



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/0588

Re: Property at 22 Hillhead Road, Kirkintilloch, Glasgow, G66 2HF (“the Property”)

Parties:

Miss Karen Lang, 1 Westergreens Avenue, Kirkintilloch, Glasgow, G66 4AQ (“the Applicant and Landlord”) represented by R&G Estates Limited, 57 Townhead, Kirkintilloch, Glasgow, G66 1NN

Mr Gerard McCann, 22 Hillhead Road, Kirkintilloch, Glasgow, G66 2HF (“the Respondent and Tenant”) represented by Mr Raymond Heath, East Dunbartonshire Citizens Advice Bureau, 11 Alexandra Street, Kirkintilloch, Glasgow, G66 1HB

Tribunal Members:

Patricia Pryce (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined it was not reasonable in all of the circumstances to grant the application for eviction and that the application should be dismissed.

- **Background**

The background of the application is referred to within the Case Management Discussion note of 27 August 2018. A previous hearing set down for 8 October 2018 was postponed on the motion of the Applicant’s representative.

- **The Hearing**

Preliminary Issue

The Tenant and Mr Heath were in attendance at the hearing. Neither the Landlord nor her representative attended at the hearing. The Clerk of the Tribunal checked to see if any contact had been made by the Landlord or her representative. No contact had been made. The Landlord’s representative had received notification of the time, date and location of the hearing by way of a letter dated 7 November 2018

sent recorded delivery post, which letter was signed for on 8 November 2018 at 11.48 am.

After a short adjournment, the Tribunal reconvened at 10.30 am. Mr Heath submitted that his client wished to proceed with the hearing in the absence of the Landlord. He stated that the hearing had previously been postponed on the motion of the Landlord. His client is self-employed and had lost yet another day of income as a result of the hearing and the previous postponement. In addition, the evidence had been supplied by parties by the Case Management Discussion (CMD) in August. Nothing further had been submitted by either party and neither party intended to call witnesses. In short, the Tribunal had all of the evidence before it that it needed to make a decision. There was no new evidence.

The Tribunal considered the submission by Mr Heath and the terms of Rule 29 of the Rules of Procedure. The Tribunal determined that it would proceed in the absence of the Landlord and her representative. Sufficient notification of the hearing had been provided to the Landlord's representative and this had been received. In addition, the terms of the CMD confirmed that neither party wished to call witnesses. The Tribunal noted that there had been a previous postponement of the hearing at the request of the Landlord's representative. In all the circumstances, the Tribunal considered that it was fair and just that the hearing should proceed.

- **Findings in Fact**

1. The tenancy of the property had commenced on 28 August 2015.
2. The Tenant had resided in the property since 28 August 2015.
3. The Tenant, by his own admission, cut the wires to the previous boiler within the property on or about February 2017.
4. The property remained without a functioning boiler for around 6 months thereafter until the Landlord replaced the boiler in July 2017 after the Tenant had raised a repairing standard application to the Tribunal.
5. The property had no central heating or running hot water from February 2017 until the boiler was replaced.
6. The property has an electric shower.
7. The Landlord provided the Tenant with two convector heaters until the boiler was replaced.
8. The Tenant has paid his rent throughout his tenancy.
9. There are no arrears of rent.
10. The Tenant informed the Landlord's agent the day after he cut the wires that he had cut the wires.
11. The Tenant offered to pay for new wiring to the boiler.

- **Summary of Evidence**

The Tribunal considered all of the evidence before it including all of the written submissions provided to it by the parties.

The Tenant gave evidence to the Tribunal. He submitted that he was a self-employed painter and decorator. He had lost wages through the hearings. On the night in question, he was awoken at two or three in the morning by a dreadful noise. He thought that someone was trying to break in. He discovered that the noise was

emanating from the boiler. The boiler had been moved in December 2016 by workmen when the Landlord had a new kitchen installed in the property.

