



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/18/2153

Re: 58 Dawson Road, Broughty Ferry, Dundee DD5 1PY (“the Property”)

Parties:

**Mr Khaleefa Mahmood, 4 Lismore Place, Newton Mearns, Glasgow G77 6UQ (“the Applicant”)
represented by Baillie Shepherd, solicitors, 37 Union Street, Dundee DD1 4BS**

Ms Debbie Jackson, 58 Dawson Road, Broughty Ferry, Dundee DD5 1PY (“the Respondent”)

Tribunal Members:

**David Bartos (legal member and chairperson)
Linda Robertson (ordinary member)**

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent shall pay to the Applicant the sum of TWO THOUSAND ONE HUNDRED AND FIFTY-THREE POUNDS AND FORTY-EIGHT PENCE (£ 2153.48) STERLING.

Background

1. In 2012 the parties entered into a tenancy of the Property with the Applicant as landlord and the Respondent as tenant. The Applicant seeks an order for payment of rent by the Respondent.
2. On 7 January 2019 the Tribunal had a case management discussion attended by the Applicant's solicitor and the Respondent. At the discussion the Respondent submitted that she was not liable to pay the rent sought because it was rent at an increased level, her agreement to the increase was conditional

and the conditions had not been fulfilled. She also submitted that given that the conditions for rental increase related to repairs to the Property she was entitled to retain payment of rent until all repairs had been carried out and upon them being carried out was entitled to have the rent reduced for the period of disrepair.

3. At the case management discussion three issues were identified to be decided at a hearing. These were :
 - (i) Was the agreed increase in rent conditional on the Applicant's undertaking repairs to the Property, and if so, what repairs were agreed to be undertaken ?
 - (ii) If the increase in rent was conditional on repairs to the Property being undertaken by the Applicant, have those repairs been carried out, and if not, is the increased rent payable by the Respondent ?
 - (iii) If there are arrears of rent, how much is due and payable by the Respondent to the Applicant ?
4. The notes of the case management discussion together with a Notice of Direction dated 7 January 2019 were sent to the parties by recorded delivery letters dated 9 January 2019. The Direction required the parties to provide written summaries of their respective positions in relation to the agreed increase of rent. The Direction also required the Respondent to provide a written summary of the repairs which she said required to have been done by the Applicant together with confirmation of whether the repairs had been carried out and any supporting evidence.
5. The date and time and place of the hearing was notified to the Applicant's solicitors and to the Respondent in letters from the Tribunal's Casework Officer dated 29 January 2019. The letter was sent by recorded delivery post to the Respondent who on 31 January 2019 uplifted it from Dundee East Delivery Office.
6. By amended application lodged with the Tribunal on 17 January 2019 the Applicant sought to amend his application by adding a separate "Details of Claim" document and to increase the sum claimed for to £ 2,153.48. The amended application was notified to the Respondent by letter from the Tribunal dated 21 January 2019.
7. The Applicant lodged documents in support of his application. These included a draft tenancy agreement with a commencement of tenancy on 1 August 2016 and a rent of £ 732.76, and invoices from Thornbury Electrics dated 28

December 2018 and from the Electric Center dated 20 and 31 December 2018 and a gas safety certificate dated 20 December 2018 relating to among other things an Ideal boiler at the Property.

8. By e-mail to the Tribunal dated 4 February 2019 the Applicant's solicitors sought to lodge further documents including a copy text message and printouts from Dundee City Council. Unfortunately these printouts were not fully legible despite various endeavours. By e-mail dated 15 February 2019 the Applicant's representative supplied legible copies to the Tribunal and at the hearing the Tribunal allowed these to be lodged although late.
9. No documents were lodged by the Respondent. No written representations were lodged by the Respondent and she did not respond to the Notice of Direction.

