



**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/18/2951

Re: Property at 93 Glen Avenue, Largs, KA30 8RJ (“the Property”)

Parties:

**Mr Ken MacIntosh, c/o Acre Lettings Ltd, 6 Stanlane Place, Largs, KA30 8DA
 (“the Applicant”)**

**Mr Alistair Cairns, Mrs Jacqueline Cairns, 5 Newhaven Grove, Largs, KA30 8NS
 (“the Respondents”)**

Tribunal Members:

Karen Kirk (Legal Member) Gordon Laurie (Ordinary Member)

**This Hearing was fixed in terms of Rule 24 of the Procedure Rules and
concerned an Application for civil proceedings in relation to a Short Assured
Tenancy under the 1988 Act.**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) granted a payment order in favour of the Applicant for £2950.**

Attendance and Representation

**The Applicant was represented by Andrea Bell, Acre Lettings Ltd, 6 Stanlane Place,
Largs, KA30 8DA**

The Respondents attended the Tribunal without representation.

Preliminary Matters

Deposit paperwork

1. The Tribunal raised with the Applicant's representative that in terms of the Direction issued by the Tribunal on 29th August 2019 no information regarding the property deposit was lodged. The Applicant's representative sought to lodge a document that was sent to the tenant showing the deposit was with Safe Deposit Scotland at the start of the tenancy, an email dated 19th December 2018 from Safe Deposit Scotland confirming that they had made an application to have same returned to the landlord due to the condition of the property at the end of the tenancy and a statement regarding the deposit dated 17th January 2019 showing the deposit being returned to landlord's agent. The email confirmed that Safe Deposit Scotland sought a response from the tenant in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 within 15 working days failing which the deposit would be refunded to the landlord in terms of their application.

The Tribunal in respect to this preliminary matter advised parties that the Tribunal had no jurisdiction to deal with any matters regarding the deposit. There are separate statutory regulations which exist to allow the Respondents access to an arbitration scheme. It was unfortunate the Respondents did not participate but the Tribunal considered that the matter and all related issues were not relevant to this Application. The parties accepted same.

Witnesses

2. The Respondents had lodged a list of witnesses but confirmed they were only intending to call one witness namely Finlay Cairns as they had thought the Tribunal cited witnesses. They wished to proceed.

Agreement

3. Both parties agreed the amount of rent due was £2950 and the rent statement was accurate and not in dispute.
4. Both parties agreed that the Tenancy commenced on 1st June 2016 and ended on 30th November 2018.

Documents

5. During discussion of the preliminary issues it became apparent that both parties had not lodged documents they were intending to rely upon in Evidence. There being no objection by either party both lodged the following documents which the Tribunal allowed to be received although late;
 - Answers to claims by Mr McIntosh undated lodged by Respondents
 - Copy email from Chief Operating Officer of Safe Deposits Scotland lodged by the Applicant.
 - Copy email dated 19th December 2018 from Safe Deposits Scotland lodged by the Applicant.
 - Copy documentation from Safe Deposits Scotland sent to Respondents on 28th June 2016 lodged by the Applicant.

- Copy Financial Statement of Acre Lettings dated January 2019 lodged by the Applicant.
- Decorator Invoice dated 31st May 2016 lodged by the Applicant.
- Final Inspection Inventory dated 26th November 2018 lodged by the Applicant.
- Electrical Condition Report dated 30th May 2016 lodged by the Respondent.
- Gas Safety Report dated 10th September 2015 lodged by the Respondent.
- Landlord Gas Safety Record dated 10th September 2015 lodged by the Respondent.

Documents Before the Tribunal commenced.

- Application received on 1st November 2018
- Tenancy Agreement dated 1st June 2016
- Agency Agreement
- Rent Statement
- Land Certificate
- CMD note from 15th January 2019
- Execution of Service 9th May 2019
- Adjournment Request 31st May 2019
- Tribunal Direction dated 24th July 2019
- Email from Respondent 31st July 2019
- CMD Note 29th August 2019 with Directions
- List of Witnesses for the Respondents
- Further written representations and photographs from the Respondents by email dated 11th September 2019.
- Documents lodged by the Applicant by email dated 18th September 2019 containing invoices.
- Texts to Tenant dated 5th October 2017, 20th November 2017 and 29th November 2017 specifying the bath could be used during bathroom repairs.
- JHS Building Services Invoice 8th April 2008
- Letters by the Applicants authorising Acre Lettings to act dated 6th January 2016
- Invoice to Applicant for Whirlpool Oven dated 26th April 2017
- Plumbing Invoice dated 19th March 2018
- Email dated 6th September enclosing statement of the Applicant.
- Email dated 10th September 2019 enclosing photographs

Procedure

The Legal Member explained to parties the procedure which would be adopted following discussion of the preliminary issues in order to deal with the Application and the evidence to be led having reference to the procedural rules and overriding objective of the Tribunal. There was no objection to same.

