



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/CV/21/1407

Re: Property at Flat 2/1, 3 Blackburn Street, Glasgow, G51 1EX (“the Property”)

Parties:

Mr Ramzan Amin, Plot 89, 64 Parkmanor Avenue, Glasgow, G53 7ZD (“the Applicant”)

Mr Imtiaz Ali and Mrs Sadia Ali, 15 Jordons Crescent, Langley Green, Crawley, RH11 7SZ (“the First Respondents”)

Mr Hannan Khokar, sometime residing at 6 Marine Gardens, Festival Park, Glasgow and whose current whereabouts is unknown (“the Second Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and James Battye (Ordinary Member)

Decision

The Tribunal makes an order requiring the First Respondents and the Second Respondents jointly and severally to pay the sum of TWO THOUSAND AND EIGHTY FIVE POUNDS (£2,085) to the Applicant

Background

- 1. This is an application by the Applicant seeking payment of the sum of rent arrears of £2,085 in respect of the Property. The application is dated 2nd June 2021.**
- 2. The First Respondents were tenants in the Property and the relevant tenancy Agreement is dated 24th December 2020. The tenancy has been terminated.**

3. The tenancy agreement states that the Second Respondent is a guarantor for the obligations of the First Respondent.
4. Service by Advertisement had been made on the Second Respondent. The tribunal had a certificate of advertisement showing that the period of advertisement had commenced on 18th January 2022.
5. A case management discussion had been held on 12th October 2021.

The Hearing

6. A Hearing was held by audio conference on 22nd February 2022. The Applicant and Mr Ali participated. Mr Sajjab Ahmed was present with Mr Ali. He described himself as a “litigant friend” but, to all intents and purposes, represented Mr Ali and it was clear from what he said during the Hearing that he had provided advice to him in a period prior to the tenancy being terminated. The tribunal treated him as the First Respondents’ Representative.

Preliminary Matters

7. The Applicant said that the rent arrears amounted to £2,359.19 but that he had not formally intimated this figure to the Respondents. He said that he had only recovered the papers for the Hearing from his agents the previous day. He said that he was prepared to restrict the claim to £2,085.
8. Mr Ahmed said that the First Respondents did agree that the level of rent arrears is £2,085 but that the issue was that all the rent was not due to be paid because of the condition of the Property and the repairs which required to be done to it.

The Issues

9. There was agreement that the sum of £2,085 represented the level of rent arrears.
10. Mr Ahmed said that there were a lot of things wrong with the Property. He said that there was no heating, the hot water was not functioning properly, there were tiles off the walls in the kitchen and there was a broken window in the bathroom.
11. Mr Ahmed said that the First Respondents had rented the Property on a furnished basis but that there was no furniture supplied by the Applicant. He explained that the First Respondents had arrived in Scotland from England to run a small business and, because of that, required a furnished property.

12. Mr Ahmed said that Mr Ali, his daughter and son in law had sent a number of emails to the Applicant's letting agents with regard to the state of the Property. Mr Ahmed said that there had been no time to lodge them but that he could.

13. The tribunal considered that it would be fair to have an adjournment to allow parties an opportunity to lodge any copy emails they wanted.

The tribunal reconvened after a short adjournment

14. Mr Ahmed lodged a number of emails between his clients and their family members and AVJ Homes, the letting agent of the Applicant.

The Tenancy

15. The Applicant referred the tribunal to the tenancy agreement which showed that the tenancy commenced on 24th December 2020 and that the Second Respondent signed the tenancy agreement as a guarantor.

16. Mr Ali said that the Property was let as furnished but that there was no furniture other than items left by a previous tenant.

17. Mr Amin said that furniture had been provided and that he had told the First Respondents that they could dispose of any items which they did not want. He disputed Mr Ali's statement that it was rubbish which was left and that it was agreed that this would be left outside the Property to be collected by him. He said that there was no such agreement and that he would not have told them to leave items on the landing outside the door of the flat.

18. Mr Ali said that, when the letting agent showed the flat to him, he had been told that furniture would be provided and he said that his daughter and son in law had been present and had heard this.

19. Mr Amin said that he had let the flat with the furniture that was in it and that there was no agreement to provide additional or alternative items.

