



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 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/20/0632

Re: Property at 2/21 145 Albion Street, Glasgow, G1 1QS (“the Property”)

Parties:

Miss Fatma Ibrahim and Mr Manuel Andia, 3/1a 10 Havanna Street, Glasgow, G4 0UB; and 5 Rue Etex 75018, Paris, France (“the applicants”)

Mr Paul McMenamin, Flat 7 Wexner Building, 2 Strype Street, London, E1 7LF (“the respondent”)

Tribunal Members:

David Preston (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent shall pay to the applicants the sum of ONE THOUSAND FOUR HUNDRED AND NINETY FOUR POUNDS (£1494).

1. By application dated 23 February 2020 under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 and section 70 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) the applicant sought: refund of 50% of the rent paid from January to November 2019; compensation for financial loss, inconvenience and disruption all totalling £5600. Basis of the claim for refund of rent was based on their inability to fully use the property during this time due to serious repair issues not being carried out.

2. By Notice of Acceptance dated 29 June 2020 a legal member of the First-tier Tribunal with delegated powers so to do, accepted the application for determination by the First-tier Tribunal and appointed the case to tribunal for determination.
3. Three Case Management Discussions (CMDs) took place by telephone on 27 August and 15 October both 2020 and 13 January 2021. The parties all attended the CMDs along with the respondent's mother as a supporter/observer. Reference is made to the Notes of the CMDs which dealt with various procedural matters and sought to regulate the lodging of productions by both parties. The issues in dispute were also focused at the CMD's. The productions comprised a significant volume of correspondence and photographs.
4. On 17 December 2020, the applicant submitted written representations along with an Inventory of Productions detailing 242 pages of correspondence, photographs, and documents. On 9 February 2021, the respondent submitted final representations together with an Inventory of Productions extending to 170 pages of correspondence, photographs, and documents.
5. Both parties had lodged lists of witnesses who were available to provide evidence to the tribunal if necessary: Ms Diletta Taris and Rebecca Gair for the applicant; and Mr Joseph McMenamin and Ms Joanna Szumilas for the respondent. In the event the tribunal heard from Ms Taris and Mr McMenamin.
6. At the start of the hearing the convener explained the procedure which the tribunal intended to follow.
7. In the Statement references to productions by page number relate to the applicants' Inventory of 17 December 2020 and references by Appendices relate to the respondent's Inventory of 9 February 2021.

Findings in Fact

8. After hearing evidence and considering the productions to which the parties referred during the hearing, the tribunal made the following findings in fact:

8.1 The respondent as landlord entered into a Short Assured Tenancy with the second named applicant as tenant on 10 November 2017. On 10 February 2018 the respondent as landlord entered into a Private Residential Tenancy Agreement with both applicants.

8.2 The applicants vacated the property on 18 December 2019 which brought the tenancy to an end.

8.3 Between 10 November 2017 and August 2019, the tenancy was managed by Countrywide and from August until December 2019 it was managed by Clyde Property.

8.4 The property comprised a studio type flat which contained one room with: kitchen/dining area; lounge area; and sleeping area which was separated by means of a curtain.

8.5 During the tenancy the applicants raised a number of issues with the respondent and/or his agents in relation to specific problems they encountered with the property. In addition, they requested a number of additional items of kitchen equipment and replacement of the curtain by a wall. These requests were refused by the respondent. The applicants did not include these requests or their refusal within their claim. The respondent sought to use them as examples of unreasonable requests and behaviour by the applicants.

8.6 In particular, and in addition to other matters in respect of which we were not required to consider, the applicants made the following complaints to the respondent:

8.6.1 One of the windows was faulty and could not be closed resulting in temperature in the flat becoming unreasonably cold, particularly during the winter months. The respondent's father had been able to close the window but on subsequent use the applicants were unable to shut it properly.

8.6.2 A leak from the sink in the kitchen caused flooding within the covered immediately below and water spread across the floor. The tenants were unable to use the cupboard for storage and had to keep items on their kitchen table.

8.6.3 The intercom system providing communal access to the flats in the building was ineffective since it only registered the second named respondent's telephone number.

8.6.4 The tenants were unable to gain access to the overhead lighting to change lamps or to the smoke detector in the ceiling due to an unsafe stepladder which was too short for them to reach the ceiling safely.

8.7 The respondent's father, Mr Joe McMenamin was able to close the window when he visited the property in December 2017 and he advised the applicants not to open the window as the mechanism was stiff and difficult to operate. He did not visit the property again until after the tenants had left.

