temperature and took a photograph of the bathroom every five minutes using my mobile phone. I did this to try and evidence that there is nothing wrong with the bathroom fan in terms of removing moisture” He records that after twenty minutes the condition of the bathroom had not changed, the fan was in perfect working order. He again advised the tenants not to dry wet clothes there and that the fan is designed to reduce moisture by extracting the steam but will never extract everything instantly.
23. Mr Wilson then records in his affidavit that he was called back on 12th August the day after a bad storm in Fife to check for potential water ingress to an electrical socket in the living room. He found it “completely dry and safe for Ms Martin and Ms Ross to use.” He notes that in his view, Ms Muir deals with complaints timeously and that any issues with the property are caused by the way the tenants are living in the Property.
24. Ms Muir confirmed that this was a correct statement of the times and purpose of her instructions for the electrician to visit the property. She added that the Respondent in the e-mail sent on 12th August mentions damp and mould in the property and also mentions water in bedrooms and living room.
25. Ms Muir advised that she has also sent a person from a roofing company that she often uses on her properties Macrae Roofing and Building to check the Property for the tenants following complaints from them of water leaking in the Property and again the Applicant has lodged an affidavit to confirm the visits and outcome. The Affidavit in this instance is from Ms James John Thomas Macrae who confirms that he is a roofer who works for his son Shaun Macrae who owns the business. Ms Brady asked Ms Muir to confirm

the statements made in the affidavit by Mr Macrae are accurate as far as she is aware from what he reported back to Ms Muir from his visits to the Property, and Ms Muir confirmed they are.

26. Mr McRae states in his sworn affidavit that he visited the property first on 9th July because the tenants Ms Martin and Ms Ross had complained of damp and water leaking from the ceiling in Ms Martin's bedroom. Mr McRae confirms that he checked the ceiling with a moisture meter detector and the meter readings confirmed they were within the guidelines and he advised Ms Martin there was no damp in her bedroom. At this point he states she tried to take her clothes off to show him some rashes on her body so he left feeling very uncomfortable. He also confirmed that during this visit he saw a large industrial size sun bed in the Property and advised Ms Martin that this could cause a lot of condensation and was not advisable in the Property. He also comments that no windows were open and the Property seemed hot and stuffy.
27. Ms Muir also agrees that she was sent copies of the meter reading Mr McRae took and confirms these have been lodged with the second list of productions and confirms that they show the meter readings are normal.
28. Mr McRae then confirms he was asked to return on 27th July 2020 after Ms Muir had told him the tenants were complaining of damp water staining in the bedroom which he checked again and there was no evidence of dampness. He also advises he checked the living room which showed slight elevation but the readings were still within the guidelines and so were not a cause for concern. He also found a blocked internal downpipe and cleared it the next day.
29. Ms Martin advised on this visit that she could hear water running within the walls of the property but Mr McRae advised her that as this development has internal downpipes this was why she could hear water running from time to time and assured her this was nothing to worry about.
30. Ms Muir advised that she had to call Mr McRae back once again the day Fife was hit by a bad storm because the Respondents had called her to say that water was pouring through the ceiling, Ms Muir confirmed she treated this as an emergency, phoned the roofer and he attended straight away. He reported back that there was no water pouring in, that he could hear water in the downpipes again but that was all. Mr McRae's report of this visit corroborates that statement advising that he was able to attend within 10 minutes of being called because he was in the area carrying out another job. He also advised that Ms Martin got quite angry when he said he could not see or hear water and told him to get out the house.
31. He also confirms that Ms Martin continued to send text message to Ms Muir as she sent them on to him showing messages up to 12.24pm because of this he agreed to return with a colleague and went back on 12th August at 4.40pm and went on the roof where he saw no damage.
32. Ms Muir then advised she asked Mr McRae to make another visit later that month after receiving further reports of water leaking through the ceiling in the living room and stated that he reported back that there was a bucket on the floor with a small amount of water and a hole in the ceiling but in his opinion it looks like someone has cut open the plasterboard themselves and water would have shown staining round the hole area where it would wet the plasterboard.