Condition of the Property

20. Mr Ali said that there was no heating in the Property but that the Applicant left electric heaters in boxes for he and his family to use. He said that the heaters were no use because they were of a type that required to be fitted to walls by an electrician. He said that this matter was raised with the letting agents.

21. The Applicant said that he had bought the heaters in B and Q and that he would not have bought heaters that would have required to be installed by an electrician. He said that the heaters had stands which

required to be screwed on to them. He said that he remembered delivering the heaters on Christmas Eve which was the day that the First Respondents had moved into the Property.

22. Mr Ali said that the Property had hardly any hot water and that a contractor had told him that it needed a pump because of the pressure. Mr Amin said that there was hot water even though the water pressure might not have been good.
23. Mr Ali said that the window in the bathroom could not open and close and that a light switch did not work.
24. Mr Ali said that the letting agents had been told in January that the Property was not up to standard. He said that his daughter had spoken to the letting agents on the phone and that he had sent “numerous emails” and not just one.
25. Mr Amin said that any repair issues which the First Respondents had raised were not, in his view, “essential repairs” and he said that there had been access issues because of Covid-19. He said that at one point the tenants had Covid and a contractor could not get access. He said that he had been prepared to carry out any repairs but that, by the time it had been possible to get access, the First Respondents had left the Property. He said that the letting agents got no notice of their departure and that it was discovered that they had gone when an owner of a local business contacted the letting agent to say that he had the keys of the Property.
26. Mr Amin said that Mr Ali’s daughter had emailed the letting agents in January 2021 intimating that her parents wanted to leave the Property but that this was cancelled on 13th January 2021. He said that, on 19th January 2021, Mr Ali’s daughter had intimated that her parents were giving notice that they intended to leave the Property but that she had withdrawn this on 23rd January 2021.
27. Mr Amin said that he had lots of emails to evidence that he was prepared to do repairs but that he had not lodged them because he had only got the papers for the case back from his agents the day before the Hearing.

Schedule of Rent

28. The schedule showed that the arrears of rent comprise non payment on three occasions. Rent due on 24th February, 24th March and 24th April 2022 was not paid. Rent was paid on 23rd December 2021, 28th January and 20th April 2022.

Emails lodged by First Respondents

29. The emails lodged by the First Respondents are dated April to June 2021. The senders and recipients are Mr Ali, the guarantor and the letting agents.

30. The emails make reference to repairs being required/ non provision of heating and furniture and also to non payment of rent. It is useful to provide some excerpts:

30.1 25th April 2021: Mr Ali to Letting Agent: *“The January rent was paid in December 2020. The rent I paid on 20th of this month was for the month of March. I was only two months behind in rent. In your email you said rent paid for the month of January which is not correct. Most importantly Landlord never left oil filled heater. What he left are electric heaters which needs fittings...”*

30.2 26th April 2021: Letting Agent to Mr Ali: *“We will ask the landlord to attend on the premises. you will make rent payments will be paid immediately after repairs.”*

30.3 26th April 2021: Mr Ali to Letting Agent: *“Let the Landlord come first then he will be in a position to know what sort of tradesman he needs. Rent will be paid promptly.”*

30.4 7th May 2021: Mr Ali to Letting Agent: *“As you told us Landlord is going to provide us with sofas and chairs. It is difficult for us to stay in a flat which is partly furnished. We will move out as soon as we get another flat but we cannot give you two months notice because we don't know when we will get another flat. Rent will be paid after seeing my doctor and solicitor.”*

30.5 10th May 2021: Letting Agent to Mr and Mrs Ali: *“We write to advise you the factors have called to say that the rubbish you have put onto the landing is a fire risk. Can you kindly remove this as soon as you can as the landlord will not be liable for any damages.”*

30.6 10th May 2021: Mr Khokar (the guarantor) to Letting Agent: *“This is the rubbish AVJ Homes/landlord instructed us to just put outside the property. Which you failed to acknowledge being a hazard after we raised it multiple times as being a hazard. To say I'm disappointed would be an understatement on how AVJ Homes has dealt with this letting.....These issues at hand need to be actioned before we clear rent. You are no doing repairs on behalf of landlord that you should do. We have wasted time and money multiple times to raise this with you on phone, email and in person.”*