8.8 In January 2018, the window was attended to by Senako. Thereafter the applicants were again unable to close it fully, resulting in low temperatures in the property, which was of particular difficulty during the winter months. The first named applicant reported the problem on 9 September (p 61), and in follow up emails dated 4 (p64), 9 (p64) and 17 October 2019 (p67) and explained the difficulties in relation to the low temperature in the property. On 17 October 2019 (p68) Countrywide told them that the respondent would investigate the matter when he attended the property in December 2019.

8.9 In April 2018, the applicants complained about a leak from the kitchen sink which was causing damage to the unit beneath the sink. Countrywide instructed repairs which were carried out and resulted in a piece of wood being inserted inside the unit to support the sink top, which appeared to resolve the issue. However, the leak continued thereafter which the applicants reported on 3 November 2018 (p14), 16 March (p18) and 6 April 2019 (p19). Countrywide were advised on 6 April 2019 that the kitchen had been soaked in water and that there was an ongoing leak problem under the sink where the temporary repair was no longer holding. The applicants sent numerous reminders including emails to countrywide on 21 (p22), 26 (P26), 29 (P39 & 43).

8.10 On 29 April 2019, the applicants reported to Countrywide that they had hired an emergency plumber who discovered two causes for the leak; sink overflow was not tight and the tap itself was leaking. He rectified the first issue but was to return to attend to the tap. The applicants then sought to recover the cost of that initial repair by a deduction from the rent but by email dated 17 October 2019, Clyde Property advised them not to withhold any rent as it may affect the landlord's decision to continue with the tenancy in the future.

8.11 The leak from the kitchen sink damaged the shelving and contents of the unit beneath and water spread over the floor of the flat which had to be cleaned up regularly by the applicants, notwithstanding that they used buckets and other containers to catch the leaking water.

8.12 In December 2018 when the respondent visited the flat, he was shown the repair which had been carried out under the sink with which she was not satisfied, and he undertook to take the matter up with Countrywide. Because of this and other issues, the respondent started dealing with Countrywide and shifted the agency to Clyde Property in August 2019.

8.13 The original intercom system in the property had been replaced prior to the start of the tenancy. The new system operated by a call to a mobile phone number registered with the system. This was unknown to the applicants when they took entry to the property and in January 2018, they had correspondence with the respondent about registering numbers. They asked that both numbers be registered which the respondent attended to. The applicants had difficulty in operating the system with two numbers as it seemed to operate solely on the second named applicant's phone. The respondent mentioned in a text message of 29 January 2018 (p9) that: "they don't normally program to numbers due to answerphone being registered as an answered door call."

8.14 The applicants reported ongoing problems with the intercom system throughout their tenancy including by email dated 23 September 2019 to Clyde Property (p63).

8.15 On 29 April 2019, the applicant told Countrywide by phone (p46) that they were unable to replace light bulbs because the ladder in the flat was very unstable and fragile the applicant considered it unsafe for her to use. They were also concerned that she would be unable to access the smoke detector if batteries needed to be changed (see emails to Clyde Property dated 8 & 14 August and 10 & 19 November 2019 – p57, 60, 73 & 75).

8.16 The batteries in the smoke detector did require to be changed as it began to emit beeping noises in November 2019. The first named applicant tried to change the battery using the ladder but was unable to do so but was able to detach the unit from the ceiling (photo p92). Mr McMEnamin Snr changed the bulbs and the battery by using the stepladder after the applicants had left.

8.17 Although the property was vacated by the applicants on 18 December 2019, they had moved out earlier and found temporary accommodation with Ms Taris and her partner Ms Gair.

8.18 The applicants withheld the rent payment from 10 November until 18 December, both 2019 leaving arrears at the date of termination of the tenancy of £1010.41. The deposit of £900 was awarded to the respondent by Safe Deposits Scotland.

8.19 Throughout the tenancy the applicants communicated their complaints and concerns regarding these issues and others to the respondent or his agents and, so far as these issues are concerned received little by way of satisfaction that their complaints were being attended to or taken seriously. When Clyde Property took over the agency in August 2019 the applicants explained in some detail the various outstanding issues and the problems which they were encountering but the issues were not resolved, and they felt that their concerns were largely being ignored.

8.20 Clyde Property attempted to make arrangements for inspections once they had taken over the agency, but suitable arrangements could not be made for specific appointments before the applicants vacated the property.

Evidence

9. The parties amplified their written representations and directed the tribunal to specific items of correspondence within their respective inventories.

10. The applicants' position was that their enjoyment of the flat fell short of what they were entitled to expect and felt that their concerns were largely ignored by the respondent.

