



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/CV/22/0672

Property at 18 West Benhar Road, Harthill, ML7 5PB (“the Property”)

Parties:

Shyla Sathiya Kumar, 4 Etna Court, Armadale, West Lothian, EH48 2TD (“the Applicant”)

Mr Alban Bartley-Jones, 18 West Benhar Road, Harthill, ML7 5PB (“the Respondent”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Gerard Darroch (Ordinary Member)**

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £16,700 should be granted against the Respondent in favour of the Applicant.

Background

- 1. The Applicant seeks an order for payment in terms of Section 71 of the 2016 Act. A copy private residential tenancy agreement and a rent statement were lodged in support of the application.**
- 2. A copy of the application was served on the Respondent by Sheriff Officer on 17 May 2022. Both parties were notified that a Case Management Discussion (“CMD”) would take place on 16 June 2022 at 2pm by telephone conference call and that they were required to participate. The Respondent did not participate. Following the CMD, the Tribunal granted a payment order. The Respondent made a request for recall, stating that he had not received a copy of the application or notification of the date of the CMD. Although the application**

had been deposited at the property by Sheriff Officer, the recall was granted.

3. A further CMD took place on 3 October 2022. The Respondent participated. The Applicant was represented by Mrs Newman, who joined the call late. Following the CMD the Tribunal issued a Note and a direction and determined that the application should proceed to a hearing by telephone conference call. The parties were notified that the hearing would take place on 9 January 2023. The hearing was postponed at the request of the Respondent because he was out of the country. The Applicant did not oppose the postponement as the letting agent representative withdrew from acting. The Tribunal decided to hold a further CMD as neither party had provided a response to the direction issued by the Tribunal.
4. The parties were notified that a further CMD would take place on 21 March 2023 at 10am by conference call. Prior to the hearing the Applicant's new representative submitted an updated rent statement. The Respondent lodged a list of potential witnesses and a submission regarding his desire to lodge video evidence.
5. The CMD took place on 21 March. The Applicant was represented by Mr Sheridan, solicitor. The Respondent participated.

Case Management Discussion

6. The Tribunal noted that both parties had lodged late submissions. The Tribunal indicated that these would be allowed because it was a CMD and not a hearing, so neither party would be prejudiced by the late submission. Parties were reminded that documents and submissions had to be lodged on time before the hearing or may be excluded.
7. The Tribunal noted that neither party had provided a response to the direction which had been issued. Mr Bartley Jones advised the Tribunal that he had not known how to lodge the documents. He also stated that he had not received the direction, although the Tribunal had evidence that it had been sent by email and acknowledged. Mr Sheridan told the Tribunal that he had been recently instructed and had been endeavouring to prepare the documents which are to be lodged.
8. Mr Sheridan advised the Tribunal that the letting agent did not appear to have a record of complaints from the Respondent about repairs, although he was still reviewing documents. There were documents which relate to repairs which were carried out, including an invoice from Taylor Roofing. He confirmed that there was a brief report from Russell Preservation from the visit which took place in February 2022. This report states that lifestyle is the reason for condensation in the property. Mr Sheridan advised the Tribunal that the landlord had been given no evidence that the rent has been consigned. The Tribunal advised the parties that, if the Respondent failed to provide evidence that it had

been set aside, this could be an indicator of bad faith on the part of the Respondent and an adverse inference might be taken. However, the Tribunal could still consider whether the Respondent is entitled to an abatement of rent.