Evidence Summary

Andrea Bell

6. The Applicant's representative gave evidence that the property was let to the Respondents following redecoration works and cleaning. She advised that it was unfortunate that there was then a problem with the boiler. Her evidence was that any problems were dealt with immediately and reported to the landlord or repaired. She advised that there was also a report of water ingress in the bathroom to which a plumber resealed the bath. Thereafter she said it became clear that the bathroom repair was more complicated than had first been thought, which meant the Applicant had to make an insurance claim. The Applicant's position was that the Respondents throughout the time that the bathroom was being repaired could use the bath but not the shower.
7. The Applicant's representative advised that she had spoken further with the plumber instructed the repair the bathroom and he said that the bath was fully operational as well as the downstairs toilet and wash hand basin.
8. The Applicant's evidence further was the roof repairs were also carried out promptly and generally the Applicant's representatives were not aware that the Respondents were unhappy regarding the property nor did the Respondents ask regarding payment plans in order to pay the rent arrears which accrued. She advised further that the contractors used to repair the property were trusted and well known, the Respondents had not said they were withholding rent and the Applicant sought the arrears to be paid.
9. In cross examination she agreed that there had been no complaints made by the respondents regarding any of the tradesmen or the letting agents. She said that the boiler not working when the respondents moved in was a surprise to her and that this was the only time she knew there was a problem. She said further that the boiler not being operational for 5 weeks was not ideal but steps had been taken to replace it as soon as possible. In regards the bathroom leak she disagreed that the respondents could not use the bath but said it did take longer because it became a bigger repair than had originally been thought. She said that the roof repair had been promptly dealt with. The respondents had contacted her during the night and she remembered calling the contractor the next morning first thing. She was unaware of other recommended maintenance and all gas safety certificates and electrical certificates were up to date and done yearly. In regards the certificates lodged by the respondents her position was that they indicated work to be done was recommended and not essential.
10. In regards wires in the bathroom the Applicants representative's evidence was that she was unaware of same at the time but she has recently spoken to the electrician John McManus who said that the cables were made safe behind a non-functioning mirror. The Applicant's representatives position was that the repair works were unavoidable and that she was not aware the respondents were unhappy.

John Corrigan

11. John Corrigan gave evidence as the director of the Applicant's letting agency. He had known the Applicant for 10 years and gave evidence that in his view he was a reasonable landlord. He said during the 2 years of the tenancy in question the landlord had paid £3000 towards the maintenance of the property. He said further that the property was in a good location, was desirable and no complaints regarding the property had been received. He said further the tradesman used were trustworthy and skilled.
12. In cross examination Mr Corrigan explained further that he understood throughout the time of the bathroom repairs the bath could still be used and that he was unaware of complaints made to the Applicant directly.

Alistair Cairns

13. Mr Cairns advised that he moved into the property and immediately it became clear the boiler was not fit, he said from day 1 the property was not fit. He said the boiler was condemned and not fit for purpose. It was 6 weeks he said before it was replaced with a new boiler. Within weeks the flat roof over his bedroom leaked and flooded the room. A new flat roof was installed. He said the problems ran on. When questioned by the Tribunal on the timescale of the replacement boiler Mr Cairns conceded it may have been just under 3 weeks, it was a possibility he said but that it felt much longer.
14. Mr Cairns gave evidence that the bath had had 2 re sealant attempts as a repair before it was determined that further works needed to be carried out to repair the bathroom. He said the bath was not fitted properly and the floor was saturated and had to be renewed. The family he said had to make alternative arrangements to wash as they said they were told not to use the bath and shower. He said he was without any washing facilities for 6 months. There was no working bath he said and it was 6 plus months before anyone could wash in the house. He said they complained on a regular basis. When questioned by the Tribunal he said along with his wife Jacqueline Cairns that they continued to pay their rent throughout this time as they were frightened not to pay their rent.
15. Mr Cairns further said in evidence that in his view the electrical and gas safety certificates showed that the property should have been upgraded as it was dangerous. When questioned by the Tribunal on the basis the evidence he referred to clearly said that some works were recommended but were not classed as essential or dangerous Mr Cairns said in reply the certificates showed the property was not well maintained.
16. Mr Cairns considered that the certificates showed that the Applicant had misled the Respondents regarding the gas and electricity safety certificates. Mr Cairns gave further evidence that he felt that the loose wire was a danger to life and used further the words, "threat to life". He referred to the photograph of the wire in his productions regarding this. He said he felt like the bedroom roof was coming in. He felt like he should not pay rent given the

costs he said of driving his children all over the place for showers. Mr Cairns further said towards the end of the tenancy he was running out of options and had been robbing peter to pay paul, the family were struggling financially.

