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/20/2083

Re: Property at 27 Verena Terrace, Perth, PH2 0BZ ("the Property")

Parties:

Miss Chenaimoyo Matibiri and Mr Mervyn Dupont, both residing at 5 Arthur Sanctuary House, Sandfield Road, Headington, OX3 7RH ("the Applicants")

Mrs Jan Shirley, Sawmill Cottage, Oxnam, Jedburgh, TD8 6RQ ("the Respondent")

Tribunal Members:

Andrew Cowan (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") have determined to grant an order for payment by the Respondent to the Applicant's in the sum of £300.

Background:

1. The Tribunal convened to consider an Application in which the Applicants sought payment as compensation for breach of the terms of a tenancy agreement between the Applicants and the Respondent. The Tribunal considered the Application under Section 16 of the Housing (Scotland) Act 2014 and Rule 70 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure ("the rules") 2017.

2. The Tribunal had previously held a Case Management Discussion ("CMD") in relation to the Application on 11 January 2021. At that CMD, the Tribunal ordered that Mr Mervyn Dupont should be added as an additional Applicant. The Tribunal directed that a copy of the revised Application (which had been submitted to the Tribunal by the Applicants on 17 November

2020) was to be provided to the Respondent. The Tribunal subsequently issued the revised Application to the Respondent in compliance with this Direction.

3. At the CMD it was noted that issues to be determined at a hearing included:

    a. Whether the Respondent had complied with obligations to uphold the property in a tenantable and habitable condition and in doing so whether the Respondent had effected any necessary repairs within a reasonable period of time.
    b. If the Respondent did not comply with the obligations set out in paragraph 1 what compensation ought to be paid to the Applicants?

4. By email dated 16 February 2021 the Applicants lodged further written submissions along with copies of text messages. These documents were copied to the Respondent.

5. By email dated 13 March 2021 the Respondent lodged further written submissions and supporting documentation. These documents were copied to the Applicants.

6. A hearing in relation to the Application was heard by the Tribunal on 15 March 2021. Due to the ongoing disruption caused by the Covid-19 pandemic the hearing took place using telephone conference facilities. Both the Applicants and the Respondent took part in the conference call.

The Claim:

7. The basis for the Applicant's claim is set out in their Application as follows:

    "We moved into the property on 28/11/2019 and the heating did not work. My fiancé called Premier Properties and they stated that they would send a plumber out that evening and the plumber did not show up. The plumber fixed the heating after we had returned to London (we returned to London on 29/11/2019 and returned back to Perth on 3/12/2019). The boiler timer did not work and the temperature setting control (broken off prior to move in date). The temperature setting control was subsequently fixed. However the boiler timer was not fixed for over 6 months. Premier Properties advised us turn down all the radiators temperature when we left for work and to turn them back up upon our return from work. We followed their advice which caused the boiler to completely shut down and required a plumber to come out to the property to restart the boiler. To the best of my knowledge I believe this happened on 2 occasions. We were then unable to completely turn down the radiators (to the off position) and also were unable to turn off the boiler as we did not want to risk the boiler not turning back on. It is an unreasonable request / way of living to lower the all radiators settings in the property upon leaving and returning from work / outings. I believe we were unfairly subjected to unnecessary high gas bills and treatment. The gas panel attached to the boiler was broken by one of the contractors and has been hanging from the boiler since 12/2019 which I believe is unsafe as some of the boilers wiring etc. is exposed which at check out on 07/09/2020 the landlady herself attempted to fix in front of the estate agent and my fiancé".

The Hearing:

8. At the hearing on 15 March 2021 both the Applicants and the Respondent gave evidence. All parties made reference to the written submissions and documents which had been submitted by parties.