9. Mr Bartley Jones advised the Tribunal that there is an issue about the monthly rent charge. This is specified in the tenancy agreement as £600 but was reduced to £550. Mr Sheridan said that a temporary reduction had been offered because there were repairs required when the Respondent moved in. These would have been carried out before he took entry, but he was desperate to move in as soon as possible. Mr Bartley Jones said that the rent was reduced due to the condition of the property. As this has not changed, the rent should still be £550. The Tribunal noted that there had been some discussion about this at the previous CMD and that the Respondent would require to provide evidence that the parties had agreed to change the rent from the figure specified in the tenancy agreement.
10. In response to questions from the Tribunal Mr Bartley Jones said that there had been no repairs carried out at the property since the last CMD and that he had not contacted the letting agent or landlord about the condition of the property. He said that he cannot contact the landlord because her husband threatened him. This is under investigation by the police. The property remains in a state of disrepair. He has not refused access for inspection or repairs. He has not been asked to provide access except for the gas safety check which was carried out in December.
11. Mr Sheridan said that it is not possible to arrange for access to the property because Mr Bartley Jones will not reply to correspondence. Newman Properties still manage the property. The Landlord's position is that no repairs are required.
12. The Tribunal noted that the Respondent had provided a list of potential witnesses on 17 March 2023. The Respondent was advised that it was his responsibility to arrange for the attendance of witnesses at the hearing and that this is not arranged by the Tribunal. As the hearing was to take place in person, the witnesses should be personally present.
13. The Tribunal noted that Mr Bartley Jones wished to submit video evidence. When asked for information about the content of the videos, he stated that they show the condition of the property on various dates. There is also commentary from Ann Newman and Nicky from Newman Properties when the videos were taken. The Tribunal noted that the caseworker had already provided the Respondent with information regarding the process for, and rules regarding, the submission of video evidence. The Respondent was advised that they could only consider the material in question if the people on the recording had consented to being recorded and gave permission for the recording to be used at the hearing. The Respondent was advised that he would need to contact them or arrange for Mr Sheridan to do so. The Tribunal also noted that photographs of the condition of the property could be lodged instead of video evidence if the sole purpose of the videos is to show the condition of the

property.

14. At the end of the CMD Mr Sheridan advised that he wished to amend the application to reflect the current level of arrears shown on the rent statement of £15,500. This was not opposed by the Respondent and was granted. Mr Bartley Jones again advised the Tribunal that he wanted to commission a report but that the companies he has approached are not willing to take the instruction from a tenant. He asked if the Tribunal could make an order to allow this. Mr Sheridan said that he had no objection to a report being obtained but doubted that the Tribunal had the power to make an order regarding same. The Tribunal suggested that the Respondent obtain a letter of authority from Mr Sheridan on behalf of the landlord to enable the report to be instructed. If this was not provided, he could make an application to the Tribunal for a direction to be issued which would be considered by the Tribunal in terms of the Procedure Rules.
15. The Tribunal determined that the application should proceed to an in-person hearing. The parties were advised that they could provide the caseworker with dates to be avoided. The Applicant submitted unsuitable dates. The Respondent did not. The Tribunal also issued a direction which required the parties to lodge further information and documents. On 23 May 2023, the parties were notified that a hearing would take place at Glasgow Tribunal Centre on 26 June 2023 at 10am. The Respondent requested a postponement, stating that he was in the Philippines. The Tribunal noted that the case had been ongoing for over a year, that a hearing had previously been postponed for the same reason, that the Respondent had not advised the Tribunal of dates to avoid or notified the caseworker that he intended to leave the country. Furthermore, he did not provide evidence. The Tribunal was satisfied that it was not in the interests of justice to postpone the hearing further. The Respondent was notified. He renewed his request. This was refused and full reasons were given.
16. Prior to the hearing the Applicant lodged submissions and documents and confirmed that two witnesses would attend.
17. The hearing took place on 26 June 2023 at 10am. The Applicant was represented by Mr Sheridan, solicitor. The Tribunal heard evidence from Mr Kumar, the Applicant's husband, and Mrs Newman. The Respondent did not participate and was not represented.

The Hearing

18. Mr Sheridan referred to the updated rent statement lodged in advance of the hearing. He said that he could provide a further update. However, as this had not been lodged in advance, the Tribunal advised that it could not be submitted or considered. The Tribunal allowed the application to be amended to £16,700, the sum specified in the statement which had been lodged in advance. Mr Sheridan also advised the Tribunal that he had tried to arrange for access to

the property by Russell Preservation in advance of the hearing. However, there was no response to his emails to the Respondent and recorded delivery letters were returned. The Tribunal noted that the report from Russell Preservation which had been lodged appeared to be incomplete. Mr Sheridan said that he would check what he had received and what had been submitted. He also told the Tribunal that the Respondent may not be living at the property, given the return of the recorded delivery letters.