Finlay Cairns

17. Finlay Cairns was the son of the Respondents and resided within the property with his parents. He remembered the boiler was not working on the day the family moved in. He said regarding the bathroom in evidence that the family were told not to use the bath and the shower. He thought it was 3 months that the family he said had no washing facilities. He used his grandparent's bathroom. He said he cleaned the house on leaving with his father and felt on moving in the property was not fit for purpose.

Submissions for the Applicant

The Applicant sought an Order for payment for the full amount of unpaid rent, £2950. In support of same the submissions made were that the Respondents had rented a newly decorated and newly carpeted home. During the course of the rental the Respondents had received a new boiler, new flat roof and new bathroom to the property. The Respondents had not suggested at any time they would not be paying rent due to the alleged condition of the property or that they felt rent was not owed. The submissions for the Applicant were that rent was due and an Order for payment ought to be granted.

Submissions for the Respondent

The Respondent, Mr Cairns made submission that he did not feel he had been treated with respect. He submitted further that he had kept in touch with the Applicant regarding repairs but felt the Applicant had been disingenuous. The situation he said had affected his personal life, his health and they felt could not go any longer. The submission was further that the Property was not as advertised and he felt that he should receive repayment of the whole rent.

Facts Found by the Tribunal

- The Tenancy commenced on 1st June 2016 and ended on 30th November 2018.
- The amount of rent due to the Applicant by the Respondent at the end of the tenancy was £2950.
- The Respondents reported to the Applicant and or their representatives during the course of the tenancy repairs which required to be done.
- The Applicant and or their representatives instructed repairs to the roof and bathroom of the property.
- The Applicant and or their representatives replaced the boiler of the Property.

- The Respondents were inconvenienced with the replacement of the boiler for a period of on or around 3 weeks.
- The Respondents were inconvenienced with repairs requiring to be done to the bathroom.
- During the repairs to the bathroom the Respondents were unable to use the shower.
- The Respondents did not withhold rent nor was there an unreasonable delay in the repair of the boiler, bathroom and roof of the property during the tenancy.
- The Respondents were in some financial difficulty towards the end of the tenancy.
- The Property was during the course of the tenancy habitable, wind and watertight.
- At the end of the Tenancy the Respondents owed to the Applicant unpaid rent of £2950.

Reasons for the Decision

The Tribunal accepted the evidence of the Applicant's representative and the witness, John Corrigan as credible and reliable. The Applicant's representative was responsible for managing the property and instructing the repairs carried out during the tenancy or informing the Applicant of same. The written evidence lodged by the Applicant's representative was thorough and supported the oral evidence led on behalf of the Applicant. The evidence of both the Applicant's representative and her witness were consistent with each other and with the written evidence lodged. The Respondent's views were contrary to both the Applicant's representative's evidence and that of her witness, Mr John Corrigan. However, the Tribunal preferred the views of the Applicant's representative and her witness.

The Respondent gave evidence initially that he waited over 6 weeks for the boiler to be repaired. When challenged given the written documentation he then agreed the time period could have been 3 weeks. The Respondent gave evidence that he and his family were unable to use the bath or shower for a period of 6 months. The Respondent's witness, Finlay Cairns said he was unable to use the bath or shower for 3 months. The evidence was inconsistent and not supported by the written evidence which showed repairs being carried out timeously. On balance the Tribunal preferred the evidence of the Applicant that the Respondents could use the bath during the repairs being carried out as this evidence was consistent, credible and reliable. The Respondent referred to gas and electrical inspection documents he lodged to support that the Property in his view was not safe or well maintained. The Tribunal found these certificates instead supported the fact that the Property was habitable and the necessary inspections were up to date. The documents showed the property was safe and some repairs were recommended only but not essential.

The Respondents said the Property was not fit but did not communicate this to the Applicant or his representative and continued to pay rent. They did not withhold rent and in their own evidence when they stopped paying rent towards the end of the tenancy they were experiencing financial difficulties. The Tribunal considered no

credible or evidenced defence to the Application was put forward by the Respondents which could support rent not being lawfully due. The only conclusion upon hearing the evidence in the Application in the Tribunal's view which could be determined was that the outstanding rent was due and accordingly the Tribunal granted a payment order for £2950.

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.

K Kirk

Legal Member/Chair

Date

18/10/19