



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/19/3733**

**Re: Property at 26 Firthview Terrace, Dumbarton, G82 4DT (“the Property”)**

**Parties:**

**Mr Russell Beese, 10 Trough Lane, Watnall, Nottingham, NG16 1HR (“the Applicant”)**

**Miss Jacqueline Clark, Mr Graeme Hendry, 26 Firthview Terrace, Dumbarton, G82 4DT (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Greig Adams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the Respondent.**

**Background**

1. By application dated 21 November 2020 the Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. The Applicant lodged a copy private residential tenancy agreement, Notice to Leave with Sheriff Officer certificate of service, Section 11 Notice to the Local Authority and rent statement in support of the application. The eviction ground in both the application form and Notice to Leave is ground 12, rent arrears over three consecutive months
2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 14 January 2020. Both parties were advised that a case management discussion would take place on 14 February 2020.
3. The application called for a case management discussion (“CMD”) on 14 February 2020 with a related application under Chamber reference

FTS/HPC/19/3734 (“the CV application”). The Applicant attended and was represented by Mr Daniel. The Respondents both attended. The Legal Member noted that certain factual matters were agreed. In particular, the Respondents agreed that they had not paid rent since May 2019 and that the sum of £5355 was unpaid. The Respondents advised that they were seeking an abatement of rent for the relevant period, as a result of the Applicant’s failure to fulfil his obligations as landlord, in relation to repairs at the property. This was disputed by the Applicant. The Respondents also stated that, as rent is not due for the relevant period, the eviction ground has not been established. Following discussion, the Legal Member determined that the applications should be continued to a hearing to allow evidence to be led and submissions made in relation to the factual and legal dispute between the parties. It was also noted that a repairing standard application relating to the property was due to be heard by the Tribunal, which might have a bearing on some of the issues which had been raised at the CMD.

4. A hearing was scheduled to take place on 7 April 2020. This was postponed as a result of the Government restrictions imposed due to COVID 19. On 9 July 2020 parties were notified that the hearing would now take place on 29 July 2020 at 10am by conference call. Both parties were provided with a telephone number and passcode. Prior to the hearing the Respondents did not lodge any further documentation but notified the Tribunal that they intended to vacate the property on 31 July 2020. The Applicants lodged some copy emails and text messages. In addition, an updated rent statement was lodged on 28 July 2020. Both parties were advised by the Tribunal that the paperwork lodged by parties in connection with the repairing standard case, together with the decision and RSEO issued by the Tribunal in that case, may be considered by the Tribunal at the hearing.

### **The Hearing**

5. The applications called for a hearing on 29 July 2020 at 10am. The Applicant and his representative, Mr Daniel, both participated. The Respondents also participated.

### **Preliminary Issues**

6. The Applicant sought to amend the sum claimed in the CV application to £8925, being the sum currently outstanding and shown on the rent statement. Mr Daniel advised that no rent has been paid since 20 April 2019, accordingly 15 months at £595 per month is outstanding. He sought to amend the application to reflect this sum. The Respondents confirmed that they last paid rent in April 2019 and that the sum of £8925 is unpaid. They maintain, however, that this is not due. The Tribunal allowed the CV application to be amended and the rent statement to be lodged in connection with both applications.
7. The Tribunal proceeded to consider the documents lodged with the applications. These include a copy of the PRT, Notice to Leave and Section 11

Notice to the Local Authority. The Tribunal noted that the Applicant sent the Section 11 Notice to the Local Authority by email on 12 November 2020 and has therefore complied with Section 56 of the 2016 Act. The Notice to leave which has been lodged is accompanied by a Sheriff Officer certificate of service which establishes that it was served by being deposited through the letterbox at the property on 16 October 2019. The Respondents confirmed that they had received same. The validity of the Notice had been raised at the CMD. The Tribunal noted that the date specified in Part 4 of the notice, as the earliest date that an application to the Tribunal can be made, is 19 November. The Respondents were entitled to 28 days notice, in terms of Section 54 of the 2016 Act. The date which ought to have been specified in the Notice is 14 November 2020. Mr Daniel was invited to address the Tribunal on the validity of the Notice. He advised that the Respondents had been given an extra 5 days. This was because the Notice had been sent to the Sheriff Officers for service and there had been some uncertainty as to the date on which the Sheriff Officers would serve it. Additional days had therefore been allowed, so that the notice given was not less than 28 days. Furthermore, the application was not lodged until 21 November 2020, two days after the date specified in the Notice. He invited the Tribunal to determine that the incorrect date could be considered to be a minor error, in terms of Section 73 of the 2016 Act, which did not affect the validity of the Notice. The Legal Member advised parties that the Tribunal is satisfied that the incorrect date could be considered to be a minor error, as the date specified was later, and not earlier, than the date which should have been inserted. As a result, the error did not materially affect the effect of the Notice. The Tribunal concluded that the Notice to leave is valid and that the applicant has complied with section 52(3) of the 2016 Act.