Hearing

10. The hearing took place on the notified date, time and place at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee DD1 2HB at 14.00 hrs on 20 February 2019. The Applicant was represented by Mrs Tania Royle of Baillie Shepherd, solicitors. There was no appearance by or on behalf of the Respondent.
11. The Tribunal noted that notification of the hearing had been given to the Respondent in a letter from the Tribunal dated 29 January 2019 which had been served on her by recorded delivery post on 31 January 2019 when she uplifted it from Dundee East Delivery Office. No explanation had been given to the Tribunal Office by the Respondent for her non-attendance at the discussion. In all the circumstances the Tribunal was satisfied that the Respondent had been given sufficient opportunity to participate in the hearing and had opted not to participate.
12. Mrs Royle led the oral evidence of the Applicant. The Applicant spoke about how he had approached the Respondent with a request to increase the rent, how she paid the increased rent in cash to his agent Mrs Bashir who provided a signed receipt, without complaint or conditions and to the extent and nature of her subsequent complaints and to the work that was or was not carried out to the Property. His evidence is summarised under findings in fact below.
13. The Tribunal found the Applicant credible and reliable in his oral evidence. He gave his evidence in a clear and straightforward fashion. The Tribunal accepted it for the purposes of its findings in fact.

Findings in Fact

14. The following facts were found by the Tribunal :

- (i) The Respondent entered into a tenancy of the Property with N & N Jamal Properties, letting agents, dated 14 May 2012. The letting agents were acting on behalf of the Applicant. From 25 May 2013 the tenancy relocated tacitly (automatically renewed) on a year to year duration.
- (ii) The rent under the tenancy was £ 173.75 per week payable 4 weeks in advance amounting to £ 695 for every 4 week period.
- (iii) In or about July 2016 the Applicant, his wife and a friend visited the Respondent at the Property. In the Property the Applicant told the Respondent that he wished to increase the rent by approximately £ 37 for a four week period to a total of £ 732.76 every four weeks. He handed over a draft tenancy agreement with this new rent and a date of entry of 1 August 2016.
- (iv) During the July 2016 meeting the Respondent did not object to the increase in rent. She did not impose any conditions on the increase. She kept the draft tenancy agreement with her in the Property.
- (v) From August 2016 to 18 September 2017 the Respondent paid rent at the level of £ 732 for every 4 weeks. She paid it by means of housing benefit from Dundee City Council of £ 512 and cash payments from her of £ 220. The Applicant did not seek the pennies of rent above £ 732. The £ 220 payments were made by the Respondent in cash to the Applicant's agent Mrs Tasneen Bashir who then paid them into the Applicant's account.
- (vi) From 16 October 2017 the housing benefit from Dundee City Council increased to £ 695. It continued to be paid directly to the Applicant. The Respondent stopped paying any cash element to the Applicant or Mrs Bashir. He was not informed of any reason for this in advance.
- (vii) The Applicant contacted the Respondent by telephone. He asked her about the reasons for non-payment. She told him that windows in the Property did not have handles on them. All windows had handles at the commencement of the tenancy in 2012. The Applicant asked the Respondent to send photographs of the windows. She has not done so.
- (viii) The Respondent has prevented the Applicant from gaining access to the Property to inspect the windows. He came to the Property on 20 July 2018

but was not permitted to enter. Since then the Applicant has instructed a Mr Hanif to seek access for a joiner to visit. On 1 February 2019 the Applicant received a text message from Mr Hanif stating that his joiner had that day spoken to the Respondent who had stated that he could not gain access until Tuesday 5 February. No access has been given. The condition of the windows and handles remains unknown.

- (ix) In about November 2017 the Respondent contacted the Applicant stating that the boiler in the Property was of low efficiency. The boiler was still operational. The Applicant arranged for an inspection of the boiler. The gas technician checked the boiler. He recommended its replacement on grounds of age.
- (x) In the first week of December 2017 the boiler was replaced with a new Ideal boiler. Following installation the Applicant telephoned the Respondent. She confirmed that the boiler was working well and keeping the Property warm.
- (xi) In 2012 prior to the tenancy to the Respondent the Applicant installed a new cooker and new oven into the kitchen. The electrician left an old wire in a cable protruding out of the wall near the ceiling. It was not live. The Respondent made no complaint about it until the case management discussion in January 2019. In any event in December 2018 the Property including the kitchen had a full check of its electrical connections including those in the kitchen. Everything was found to be safe.
- (xii) From 15 October 2018 the payments of rent received by the Applicant through Dundee City Council reduced to £ 317.68. From 7 January they reduced further to £ 302.48. The Respondent continued to make no additional financial contribution to the rent.
- (xiii) As at 17 January 2019 the arrears of rent amounted to £ 2153.48.