33. Mr McRae's report confirms that he found no evidence of water leaking, that he found circles drawn round a hole in the ceiling that in "his professional opinion looked as if someone had cut open the plasterboard themselves". He confirms that if water had come in from the roof the plaster board would have worn over a long period of time before the water would start to come in. Again he advised his meter readings were normal on this occasion as well.
34. Ms Brady asked Ms Muir if in regard to the rashes that Ms Martin had complained of to Mr MacRae and Ms Hodge, Ms Martin has ever sent or shown Ms Muir any medical evidence confirming this could be caused by dampness and Mr Muir emphatically denied she had seen or been sent any medical reports confirming any of Ms Martin's allegations.
35. The Respondents have complained of gas poisoning in some of their text messages to Ms Muir and so Ms Brady asked Ms Muir to confirm what steps she has taken on behalf of the Landlord to have gas safety checked. Ms Muir confirmed that she instructs a gas maintenance check once a year from Rogerson Plumbing and Heating Ltd and the last one was done in August 2019 and she confirmed the invoice for this is production no 16 of the second list of productions and the gas safety certificate of 11th August 2019 is also lodged. Ms Muir also confirmed that there are carbon monoxide alarms in the Property and so there should be no issue with carbon monoxide leaking as it would be picked up if there was an issue. Despite this she confirmed that the Respondent advised there was a problem, so was advised to switch off the system until it was checked. Ms Muir sent out a heating engineer from Rogerson Plumbing and Heating Ltd to check and they found no sign of carbon monoxide and so switched the heating back on. Ms Muir referred to the invoice dated 4th December 2019 and gas safety certificate of the same date as proof this had been attended to and which are lodged as productions number 18 and 19. On production 18 annotation said "2 gas checks at our cost in 4 months".
36. The final affidavit lodged that Ms Muir referred to was from a painter Mr Brown whose company is Vincent Van Brown, that she advised she instructed initially following on the reports of mould in the bathroom to paint the bathroom ceiling and latterly to fix the hole in the living room ceiling and paint it. She advised that he used a special paint in the bathroom to allow it to be wiped down more easily and that he also believed the hole in the living room ceiling was caused by the tenants themselves.
37. Mr Brown in his affidavit says that he has had his own business for 10 years and has known and worked for Ms Muir for over 6 years. He confirms he inspected the bathroom ceiling when first asked to visit the Property in or around 2019 and could find no damp staining but could see mould. He advised the tenants he thought this was due to wet clothes drying within the bathroom where there is no window and advised that the tenants advised him they were using the shower for prolonged periods of time. On his second visit to the Property he advises he recoated the bathroom ceiling twice with two coats of a stain block called Zinsser Stain Block and then to coats of a stain resistant paint called Clean Extreme. He states this type of paint allows for scrubbing after it is applied so the tenants could wipe it down afterwards.
38. Mr Brown advises he visited a third time more recently to check alleged complaints of water stains on the living room and bedroom ceilings. He thought the damp stains were the result of water ingress due to works on the

roof however in his view as a painter and decorator there was no damp within the property. He also confirms he saw a hole in the living room ceiling that he thought had been made deliberately. He patched it up and used the similar products to those used in the bathroom. His view is that these are appropriate products and materials for the Property. He concludes by mentioning that Ms Martin was complaining of the fan not working in the bathroom but he checked and thought it was working fine. He advised Ms Martin that it requires cleaning, that she refused to clean it and he wiped it down for Ms Martin.

39. Ms Brady then asked Ms Muir some questions about whether there were other issues with the Property arising from the tenants use of it and Ms Muir confirmed that in her view there was including the keeping of a cat, destruction of carpets by said cat, and potential damage to door handles, doors and walls and a boyfriend of Ms Ross' potentially staying there without permission.
40. The Tribunal then proceeded to ask some questions of Ms Muir and elicited that Ms Muir is not aware of any difficulty or delay in the Respondents claiming or receiving any benefit which would have affected their ability to pay rent.
41. She confirmed that she did not know why after saying they were withholding rent the Respondents then paid one sum of £500 on 30th June 2020 although she did confirm that happened just after she had put in a replacement fridge freezer. Two more individual payments of £50 each on 1 October 2020 and 2 November 2020 have also been made. Ms Muir further confirmed that despite being told by Ms Martin that she would be contacted by her MP and GP no one has contacted her on Ms Martin's behalf. She had also asked the Respondents where and how much they were withholding as rent and did not receive a response. Finally she advised the roof of the whole block was replaced between November 2019 and January 2020.
42. The Tribunal then asked if Ms Morison had anything she wanted to say on behalf of the Respondents. She advised that she understood that there may have been an error in the e-mail address for Ms Ross that the Housing and Property Tribunal have used to send correspondence including the directions the Tribunal sent asking for evidence to be lodged by the Respondents. She advised that an extra e appears to have been missing and Miss Ross claims not to have received all the correspondence however Ms Morison confirmed that Miss Martin's e-mail address was working and valid. She advised that Ms Martin does have some health issues and she is in contact with Ms Martin's advocate but that she herself believes it would be best for the Respondents to leave the Property. She confirmed that there had been contact with Fife Council Homelessness Services. Ms Morison confirmed she was not able to comment on the repairs or substances used by the tradespeople. Ms Morison also confirmed a colleague had advised Ms Ross to ask for a postponement of the last CMD and she concluded by saying their argument is with the repairs done not the termination of the tenancy. Ms Morison could also confirm she is not aware that the rent monies are being held in a separate account although she had advised the Respondents they should have done this.