Mr Kumar's evidence

19. Mr Kumar said that he and the Applicant have had no direct contact with the Respondent as the property is managed by Mrs Newman. The only contact he had was when he went to the property with Mrs Newman, someone from Russell Preservation and the Tribunal Member who had arranged the access following a Right of Entry application. This was in February 2022. The house was not clean and was cluttered. The windows and blinds were all shut. The contractor said that the main issue at the property was that lots of clothes were being dried in rooms where the doors and windows were shut. The Respondent was told that he needed to ventilate the house.
20. Mr Sheridan told the Tribunal that he had located the missing section of the report and advised that oversight on the part of his office had resulted in the incomplete version being lodged. He stated that the report indicates that mould and vent work was to be carried out at a cost of £372. If required, a PIV system could be installed at an additional cost of £1040. Dehumidifiers should be used on a temporary basis. However, the report concludes by stating that although two vents and a fan were required, the tenant had to ventilate the property and that this was the main cause of condensation and mould at the property.
21. Mr Kumar told the Tribunal that there was a room in the house which was full of clothes being dried. The radiator was on, and the window shut. There was some discoloration on the wall. He said that the property is an unfurnished let although white goods were provided by the Applicant. There is no tumble drier. There is gas central heating and solar panels have been fitted. Roof repair work was carried out by Taylor Roofing. The property did not need to dry out after this. Mr Kumar concluded by saying that he passes the property on his way to work. Although he has not seen the Respondent, he has noted that the car is sometimes there and sometimes not when he has passed recently.

Mrs Newman's evidence

22. **Mrs Newman** told the Tribunal that Mr Bartley Jones moved into the property in November 2020 and reported dampness in December 2020. She agreed to reduce the rent by £50 until repairs were carried out. However, he refused to allow her to visit to investigate the complaint and said that he would not pay his rent until the work was complete. He did allow Taylor Roofing access to the property, and they carried out repairs in February 2021. After these had been completed, she asked about the rent. He said that they had not repaired the

gutters and refused to resume payments. She checked with the contractor who confirmed that the gutters had been fixed. Despite this, the Respondent did not resume payments.

- 23.** Mrs Newman told the Tribunal that she had carried out the check-in at the start of the tenancy. There was no evidence of damp at that time. There had also been no complaints from the previous tenants. Mr Bartley Jones provided access to her in April 2021. She asked to see the damp which he said was still an issue. There was a small patch on the wall above the fireplace and above a window in a bedroom. There was no mould, and the walls were dry to the touch. She told him that the property was drying out following the roof repair and that they would paint when it was completely dry. She asked about the rent. Mr Bartley Jones asked her to leave, so she did. She later discovered that he had been recording her without telling her or asking for permission. After this, the Respondent would not allow access and would not communicate with her or respond to emails. A Right of Entry application had to be made and this led to access taking place for Mr Kumar, herself, and Russell Preservation. The access was supervised by the Tribunal Member, who remained outside. During this inspection she saw no evidence of damp or mould. The contractor told the Respondent that the condensation was caused by the wet washing in unventilated rooms. He seemed to accept this. Access has continued to be a problem, even for the gas safety check, although this was eventually allowed.
- 24.** In response to questions from the Tribunal Mrs Newman said that she isn't sure if the Respondent was provided with a copy of the Russell Preservation report at the time. She confirmed that the work was not instructed, although she did discuss this with Mr Kumar. She thinks that the work did not proceed because of the ongoing access issue. She said that she does not believe that the Respondent is in receipt of benefits and the excuses offered for lack of access to the property suggest that he is, or was, a student.

Final submission.

- 25.** Mr Sheridan told the Tribunal that there was a breakdown in cooperation on the part of the Respondent from an early stage. The Russell Preservation report clearly indicates that lifestyle is the key factor in condensation affecting the property. The Applicant had to make a right of entry application to get access to investigate the complaints made by the Respondent. He does not respond to attempts to communicate in relation to access, previously alleging harassment .

Findings in Fact

- 26.** The Applicant is the owner and landlord of the property.