The Applicant's evidence:

9. The Applicants' evidence can be summarised as follows:

    a. The Applicants entered in to a tenancy agreement in relation to the property and entry date on 28 November 2019. A private residential tenancy agreement was entered into by the Applicant's and the Respondent.
    b. Mr Dupont (being one of the Applicant's) collected the keys for the property on 28 November 2019.
    c. On taking entry to the property on 28 November 2019 Mr Dupont attempted to operate the heating system within the property. He was unable to start the central heating system. On that date he contacted the Respondent's letting agents who advised that they would arrange for a contractor to call at the property and carry out necessary repairs.
    d. Mr Dupont left the property to travel South on 29 November 2019. When he returned on 3 December 2019 he was informed by the letting agents that a contractor had attended at the property and had repaired the heating system.
    e. When Mr Dupont returned to the property on 3 December he was able to operate the boiler. However, the timer system for the boiler did not operate. The Applicants were unable to control the timing of the boilers operation and required the system to be running fully at all times with the inability to control the time setting of the system.
    f. On 6 December 2019 Mr Dupont emailed the letting agent. He advised that "the boiler still seems to be on permanently and there is no longer anything on the screen so we are currently unable to tell whether or not it is on once or twice."
    g. The letting agent acknowledged receipt of the Applicant's email of 6 December 2019 by return email of the same date. The letting agent confirmed the contractor (who was due to attend the property anyway to attend another issue in connection with the boiler) could also attend to the issue raised in relation to the operation of the timer etc.
    h. On 10 February 2020 the letting agent emailed Mr Dupont and requested Mr Dupont to send a photograph of the boiler timer. Mr Dupont complied with this request and arrangements were thereafter made for a contractor to visit the property on Wednesday 10 February. Mr Dupont stated that the most suitable time for the contractor to visit on the Wednesday would be in the morning.
    i. On the date arranged for the contractors visit on 10 February the Applicant required to leave the property later in the afternoon. They attempted to contact the contractor concerned by mobile phone to ascertain the likely time of his visit to the

property, however they were unable to make contact with the contractor. They left the property in mid-afternoon. The contractor had not attended at the property by the time they left the property.

j. From 6th December 2019 to the date the timer on the boiler was finally repaired on 10th July 2020, the Applicant's and the Respondent's letting agents exchanged a series of emails which required the Applicant's to produce further information and requested the Applicant's to make direct contact with a number of contractors in connection with access to the property to carry out necessary repairs to the boiler timing system.
k. The boiler timing system was finally repaired on 10th July 2021.
l. The Applicant's evidence was that they were unable to properly operate the boiler from entry to the property until it was fully repaired (on 10 July 2020) as the boiler time clock did not operate correctly.
m. They had tried to operate the heating by turning the boiler on and off at required times. They had found that this had meant that the boiler had to be reset every time it was turned off.
n. In summary the Applicants maintain that the boiler system did not operate as it should have throughout the period and that the Respondent had failed on her obligations to maintain the heating system in proper working order. The Applicant's submit that they suffered inconvenience and loss of enjoyment during the tenancy as a consequence of the Respondent's failures in this respect.

The Respondent's evidence:

10. The Respondent's evidence can be summarised as follows:

a. The Respondent accepts that timing system on the boiler did not operate as it should.
b. The respondent maintains that she took reasonable steps to have the timing system on the boiler repaired in reasonable timescales.
c. The Respondent maintains that she was not personally aware of the issue with the timing system on the boiler until 7th February 2020.
d. The Respondent accepts that the Applicant's may have reported the requirement for repair to the timing system of the boiler to the Letting Agent due to an early date but she was not personally aware of the requirement for the repair until 7th February 2020.
e. The Applicant made arrangements through the Letting Agents for a contractor to attend the Property on the 12th February 2020. The Respondent maintains that the Applicant's failed to ensure they were present at the Property for the contractors visit within reasonable periods of time. The contractor was unable to gain access to the Property on the 12th February 2020 as the Applicants failed to provide entry, as was reasonably required.
f. After the aborted attempt to have a contractor attend the property on the 12th February 2020 the Respondent had, through her Letting Agent, made attempts to have another contractor visit the property. A further contractor visited the Property on the 28th February 2020.