Findings in Fact

43. The parties entered into a lease of the Property which commenced on 15th February 2019
44. The Rent due in terms of the lease is £500 per calendar month payable in advance.
45. The Respondents are still living in the Property
46. The Applicant produced a statement of rent showing that since the end of October 2019 rent has been continually in arrears.
47. The Notice to leave was served on 2nd February 2020.
48. There were over 3 months' rent outstanding at the date of service of the Notice to Leave.
49. As at the date of the Application there was £2,500 of rent outstanding.
50. The rent outstanding today is over £5,900, which is over 3 months' rent.
51. The Respondents have indicated they were withholding rent because of outstanding issues and repairs required to the property.
52. The rent has not been set aside in a separate account.
53. 3 recent payments of rent have been made.
54. The rent is lawfully due.
55. The landlord has not delayed or refused to deal with any repairs that have been requested. The landlord has attended to all complaints promptly and timeously.
56. The fan in the bathroom was broken prior to October 2019 but was fixed and replaced by 22nd October 2019 with a larger fan.
57. Dampness or mould on the bathroom ceiling was caused by a build-up of condensation or moisture in the bathroom through lack of ventilation or use of the fan, drying of washing on radiators and screens, as well as use of an industrial size sun bed by the tenants.
58. The Property is habitable. There was no water ingress to the Property in August 2020 or at any time that has left the Property uninhabitable.
59. The gas boiler has been checked and serviced and there is no evidence of a carbon monoxide leak.
60. A notice to leave was served on the Respondent on 3rd February 2020 by post confirming that no proceedings would be raised before 5th March 2020.
61. These proceedings were raised on 9th March 2020 and the application included a copy of the Notice to Leave which specified Ground 12.
62. The arrears are not wholly or partly due to a delay or failure in payment of a relevant benefit.

63. Reasons for Decision

64. The Tribunal was satisfied that the Respondent had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 of Schedule 3 of the Act as the relevant ground of eviction.
65. The Notice to Leave was also accompanied by evidence of how the ground was met namely the rent statement showing arrears due from 30th October 2019 2019.
66. The Notice also set out the relevant notice period which expired on 10th February 2020.
67. The Application was lodged on 9th March 2020 it was therefore lodged after the expiry of the Notice period and within 6 months from the date of the expiry of the notice period and therefor complies with Section 55 of the Act.

68. Ground 12 of Schedule 3 of the Act states “

69. It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

70. The First Tier Tribunal must find that the ground named by sub-paragraph (1) applies if

- a) At the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits the tenant is
 - i) in arrears of rent by an amount equal to or greater than the amount which would be payable as one month’s rent under the tenancy on that day and
 - ii) has been in arrears of rent (by any amount) for a continuous period up to and including that day of three or more consecutive months and
 - iii) The Tribunal is satisfied that the tenant’s being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.”

71. The Tribunal accepted the verbal averments and the written statement of rent arrears from the Applicant who was wholly credible in all of her evidence of the Respondent having failed to pay the full rent due since October 2019, and that she has responded promptly and appropriately to the Respondents’ complaints about the fan in the bathroom and subsequent complaints about carbon monoxide gas and water ingress in the living room and elsewhere. Ms Muir has provided compelling written evidence from 4 trades people, namely a cleaner, electrician, roofer and painter all confirming she instructed them straight away after complaints from the tenant. They all confirm that the Property was fit for purpose, that any mould or damp in the bathroom or property was caused by the way the tenants lived in the Property and not a failure of the way the landlord keeps the Property. The claim that the fan in the bathroom has not been working which the Respondents were alleging has also been checked by Mr Sweeney of Fife Council’s Environmental Health Department and he has supplied written confirmation that on 22nd October 2019 the fan was working and the Property complied with the repairing standard.