27. The Respondent is the tenant of the property in terms of a private residential tenancy.
28. The Respondent is due to pay rent at the rate of £600 per month.
29. The Applicant agreed to a temporary reduction in rent of £50 from November 2020 to March 2021 until repairs were carried out. The Respondent did not agree to this reduction.
30. The Respondent has paid no rent since 12 January 2021. The total sum which is unpaid is £16,700.
31. The Respondent told the Applicant's letting agent in December 2020 that he was withholding rent because repairs were required to eradicate dampness.
32. The Respondent has been obstructive in relation to access to the property by the Applicant, her agent and contractors instructed by them.
33. The Applicant had to make a right of entry application to get access to the property to investigate the Respondent's complaints.
34. Taylor Roofing carried out roof repairs in 2021. These repairs resolved water ingress at the property.
35. Following completion of the roof work, the Respondent did not resume payment of rent.
36. The Respondent has not lodged the unpaid rent in a separate account.
37. The Applicant and her agent have not been able to inspect the property since February 2022.
38. When the property was inspected in February 2022, the contractor noted some evidence of black mould, and that the property was affected by severe condensation.
39. The contractor stated that some minor repairs were required to address the problem with condensation, following their inspection in February 2022.
40. The principal reason for condensation and mould at the property in February 2022 was the failure by the Respondent to ventilate the property.

Reasons for Decision

41. The application was submitted with a private residential tenancy agreement and a rent statement. In terms of the tenancy agreement, rent is due to be paid at the rate of £600 per month, although the Applicant agreed to accept £550 per month for a short period until roof repairs had been completed. This

arrangement was not accepted by the Respondent. He has paid no rent since January 2021. The rent statement lodged by the Applicant shows a balance owed by the Respondent of £16,700. The Tribunal is satisfied that the sum of £16,700 is unpaid.

42. The Respondent did not attend the hearing. He also failed to lodge written submissions and documents in support of his defence to the application although he had been specifically directed to do so in October 2022 and March 2023. No explanation for his failure to respond to the second direction has been provided. His explanation for the failure to respond to the first was not supported by the evidence. The Tribunal therefore made its decision based on the information he provided at the CMDs, the evidence led by the Applicant, and documents lodged by the Applicant. The Tribunal did not consider the video evidence which was lodged. The Respondent was advised that this would be considered only if the audio recording which accompanied it had been made with the knowledge and permission of Mrs Newman. The Respondent failed to provide evidence of this, and the Tribunal was told by Mrs Newman that she had been unaware and did not give consent. In any event, it appears that the recording was made in April 2021, when Mrs Newman visited the property, so the video could not establish the current condition of the property.
43. The Tribunal found both Mr Kumar and Mrs Newman to be generally credible and reliable. Their evidence was consistent with the documentary evidence and with each other. The Tribunal did not hear evidence from the Respondent. It was also noted that he failed to provide any documents to support his statements at the CMD. In particular, he failed to provide proof that the rent had been set aside in a separate account, although this would have been easy to evidence, if he had done so.
44. The Tribunal notes that Mrs Newman acted promptly to arrange for Taylor roofing to carry out repairs in February 2021, when the Respondent made a complaint of dampness. She did so although the Respondent did not allow her to investigate the complaint, as she was entitled to do. As a result of continuing complaints, and non-payment of rent, the Applicant took appropriate action and applied to the Tribunal for assistance getting access to the property. This access led to the report from Russell Preservation which identified some minor remedial work. It is not entirely clear why this work was not instructed. Access was certainly an issue, but there was no suggestion that Russell Preservation attempted to do the work and were refused entry. In any event, the contractor told the parties during the inspection that the principal cause of condensation was the Respondent's use of the property. Despite this advice, he did not resume payments of rent or repay any of the arrears. The Tribunal is satisfied that the condensation at the property, from completion of the roof repairs until February 2022, was largely the fault of the Respondent. This being the case, no abatement of rent is due for that period.
45. There was no evidence led as to the condition of the property since February 2022. As the Applicant has been unable to get access, only the Respondent or others admitted to the property by him, could have provided evidence on this issue. He could also have obtained his own specialist report or even lodged

photographs. He chose not to do so. In the absence of any evidence that the property is currently affected by dampness or mould which is not associated with the Respondent's use of the property, the Tribunal is satisfied that he is not entitled to an abatement of rent and that the Applicant is entitled to an order for payment in relation to the whole sum which is unpaid.

Decision

46. The Tribunal determines that an order for payment for the sum of £16,700 should be granted in favour of 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.

Josephine Bonnar, Legal Member

26 June 2023