g. Following the contractors visit on the 28th February the Applicant, her Letting Agents and the contractor exchanged correspondence regarding necessary works and approvals for costs etc.
h. From the 25th March 2020 to 28th May 2020 the contractors were only able to carry out emergency repairs at properties due to Covid lockdown restrictions. The issue with the boiler timing system was not considered an emergency repair as the Property was still able to operate with hot water and heating.
i. Following the lifting of Covid restrictions the Applicant and her Letting Agent sought to ascertain when the contractor (who had originally visited the Property in February 2020) could complete the boiler timing repair. The Applicant and her Letting Agent were unable to ascertain when that original contractor could complete the repair and, in June 2020, appointed another contractor to undertake the necessary work.
j. Work to carry out the necessary repair to the timing system of the boiler was arranged for the 26th June 2020 however the date for that repair was not convenient for the Applicants and the repair was eventually rearranged and completed on the 10th July 2020.

Findings and Facts:

13. The Applicants and the Respondent entered in to a Private Residential Tenancy Agreement in relation to the Property with an entry date on 28th November 2019.

14. Between 3rd December 2019 and 10th July 2020 the heating timer mechanism of the central heating system was not in proper working order.

15. Between 3rd December 2019 and 10th July 2020 the central heating system was not in proper working order and in a reasonable state of repair.

16. The Respondent did not take all reasonable steps to effect the necessary repairs to the boiler to ensure that it was in reasonable state of repair.

17. As a consequence of the Respondent's failure to complete repairs to the central heating boiler timing system, within a reasonable period of time, the Applicants suffered inconvenience.

Reasons

18. The Respondent's contractual obligations in relation to the repair and maintenance of the property are set out in clause 18 of the tenancy agreement between the Parties. Clause 18 of the Tenancy Agreement highlights that the Respondent, as Landlord, is responsible for ensuring that the let property meets the repairing standard.

19. The Tenancy Agreement confirms that the let property must meet the repairing standard to include that "installations for supplying water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order.

20. The Tenancy Agreement further specifies that:

    "The Respondent will keep and repair and in proper working order the installations in the let property for the supply of water, gas, electricity, space heating and water heating (with the exception of those installed by the Tenant or which the Tenant is entitled to remove)."

21. The Tenancy Agreement further confirms that "the Tenant undertakes to notify Premier Properties Perth as soon as reasonable practical of the need for any repair or emergency. The Respondent is responsible for carrying out necessary repairs as soon as is reasonably practical after having being notified of the need to do so."

22. The Tribunal are satisfied on the evidence of the Applicant that they notified the Respondent's Agents (Premier Properties Perth) of the need for a repair to the central heating timing system by email dated 6th December 2019. The notification of the requirement for the repair was made to the Respondent's letting agents as required by the terms of the Tenancy agreement.

23. The Respondent does not dispute that the timing system on the boiler system was defective and required repair.

24. The Tribunal is not satisfied that either the Respondent, or her Letting Agents, carried out necessary repairs as soon as was reasonably practical (or within a reasonable timescale), after having been notified of the need for repairs to the boiler timing system.

25. The Respondent gave evidence that she wasn't aware of the requirement for the repair until February 2020. Whilst that may be the case, the Respondent's letting agents were aware of the requirement for the repair. The Applicant's notified the Respondent's agents of the requirement for the repair as required in terms of the Tenancy Agreement.

26. The Tribunal is not satisfied that the Respondent took such steps as were necessary to ensure that the necessary repairs were carried out as soon as was reasonably practical after having being notified of those repairs. The repairs were first notified to the Respondent's agents on 6th December 2020. The first attempt to carry out a repair was not until 12 February 2020.