72. The written response from the Respondents is that the rent is not due and owing due to the condition they allege the property is in and the effect on their health and well-being. There is no evidence to support the Respondents’ position that the Property was not fit to live in or that the Respondents were entitled to withhold rent for repairs as all repairs were investigated and carried out timeously. There is no evidence of water ingress during the tenancy or dampness and the mould that appears on the bathroom ceiling is the result of condensation which the Landlord has addressed by putting in a larger fan and having it painted with specialist paint. The Tribunal prefers the evidence of the Applicant’s Ms Muir whom they found honest and credible and the Tribunal accepted her position that there is no outstanding repair or essential defect with the Property that would entitle the Respondents to any entitlement to withhold rent.

73. The Respondents' representative confirmed that in fact the Respondents have not placed the rent they allege they are withholding, in a separate account and the Tribunal found no reason to show that the Respondents would be entitled to an abatement of rent.
74. The rent statements lodged and the verbal submissions confirmed that the rent outstanding as at today's date amounts to more than one month's rent and that arrears have been due and owing for more than 3 months.
75. The Respondent was instructed to lodge her e-mails or text messages asking for repairs to be done and to explain what it is the Applicant has not done. The Respondent has not lodged any evidence in response to these requests. Ms Morison did however indicate that she understands that there may have been an error in the e-mail address that the Housing and Property Tribunal have used to send correspondence including the directions the Tribunal sent asking for evidence to be lodged by the Respondents. It would appear however that the e-mail address used for Ms Martin is the correct one. Ms Ross had replied however just before both CMD's asking for further time to get legal representation and was aware of the case being held. The Respondents have sought and obtained representation from Frontline Fife who appeared for them at the Hearing. Ms Morison has not sought or requested further time and has been instructed since September 2020 so if there was evidence to present, there has been ample time to prepare and present it. The Tribunal is satisfied therefore that the hearing today has been fair and both parties have had an opportunity to present their case. The Tribunal has tested the statement made about the Property against the Applicant's submissions.
76. As the Tribunal is satisfied for the reasons given above that the rent of £5900 is due and owing the Tribunal is satisfied in terms of S 51 (1) of the Act that one of the eviction grounds named in Schedule 3 of the Act, namely Ground 12, is met. As the notices were served in February 2020 the Tribunal has no discretion if this ground is met and therefore determined that the order for eviction sought by the Applicant should be granted.
77. There was no evidence presented that arrears have accrued as a result of a delay or failure in payment of a benefit.
78. The Applicant's solicitor raised the issue of expenses after the Tribunal gave its decision and asked the Tribunal to make an award of expenses due to the failure of the Respondents to provide further detail or evidence to support their position as requested in the Tribunal's directions. In particular Ms Brady submitted this failure to respond has led to her client not being able to narrow the issues and has led to the production of a greater amount of evidence than otherwise might have been necessary. The Tribunal advised as this had been raised after the decision was given it would reserve its position and respond in the written decision after considering the submission. Ms Morrison felt she was not equipped to express a view on the question of expenses.
79. In respect of the claim for expenses, the Tribunal finds that no expenses should be awarded to or by either party.
80. The criteria for the award of expenses in terms of Rule 40 of the Tribunal rules is that "where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense" is not met and no expenses should be awarded. This criteria is a high one, the general rule is that expenses are not granted and a party has to show that

the other party has acted unreasonably. The Respondents have stated that they believe they are entitled to withhold rent because of issues with the Property. From the text messages the Applicant has lodged they appear to genuinely hold the view, that repairs are outstanding and the Property has issues. The Tribunal has heard that Ms Martin may have mental health issues that may make it more difficult for her to respond and engage with the process. The Respondents have tried and have eventually obtained some representation. They specified the issues in their e-mail of 12th August and while not very specific gave enough grounds to state a potential case which was of dampness, mould and gas contamination in the Property. The Applicant has chosen to lodge a large number of productions to counter these allegations, and has given oral evidence all of which the Tribunal has accepted as credible. The Respondent is entitled to defend their case and the Applicant has not shown that the Respondent's behaviour in particular in defending this application has put the Applicant to unreasonable or unnecessary expense. For this reason the request for expenses is refused.

81. Decision

82. Order for possession against the Respondents is granted.

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.

Jan Todd

Legal Member/Chair

9th November 2020
Date