



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

**Chamber Ref: FTS/HPC/CV/20/2010**

**Re: Property at 29/2 Rannoch Place, Edinburgh, EH4 7HH (“the Property”)**

**Parties:**

**Mr Pablo Cabrera Garcia, 29/2 Rannoch Place, Edinburgh, EH4 7HH (“the Applicant”)**

**Mrs Pauline Gillies, Blessings and Blossoms, 132 St Johns Road, Edinburgh, EH12 8AX (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr G Darroch (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £2115.44.**

**Background**

1. This is an application made under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) received in the period between 21<sup>st</sup> September and 16<sup>th</sup> November 2020. The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 5<sup>th</sup> June 2019 and ended on 21<sup>st</sup> or 22<sup>nd</sup> December 2020. The Applicant was seeking an order for payment in the sum of £3022.05, which is half of the rent paid for the period of eleven months when there was no heating or hot water in the Property. The Applicant submitted a copy of the tenancy agreement, a First-tier Tribunal for Scotland (Housing and Property Chamber) repairing standard decision (FTS/HPC/RP/19/2899), and email correspondence between the parties.
2. A Case Management Discussion (“CMD”) took place on 13<sup>th</sup> January 2021 by telephone conference. The Applicant was in attendance. The Respondent was not in attendance. The CMD was continued to an evidential hearing. The

Applicant was asked to lodge written representations with the Tribunal at least 14 days before the hearing, to address the basis on which the sum claimed was calculated, the effect that the loss of heating and hot water had upon him, and details of any loss of amenity and enjoyment suffered. The Applicant did not provide any further representations.

3. A hearing was set down for 18<sup>th</sup> March 2021. Shortly before the hearing, it became apparent that service upon the Respondent had been made at an incorrect address. The hearing was postponed and personal service of the application, associated documents and notice of a hearing scheduled for 19<sup>th</sup> May 2021 was made upon the Respondent by Sheriff Officers on 20<sup>th</sup> April 2021.

### **The Hearing**

4. A hearing took place on 19<sup>th</sup> May 2021 by telephone conference. The Applicant was in attendance. The Respondent was not in attendance. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the hearing together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 24 had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent.
5. The Applicant said he was without heating and hot water for a period of eleven months from June 2019 to May 2020, while he was a tenant residing in the Property. He said he had repeatedly approached the Respondent's representative, a letting agent, seeking a repair. He was told he should leave the Property. He asked for a rent reduction. He was told this would be considered but nothing came of it. He was not given any alternative heating by the Respondent. He purchased a small electric heater himself.
6. It was the Applicant's position that the Property did not meet the minimum standards required. Responding to questions from the Tribunal as to the effect the lack of heating and hot water had on him, he said he had to shower at his workplace, as the Property was so cold. Although there was an electric heater, it was uncomfortable to have a shower when the Property was freezing. He washed dishes and clothes with cold water. He rarely invited friends to the Property. Sometimes he stayed overnight with friends because the Property was so cold. It was unhealthy to live in the Property due to the cold.
7. Responding to questions from the Tribunal regarding the claim made by the Respondent's representative that the Applicant had declined electric heaters, as reflected in the decision in FTS/HPC/RP/19/2899, the Applicant said this was untrue. He had not been offered electric heaters. As for the reference in FTS/HPC/RP/19/2899 to compensation being discussed but not agreed, the Applicant said it was discussed but he never received a response or an offer of a reduction.

8. Responding to questions from the Tribunal, the Applicant said the washing machine in the Property did not heat the water, so his clothes were washed in cold water. He had a kettle that he used for making tea. He was unable to provide any indicative information as to whether or not the electric heater had proved more costly than gas heating. The Applicant said he felt it was unfair to expect him to leave the Property. That was not the way to fix the matter. It was the Respondent's responsibility to fix the matter.

### **Findings in Fact**

9.
  - (i) The Respondent is the registered proprietor of the Property which is registered in the Land Register for Scotland under Title Number MID92623.
  - (ii) Parties entered into a private residential tenancy in respect of the Property that commenced on 5<sup>th</sup> June 2019 and ended on 21<sup>st</sup> or 22<sup>nd</sup> December 2020.
  - (iii) During the tenancy, the Applicant paid rent of £413 for June 2019, £492.11 for July 2019, and £571 per month thereafter.
  - (iv) In June 2019, there was a fault with the boiler in the Property, and the boiler did not work.
  - (v) On 16<sup>th</sup> September 2019, the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 22(1) of the Housing (Scotland) Act 2006 for a finding as to whether the repairing standard was met.
  - (vi) On 9<sup>th</sup> March 2020 a Tribunal found that the repairing standard had not been met and a Repairing Standard Enforcement Order was put in place. This included a requirement to repair or replace the installations in the Property for the supply of gas.
  - (vii) In May 2020, a new boiler was installed in the Property.
  - (viii) The Applicant was without gas heating and the ability to heat the water with gas for a period of 11 months.
  - (ix) No rent reduction or compensation was offered to the Applicant by the Respondent.
  - (x) The Applicant did not have full enjoyment of the Property due to the lack of heating and hot water.

- (i) Rent paid by the Applicant to the Respondent in the sum of £2115.44 for an eleven-month period from June 2019 to May 2020 was not lawfully due.

### **Reasons for Decision**

10. In a situation where a tenant does not have full enjoyment of the subjects, it follows that rent is not lawfully due in respect of the parts of the subjects of which the tenant does not have full enjoyment. The Applicant did not have full enjoyment of the Property for a period of 11 months due to the lack of heating and hot water.
11. The Tribunal considered the issue of how much rent abatement should be awarded. The Tribunal considered that the 50% abatement claimed by the Applicant was excessive and that an abatement in the sum of 35% was appropriate. It was clear from the decision in FTS/HPC/RP/19/2899 that the Respondent breached her statutory duty to ensure the repairing standard was met in respect of the Property. The Tribunal did not have enough information before it to make any findings of loss that would justify an award of damages, as no vouching or evidence of actual loss was put forward by the Applicant.

### **Decision**

12. An order for payment is granted in favour of the Applicant in the sum of £2115.44.

### **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.**

H. Forbes

**Legal Member/Chair**

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**19<sup>th</sup> May 2021**  
**Date**