10.1. They had to suffer the discomfort of the window which did not close properly which was particularly distressing through the winter months and they described the winter as being particularly cold. Although Mr McMenamin senior had closed it and it had been fixed in January 2018 it had failed again in August 2019. When they asked for it to be attended to again, they had been expected to live with it over the winter until the respondent visited in December 2019.

- 10.2. The leak under the sink caused significant inconvenience for the applicants. The cupboard under the sink became unusable for storage of cleaning or other items and they had to use the kitchen table for that purpose. They described the flat as 'flooded' although they described this as water running in lines over the floor. Nonetheless they had to mop it up in the morning and when they came in from work. A repair which was carried out by Countrywide was understood by them to be 'temporary', although it was effective for some months. However, the leak reappeared and after making efforts to get the respondent to attend to it they eventually instructed a plumber and sought to deduct the cost from their rent, although changed their minds having been told by Countrywide that if they did so, that might affect the respondent's decision to continue the tenancy in the future. Their plumber had said that there were two issues and he fixed one of them and told them he would need to come back to fix the mixer tap.
- 10.3. They were unable to use the intercom system effectively due to the contact number only relating to one phone as they had to go down to manually open the door to visitors or delivery drivers. They had requested from the start that two numbers be used, and the main concerns of the respondent was the cost which he was unwilling to bear. The reason for two numbers was that the second named applicant was abroad for much of the time and they had eventually got an additional sim-card for use by the first named applicant.
- 10.4. The first named applicant was concerned about her inability to change the light bulbs, or, more importantly the batteries in the smoke detector which, as it happened, was required. Both applicants considered the step ladder in the property to be broken and in a dangerous condition although they were unable to describe in what way. The ladder was said to be too short to reach the lightbulbs or the smoke detector safely.
- 10.5. As a result of the discomfort and their inability to have issues attended to by the respondent they effectively gave up and terminated their lease early on giving a month's notice. The first named applicant described the stress she suffered which was exacerbated by the fact that the second named applicant was abroad on work for a large part of the time and she was under stress with her PhD thesis and her work. They explained that this was an extremely

inconvenient time for them to do this. they had taken the lease with the intention of remaining in the property for the duration of their course in Glasgow but found the situation intolerable. They were offered temporary accommodation with their friend, Ms Taris and her partner, Ms Gair at a cost of £50 per week before acquiring a student flat. This was confirmed by Ms Taris who said that the arrangement had been informal and there was no paperwork or receipts. They incurred termination charges on the broadband service and also had expenses for shipping their excess furniture and belongings home. They also had to find the deposit on the student accommodation.

10.6. The applicants denied that they had refused access to the property. A number of contractors and letting agents had inspected the property over the term of the lease but these visits had not resulted in any of the work required being carried out. By 8 August 2019 when Clyde Property took over, the applicants were very frustrated by the number of visits which did not result in any action and sent a lengthy email detailing the history of their complaints and emphasising the lack of action on the part of the respondent or his previous agents. The applicants were on holiday at that time and wanted to be present during any visits. In an email of 17 September 2019 (p139) the first named applicant advised that arranged visit from a contractor had not been kept. By an email of 4 October 2019 (p64) they complained that no progress had been made with the repairs. In her email of 17 October 2019 (p67) the first named applicant expressed her frustration at the lack of progress and the fact that the respondent was putting off very repair of the window until he attended in December and despite what she said had amounted to 10 visits over the previous two months with no progress. In that email she gave notice that the applicants intended to leave the property on 18 December 2019.

10.7. The applicants asked for refund of outlays which they had incurred because of terminating the tenancy early.

10.7.1. Broadband early termination fees of £94 which had been incurred because they had taken a three year contract to cover their residence in the UK and it was not possible to continue it in the student accommodation to which they moved in January 2020.

10.7.2. They moved to Mr Taris' flat at a cost of £50 per week from the end of October until 18 December 2019 at a total of £400 when they returned home for the holidays before they could obtain student accommodation which they did after the holidays.

10.7.3. The student accommodation required a deposit of £1556 which was paid before moving in.

10.7.4. Cost of shipping belongings home and disposal of other items were not pursued by the applicants.

11. The respondent's position was that the applicants had been problem tenants since the start of the lease and that he had attended to their issues insofar as they were his responsibility.

11.1. At the start of the lease, he said that the applicants had demanded that they had kept asking for alterations to the flat's structure and for additional items of equipment which had not been included in the lease.

11.2. The respondent said that he had occupied the property himself before moving to London when he had rented it out. A number of tenants had been in the property and none had complained of the issues raised by the applicants. He said that despite using letting agents the applicants had habitually contacted him direct which he said undermined the procedure for raising issues. In any event, any complaints they had were grossly exaggerated and their claims were overstated.