30.7 Letting Agent to Mr Khokar: *“I agree that it has taken long to get these repairs done, however we hope you understand that there were few factors involved which caused this delay. I am sure tenants handed in their notice then changed their mind. Also, Covid rules didn’t allow us to do some of the repairs. We contacted tenants in May regarding access and time suggested by the tenant wasn’t suitable to the contractor.....Tenants have no right to withhold rent without an agreement with the landlord or the agent. Even if they wanted to do so then they should have taken some advice.”*

Submissions

- 31. The Applicant said that he could have lodged a considerable number of emails to support his position but that he did not do so because of a family bereavement in December 2021 and the fact that he had only recently recovered his papers for the case from his letting agents.**
- 32. The Applicant said that his tenants at no time indicated that they were withholding rent for any reason with regard to the condition of the Property.**
- 33. Mr Ahmed said that he had provided advice to the First Respondents during the tenancy. He said that he advised them to contact Shelter Scotland for advice. Mr Ali said that he had phoned Shelter but that no one had called him back.**
- 34. Mr Ahmed said that he accepted that it would have been better if the First Respondents had set rent aside in a deposit account until repairs had been done but that, notwithstanding that, he did not consider it appropriate that tenants should be asked to pay rent for a property that was not, in his words, “fit for purpose.”**
- 35. Mr Ahmed said that the Applicant and his letting agent failed to respond to numerous requests to deal with issues in the Property.**

36. Findings in Fact

- 36.1 The First Respondents and Applicants entered into a private residential tenancy for the Property.**
- 36.2 The tenancy commenced on 24th December 2020 and terminated sometime in June 2021.**
- 36.3 The monthly rent due for the Property was £695.**
- 36.4 At termination of the lease, there were rent arrears of £2,085 after taking into account the deposit of £695 which was paid to the Applicant.**

36.5 The Second Respondent is a guarantor of the contractual obligations of the First Respondent contained in the private residential tenancy agreement.

Reasons

37. The tribunal accepted that the Parties were contractually bound by the private residential tenancy dated 24th December 2020. The date of termination of the tenancy was unclear but was irrelevant because it had terminated by 21st July 2020 which was the date of the application and there was no dispute as to the amount of rent arrears.

38. Parties were agreed that the unpaid rent amounts to £2,085. The Applicant's position is that the rent was properly due and that, therefore, the payment order should be made. The position of the First Respondents, as articulated by their representative, is that no payment order should be made because of the condition of the Property and the failure of their landlord to provide furniture for it.

39. The tribunal considered that it appeared that Mr Ahmed's argument was that the First Respondents were entitled to retain the rent pending repairs being done and, as a result of them not having been done, to be entitled to an abatement of rent. Mr Ahmed's submission is that the rent due by his clients in terms of the tenancy agreement is not lawfully due because the Applicant was in breach of his contractual and common law obligation to provide a property fit for habitation.

40. The tribunal considered that it is possible for a tenant to argue that the rent due in terms of a lease could be retained if he/she were not getting the full enjoyment of a property because of a failure of a landlord. Such retention would be on the basis that the rent is paid over once the property has been brought up to an acceptable standard. Quite separately, a tenant may have a claim against a landlord because of the condition of the tenanted property and seek to have the rent abated and hold rent previously retained as security for that claim.

41. In *Stobbs v Hislop* 1948 SC 206, Lord Russell said "*It was, in my judgement, an implied condition of the contract that the landlord should, during the tenancy, maintain the house in tenantable condition, i.e., reasonably fit for habitation and wind and water tight. On a breach by the landlord of that implied condition the tenant might resort to an equitable remedy recognised by the general law- for the purpose of compelling the landlord to make the house habitable and as a security for satisfaction of any claims for damages to be proffered by the tenant- by withholding payment of the rent and continuing the occupation. Such a right of retention is one of the equitable remedies available generally in respect of mutual contracts containing reciprocal obligations, wherever circumstances permit of resort to it....Its exercise is, however, always controlled by the Court and regulated by reference to equitable*

considerations in the light of the circumstances of each case.” The tribunal was required to consider whether or not the Property had been maintained “in a tenantable condition” and, if it had not been, had there been retention of rent and was the First Respondent entitled to an abatement.