The Tenant advised that the workmen who installed the new kitchen had just appeared one morning without warning. The Landlord had not told him that the kitchen was being replaced. He was left without water and gas for about four days.

The Tenant had used the out of hours emergency phone number with which the Landlord had provided him. However, he could not get a reply from that number.

The Tenant advised that he had never received a Gas Safe Certificate in respect of the old boiler but has one for the replacement boiler.

When he heard the noise from the boiler in February 2017, he had been very frightened. He had turned off the gas but this did not stop the noise. He then turned off the power but the noise continued and the gauge continued to show red that the pressure was high. He could not find the stop cock to switch off the water so he panicked and cut the wires underneath the boiler as he thought it was going to explode. He did not cut any wires inside the boiler. The noise still continued. He finally located the stop cock and switched off the water supply to the property and the noise stopped. He phoned the Landlord's agent the next morning to tell them what he had done. He had offered to pay for a new wiring loop but he never received a response to this offer.

The boiler remained incapable of functioning until it was finally replaced in July 2017. He had no running hot water or central heating for that whole period. He, however, continued to pay his rent.

The Tenant confirmed that he had never touched the valve which the heating engineer had stated was switched on and which had caused the noise in the boiler. He had no reason to as the boiler had functioned perfectly well until that night in February 2017.

The Tenant advised that he had not used the out of hours number as he did not have it to hand, he had panicked as he thought the boiler was going to explode and he had received no response to it when he had tried to use it previously.

Mr Heath submitted that this type of valve can be faulty and turn on of its own accord or, alternatively, it could have been switched on by the workmen when they had moved it three months' previously.

Mr Heath confirmed that no response had been received to the offer his client had made to pay for the replacement wiring loop. In addition, the Landlord and representative had never confirmed how old the boiler was when it was replaced. Mr Heath advised that the Landlord had delayed in repairing or replacing the boiler for almost six months and only did so a day or so before the hearing was due to take place in relation to the repairing standard application his client's had required to undertake.

Mr Heath submitted that his client was looking for the application to be dismissed as it was not reasonable to grant an order for eviction. There have been no further incidents since this had occurred 18 months' ago. This was not malicious or

purposeful damage. His client had been honest about the damage from the very beginning and had offered to pay for the repair of that damage. Despite being left without running hot water and central heating for nearly six months, his client had continued to pay his rent. Given that, it was extremely unlikely that any further damage would be done to the property by his client and it was not reasonable that the eviction should be granted.

- **Reasons for Decision**

The Tribunal considered that the events which had led to the Tenant cutting the wires of the previous boiler were unusual. The Tenant had attempted other ways to shut off the boiler, to no avail. The Tenant gave clear evidence that he was scared and had a genuinely held belief that the boiler was going to explode. The Tenant has remained in the property for a further 18 months without incident. The Tribunal therefore considers it highly unlikely that there would be a repeat of this conduct by the Tenant. Despite requiring to raise a repairing standard application to have the boiler situation resolved, the Tenant has continued to pay rent throughout this whole process. In all other ways, the Tenant's conduct of his tenancy appears to have been without issue. Given all of the above, the Tribunal did not consider that it was reasonable that an order for eviction should be granted. The Tenant has conducted himself very well throughout the tenancy and offered to pay for a replacement wiring loop. The Landlord did not provide details in relation to the age of the boiler. The Landlord produced an email from a heating engineer in which the engineer makes a general statement to the effect that it was not economical to repair the boiler. The engineer also assumes that it was the Tenant who left the valve in the open position. The Landlord did not provide any evidence to contradict the Tenant's submission in relation to the boiler having been moved three months prior to these events.

- **Decision**

The Tribunal determined that it was not reasonable to grant the eviction in all the circumstances of the case and dismissed the application.

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.

Ms Patricia Pryce

PATRICIA ANNE PRYCE

27 November 2018

Legal Member/Chair

Date