27. The Respondent's contractor was unable to gain access to the property on 12 February 2020. The Tribunal are satisfied that the Applicant's made attempt to contact the contractor to ascertain where they arrive and that the Applicant's actions in the respect were reasonable.

28. The Tribunal accept that Covid restrictions would have limited the ability of a contractor to access the property between March and May 2020. Notwithstanding this, after Covid restrictions were lifted, the Respondent did not take such steps as were reasonable necessary to repair the timing systems to the boiler within a reasonable time scale. The documents lodged with the Tribunal included correspondence between the Respondent and her letting agent in which highlighted delays in completing the necessary works. That delay

may have been attributable, in part, to a delay in getting information form a contractor, but there was nonetheless an unreasonable delay which was not the fault of the Applicants.

29. <u>Claim for loss and inconvenience suffered by the Applicant</u>

30. In terms of their Application, the Applicants have given the details of the order sought from the Tribunal in question 5(c) of the (revised) Application ("Details of the order being sought by the tribunal"), as:-

The inconvenience and loss of enjoyment during the tenancy has been calculated using the following formula:

Number of months spent in disrepair x £ rent per month = inconvenience

Rent £800 PCM and it has taken the Respondent 7 months to rectify the repairs from you first notifying them, minus the reasonable amount of time to complete the repairs (4-6 weeks depending on the disrepair) the formula would look like this:

6 months x £800 = £4,800

The percentage repayable assessed, renting a two bed semi-detached house with a total of 6 rooms (not including the hallways) I have not classed the kitchen and bathroom as inconvenienced due to the heat that is quickly generated in those rooms, minus the one spare bedroom and 1 dining room. This would be classed as 25% inconvenience as a quarter of the rooms were in a state of disrepair (main bedroom and living room).

Number of months in disrepair (6) x £ rent PCM (£800) – inconvenience percentage (25%) = amount repayable (£1,200).

31. The form of the Applicants' claim is expressed as a percentage of the total rent they paid during their period of occupancy. It is not expressed as a claim for abatement of rent (which could only have been made during the period of the Tenancy).

32. In considering the amount the Tribunal might award for the inconvenience suffered by the Applicants the Tribunal reviewed awards made by the courts in cases where a Tenant has suffered inconvenience. Examples of such awards include:

Gunn V NCB 1982 SLT 526 - £300 for 10 months in conditions stemming from inadequately treated rising dump.

McEachran V City of Glasgow DC (1991) 1 SHLR 149 - £1950 for three years of dampness from water penetration through roof and gutters.

Christian V Aberdeen City Council - £2750 for about 3.5 years of dump conditions.

Frankenburg V Dundee City Council 2004 - £500 for one-year infrequent water ingress

33. The Tribunal recognised that some guidance might be taken from such previous awards, whilst also recognising that each case requires to be considered on its own facts and circumstances.

34. In the present case the Applicants did continue to have a working heating system. The inconvenience arose as they could not operate the system such that it was timed to come on, and off, and they were accordingly unable to easily control the availability of the system. The Applicants have not (in their revised application) sought to argue that they suffered any direct loss (such as increased heating costs). They have chosen to seek an award for "inconvenience".

35. Having regard to
    a. the circumstances of this case,
    b. awards made by courts for inconvenience in other cases,
    c. the relatively minor inconvenience caused to the Applicants (compared, say, to a case of severe water ingress, or no workable heating system)
    d. the steps which the Respondent did attempt to take to repair the boiler timer system, and
    e. the impact of Covid restrictions on the ability of the Respondent to have the necessary repair completed.

    The Tribunal have concluded that the sum of £300 would be an appropriate award of damages for inconvenience suffered by the Applicants as a consequence of the Respondent's breach of the terms of the Tenancy Agreement following her failure to keep in repair and proper working order the timing system of the central heating at the property.

36. The Tribunal accordingly granted an order for payment by the Respondent to the Applicant in the sum of £300.

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.

Andrew Cowan — **18th May 2021**

Legal Member/Chair — **Date**