42. Mr Ali’s evidence, in summary, was that the Landlord did not provide furniture that had been agreed, that there were issues with the hot water and a window and that heating was not provided.
43. Mr Amin’s evidence, in summary, was that he had provided furniture and had not agreed to provide more or alternative furniture. He said that he had provided heaters which did not require an electrician to install them and that any repairs required were not urgent. He said that there had been issues in accessing the Property for repairs to be carried out.
44. It was difficult for the tribunal to come to a view on the evidence. Both parties stated that they had more which they could have produced. Mr Amin said that he had emails which would have assisted his case and that he had not done so because he had only recently recovered papers from his agent. Mr Ali spoke of emails which had not been lodged and that members of his family could have provided evidence. The tribunal had adjourned to give parties an opportunity to lodge documents and Mr Ali did but Mr Ahmed said that there were some which had not been produced. It is for a party in a case to organise its evidence to the best of its ability. In this case, there had been a case management discussion and parties should have been aware of what was required at a Hearing.
45. The tribunal accepted that there had been some repairs issues with the Property. The emails lodged by the First Respondents supported this. Mr Amin accepted this but considered them minor. The tribunal could come to no view, on the evidence, as to whether or not they were minor.
46. The tribunal accepted that heaters had been delivered but could come to no view, on the evidence, as to whether or not they required to be installed by an electrician.
47. The emails lodged by the First Respondents referred to furniture not being provided but the tribunal, on the evidence, could come to no view on whether or not there was a contractual failure by the Applicant in this regard.
48. It was accepted by parties that the level of rent arrears was £2,085. The First Respondents had failed to provide evidence either that they had retained rent pending repairs and other issues being dealt with or that they were entitled to an abatement of rent. It did not assist their case that the emails which they had chosen to lodge, though referring to heating, repairs and furniture, did not specifically refer to retention of rent and in fact, some would seem to indicate that outstanding rent

would be paid. The tribunal considered it significant that the earliest email lodged by the First Respondents was dated 25th April 2021 and by that date they had failed to make payment of three month's rent. It may have been the case that there were issues with the Property but the First Respondents had failed to deal with retention of rent in an appropriate manner if it was their intention to take that course of action. Mr Ahmed accepted that they should have put the rent in a separate account and, whilst not necessary in proving that retention of rent was intended, it would have shown good faith on the part of the First Respondents.

49. In a case such as this where a tenant is arguing that the rent was not paid because of the condition of a property and that s/he is then looking for abatement, it is for that tenant to prove that it was appropriate for that course of action to be taken. The First Respondents have failed to do so and the tribunal determined that, on the balance of probabilities, the First Respondents had not retained rent until repairs had been carried out and it determined that the First Respondents were not entitled to abatement of rent.

50. Notwithstanding the failure of the Applicant to provide evidence which he said would have been of assistance, the tribunal determines that the sum of £2,085 is due to be paid to the Applicant. It accepted the terms of the rent statement and noted that the First Respondents accepted the level of rent arrears.

51. The tribunal had no difficulty in determining that the First Respondents are liable to make payment to the Applicant. It had to consider the position of the Second Respondent. The private residential tenancy agreement was dated 24th December 2020. Clause 38 relates to the Guarantor. It defines the Guarantor as follows: *"A third party, such as a parent or close relative, who agrees to pay rent if the Tenant doesn't pay it and meet any other obligation that the Tenant fails to meet. The Landlord can take legal action to recover from a guarantor all payments of rent due but not paid even after the termination of this Tenancy Agreement or any alteration to this Tenancy Agreement, any other obligations under this Tenancy Agreement, and any other payments due to the Landlord which the Tenant is required to pay under this Tenancy Agreement."* This clause bears to be signed by Mr Hannan Khokar whose address is given as 6 Marine Gardens. The application states Mr Khokar's address to be 6 Marine Gardens, Festival Park, Glasgow, G51 1HH. The tribunal determined that the Second Respondent has a contractual obligation to pay rent for the Property in the event that it is not paid by the tenant and that therefore the First Respondents and the Second Respondent are jointly and severally liable to pay the sum of £2,085 to the Applicant.

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.

M. McA.

**Martin J. McAllister
Legal Member
9th March 2022**