11.3. In relation to the window, he said that his father had effected repairs, which was confirmed by Mr McMenamin senior, and he then had the window fixed by 16 January 2018 at a cost of £96. He had seen no problem with the window or the temperature in the flat when he visited in December 2018. He said that on the photograph of the window on page 66 and 67 of the applicant's Inventory taken on 11 October 2019 the yellow arrow pointed to the window in the closed position.

11.4. The respondent said that the water had been from a broken seal at the kitchen sink which had been caused by the worktop falling slightly which had been fixed by the insertion of a piece of wood which looked unsightly. He had instructed Countrywide to attend to the repair and was not happy at what had

been done as although it was effective it did not look good. As a result, and due to his dissatisfaction with the actions of Countrywide over that and several other reasons, he changed his letting agent to Clyde property in August 2018. He said that after their appointment they had been denied access to the property for any inspection visits. He pointed out that after Clyde property's appointment the cost of the applicants' plumber had been repaid in full. He complained that the tenants had sought to withhold rent in respect of the plumbing account.

11.5. The respondent said that he had instructed the intercom company to add the two numbers provided by the applicants to the system. He did not see why he should bear the cost of changing numbers or putting any additional numbers on to it, which was the applicant's choice and not something for which he was responsible. He had advised them by text on 29 January 2018 (page 9 of applicant's Inventory) that there was an issue with having two numbers on the system due to an answer phone counting as an answered door call.

11.6. The respondent said he had not provided the ladder in the property as part of the tenancy and that it had been left by a previous tenant. He said that the ladder was perfectly adequate for reaching the bulbs and smoke detector and had been used by his father for that purpose. He did not accept that it was broken or unsafe.

11.7. The respondent did not accept responsibility for the financial claims submitted by the applicants. He questioned whether they had actually moved to Ms Taris' flat in October and pointed out that no receipts had been produced. He said that the financial claims had been over-stated and exaggerated.

11.8. The respondent said that the applicants had denied access to the property and that he therefore was unable to carry out any of the repairs they were complaining about in any event. He referred to the letter from Clyde property dated 18 September 2020 which referred to 2 requests in or about August 2019 to inspect the property, both of which were refused and said that in an email of 10 November 2019 the applicants said that they did not wish to be contacted further about any of the issues.

11.9. The respondent largely blamed the difficulties on mismanagement by Countrywide (p127) and he took steps to rectify the position by moving the agency to Clyde Property.

Reasons

12. The productions submitted by the applicants comprised their correspondence with the respondent and his agents throughout the period of the tenancy and documented the extent to which they had reported their concerns and complaints.
13. The productions submitted by the respondent largely comprised correspondence between himself and his agents apart from that which had been included in the applicants' productions.
14. The tribunal was satisfied that the respondent had found his initial letting agents, Countrywide, to have provided an unsatisfactory service and that he had expressed this dissatisfaction to the applicants who had attempted to communicate with him direct, but he continued to complain that they did so and suggested that they had "undermined" his process. The respondent's position about the applicants contacting him direct was inconsistent. He accepted that he was dissatisfied with Countrywide's service and sacked them in August 2018, but the tone of the email exchange between the respondent and Countrywide dated 27 and 29 November 2017 (Appendix 4) indicates that the respondent had been dissatisfied with Countrywide from the commencement of the tenancy with the applicants. On balance we preferred the evidence of the applicants in relation to their having been told to contact the respondent direct rather than go through the agents.
15. The respondent suggested that the applicants had attempted to force him to make alterations to the property, but the tribunal was satisfied that they had merely made requests for additional equipment and had not pressed the issue if it had been refused, except where the respondent had obligations as their landlord.

16. It was unreasonable of the respondent to seek to delay giving attention to a repair to an open window in or around the winter months. The respondent suggested that the heating system in the property was effective, but it is not acceptable to put the applicants to the additional expense of increased energy consumption due to a faulty window. The respondent referred to photograph (p65 and 66) as showing the window closed. The tribunal does not accept that interpretation and finds that the window was ajar and not fully closed. It accepts that the window would create a cold draught in those circumstances.

17. The respondent had an obligation to ensure that the window in the property was wind and watertight and was in a reasonable state of repair and in proper working order and was maintained to the repairing standard. He had failed in this obligation.