Reasons for Decision

- 15. With regard to issue (i), the Applicant's solicitor submitted that the making of payments of the full rent, including the increase for a period of over a year from August 2016 before the making of any complaint indicated the Respondent's unconditional acceptance of the increase in rent by £ 37 for a four week period.
- 16. The Tribunal accepted that submission. In effect at the meeting in July 2016 the Applicant had offered an increase in rent by £ 37. By making that payment without objection the Respondent had accepted that offer without conditions. This had the effect of increasing the rent under the 2012 tenancy to £ 732 for a

four week period. Given that the tenancy was for one year no written agreement was required.

17. With regard to issue (ii) the repairs the Applicant's solicitor submitted that given her submission on issue (i) it did not arise. However in any event all the alleged repairs of which the Respondent was aware had been carried out. It was accepted by the Respondent that the boiler had been replaced in December 2017. In any event the old boiler had not ceased to work. The wire in the kitchen had not been complained about until the case management discussion and the Respondent had accepted that it had been removed.
18. So far as the window handles were concerned she submitted that the Respondent had prevented the Applicant from carrying out any repairs and therefore there was no breach by the Applicant of his duty to keep the Property in a habitable condition.
19. The Tribunal accepted this submission in relation to the boiler and wire in the kitchen. The Applicant had not breached his duty to the Respondent in relation to either item. The old boiler had not ceased to function. The new boiler had been installed within a reasonable time of the the Respondent's complaint. No complaint had been made about the kitchen wire before its removal.
20. With regard to the window handles, the Tribunal accepted the Applicant's evidence that the windows had handles at the outset of the tenancy in 2012. There was no indication that the Respondent had complained about them on her own initiative. The Tribunal took the view that it lacked any reliable evidence about the state of the handles or their absence. The Respondent had not given evidence at the hearing. Her statement at the case management discussion had not been tested through cross-examination. She had not responded to the Notice of Direction seeking a written statement on the matter. In these circumstances the Tribunal was not prepared to make any finding in fact as to the state of the windows. It followed that it was not prepared to find that the Applicant had breached any duty in relation to them.
21. There having been no breach by the Applicant of his duty to keep the Property habitable, the Tribunal found there to have been no justification for either retention of rent by the Respondent or its reduction (abatement). The Respondent's defence of retention or abatement was rejected.
22. With regard to issue (iii), the Applicant's solicitor requested the Tribunal to amend the sum claimed in the application to £ 2587.44 to reflect additional lack of full payment on 4 February 2018 and also a further reduction in payment from Dundee City Council.

23. The Tribunal considered the earlier written request for amendment made by the Applicant's solicitors in their amended application form lodged in January. That sought to increase the sum claimed to £ 2153.48. It was supported by a rent outstanding schedule and a printout from Dundee City Council showing a reduction of payment to the Applicant to £ 302.48. There had been no objection from the Respondent. The Tribunal allowed this amendment.
24. With regard to the request made at the hearing itself the Tribunal took the view that fairness required the Respondent to have an opportunity to respond to it. She had not been given any warning that it would be raised at the hearing. In these circumstances the Tribunal took the view that in fairness that amendment to the application should not be allowed.
25. The Tribunal was satisfied that the rent remained outstanding and unpaid in terms of the "Rent Due" schedule from 18 September 2017 to 7 January 2019 in the total sum of £ 2153.48. Those figures had not been disputed by the Respondent.

Outcome

The First-tier Tribunal for Scotland (Housing and Property Chamber) orders the Respondent to pay to the Applicant the sum of TWO THOUSAND ONE HUNDRED AND FIFTY-THREE POUNDS AND FORTY-EIGHT PENCE (£2153.48) STERLING.

Right of Appeal

In terms of section 46 of the Tribunals (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.

D. Bartos

20February2019

Legal Member

Date