18. Regarding the intercom system, some further communication between the parties would have been preferable. The respondent could have taken more effort to establish the requirements and limitations of the new system and give more assistance to the applicants in ensuring that it operated effectively. An intercom system of the sort described is a fixture, fitting or appliance. The repairing standard requires that any fixtures, fittings and appliances provided by a landlord are in a reasonable state of repair and in proper working order. This includes a requirement to ensure that adequate instruction is provided to tenants to enable them to make effective use of the fixtures, fittings and appliances, whether they are included in an Inventory of Contents or not. The respondent had been reluctant to comply with the applicants' request to add the first named applicant's telephone number to the system and considered that his acceptance of the cost of entering the number at all was a "gesture of goodwill". The tribunal was satisfied that the initial request was for both numbers to be added to the system. Further, such an intercom system comprises a fitting or fixture which a landlord is required to maintain in "a reasonable state of repair and proper working order" and as such is a cost for which the respondent is liable.

19. In relation to the leak, the tribunal was satisfied that the respondent had failed to ensure that the concerns of the applicants were attended to in good time. Elements

of this complaint had been dealt with by Countrywide as an emergency but thereafter little or nothing was done to progress the full and final repair, forcing the applicants to engage a plumber to attend to it. Thereafter the applicants found difficulty in recovering the cost of the plumber and were threatened with action by Clyde Property if the sort to withhold their rent.

20. The property contained a stepladder when the applicants took occupation. Accordingly, the ladder is an “appliance” or a “furnishing” in terms of the repairing standard, whether included in an Inventory of Contents or not, and accordingly must be maintained in a reasonable state of repair and in proper working order and be capable of being used safely for the purpose for which they are designed, at the start of and throughout the tenancy. The height of the ladder was not established but an assessment of it from the photograph (p92) would make it difficult for an individual unused to stepladders to carry out safely an operation such as changing a battery in a smoke detector. The tribunal accepts that Mr McMenamin senior was able to do so but, having been in the building trade for a number of years, he is assumed to be well used to using stepladders and working at height. The tribunal notes that in the call log of Clyde Property of 22 November 2019 at Appendix 29 it is noted that the respondent was told that ladders are required in the property and that he undertook to replace the ladders with others from the family home in between lets. He was also told that in the absence of stepladder he would be responsible for a contractor to attend to replace light bulbs and change the batteries in the alarms.

21. The tribunal was satisfied that the applicants did not refuse access for Clyde Property to inspect. There may have been issues around making suitable arrangements, but this did not amount to a refusal. It was not unreasonable in the whole circumstances for the applicants to wish to be present.

22. The respondent sought to absolve himself of liability by blaming the poor service he received from Countrywide. The tribunal does not accept that this is legitimate. The responsibility of a landlord lies with them and does not pass to an agent who

is appointed to act on behalf of the landlord. The landlord remains responsible for fulfilling his/her obligations throughout the period of lease.

23. The applicants initially sought: a refund of 50% of the rent paid by them amounting to £4400; financial loss or gain by additional expenses incurred by them amounting to £700; and a sum for disruption and inconvenience suffered by them during the tenancy amounting to £500.

24. The tribunal finds that such figures are excessive. It recognises that there was significant inconvenience caused to the applicants by the respondent's attitude and lack of response but is unable to justify any such figures in this regard.

24.1. The tribunal considered that the claim for refund of 50% rent was excessive. To reflect the extent to which the issues created discomfort, it determines that a nominal refund of rent in the sum of £500 would be appropriate. We also took into account the fact that the applicants had withheld rent of £1010.41 and the respondent was awarded £900 by SafeDeposit Scotland, leaving a shortfall of £110.41.

24.2. Because of the level of frustration caused to the applicants by the respondent's failure to fulfil his obligations to maintain the property, furnishings and appliances in reasonable condition and in good working order, and the lengths to which they had to go to try and have these issues resolved, the tribunal considers that the applicants are entitled to £500 by way of compensation being the figure sought under this head in the application. In arriving at this figure, the tribunal took into account the discomfort and frustration experienced throughout the lease and it became difficult for the applicants to remain. The evidence before the tribunal did not demonstrate that the property fell below tolerable standard, although some items of furnishing and equipment fell below the repairing standard. The individual items may have been insignificant, but they still fell below the repairing standard and ought to have been attended to more rigorously. The applicants should not have been expected to live with a draughty window over the winter months.

24.3. The tribunal accepted that the applicants had intended to remain in the property for the full three year period of their time in Glasgow and that they were justified in terminating the tenancy as a result of the ongoing intransigence of the respondent in dealing timeously with reasonable requests as outlined in the application.

24.4. As a result of the early termination, they had incurred the broadband fees of £94 and the additional costs of accommodation in Ms Taris' flat at a total cost of £400.

25. Accordingly, the tribunal finds that the applicants are entitled to an order in the sum of £1494 to be paid by the respondent.

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.

David Preston

5 March 2021

Legal Member/Chair

Date