8. The Respondent's advised the Tribunal that they have secured alternative property and have given notice to end the tenancy on 31 July 2020. They have effectively moved out of the property, although have retained the keys. The Tribunal determined that as the tenancy has not yet been terminated, that the hearing in relation to the eviction application should proceed.
9. The Tribunal noted that the dispute between the parties relates to the Respondent's liability for rent for the period May 2019 until July 2020. The Respondents dispute that the Applicant is entitled to an order for payment of the unpaid rent. In addition, they state that the Applicant has not established that eviction ground, as there are no arrears of rent. The Respondents argue that they are entitled to an abatement of rent due to the applicant's failure to fulfil his obligations as landlord in relation to repairs. The Respondents stopped paying rent in May 2020, as a result of this failure. They notified the Applicant but did not set aside the rent or state that it would be paid when the repairs were complete. The Applicant lodged a repairing standard application with the Tribunal in October 2019. Following an inspection and hearing on 24 February 2020, the Tribunal issued a repairing standard enforcement order ("RSEO"). This order has recently been varied to allow additional time for completion of the work until 28 August 2020. In terms of the RSEO the Applicant is required to repair or replace defective windows, to replace the defective gas fire, to carry out repairs to address dampness and water ingress, to repair the cracked render, to repair the gutters, to replace missing kickboards and repair damaged

kitchen units, to repair a damaged socket and to replace the damaged bath seal, bath panel and shower hose. The Applicant concedes that some repairs at the property are outstanding, but maintains that the property is not uninhabitable, and that the Respondents are not entitled to an abatement of rent. The Applicant seeks an eviction order and an order for payment.

### **The Applicant's evidence**

**10.** Mr Daniel and Mr Beese referred the Tribunal the terms of the RSEO which was issued on 7 March 2020, shortly prior to the Government lockdown. They provided the Tribunal with the following information regarding the work specified in the order -

- (i) Windows. Due to the behaviour of the Respondents, the first glazier instructed in relation to the windows declined to take the contract. A further contractor has been identified. Measurements have been taken and it is anticipated that the windows will be replaced on or about 20 August 2020. **In response to questions from the Tribunal they advised that the windows were re-sealed as part of work carried out to the render.**
- (ii) Fire. An electrician has been instructed to install a replacement fire. An appointment was made, but cancelled by the contractor due to work commitments. This has still to be re-arranged.
- (iii) Dampness. A report on dampness at the property was obtained in early March 2020. This recommended that a building contractor be instructed to repair loose render and weather coat the property. A contractor was instructed who carried out work to the render and gutters on 27 March 2020. A ten year guarantee for the work was given. Following completion of the work the Respondents made no complaints until July 2020, when they advised the Applicant that the gutters are still leaking. In response to questions from the Tribunal the Applicant confirmed that a carpenter has been instructed to replace the damaged timber in the property, noted at the Tribunal's inspection and referred to in the damp specialist report. No access had been provided when he attended on 9 July 2020. The Applicant also advised that any ongoing issues with water ingress/dampness are likely to be due to the defective windows and not the quality of the building work which has been carried out. Mr Daniel also referred the Tribunal to the specialist report which indicates that mould at the property is likely to be the result of "seasonal condensation" and that ventilation and heating were required to address this, as well as cleaning the areas affected. He stated that the Applicant believes that it is the Respondents' failure to heat and ventilate the property that has caused mould and this does not require specialist treatment. In response to questions from the Tribunal he confirmed that a new extractor fan was installed in the bathroom, in September 2019.
- (iv) Render. As advised, the damaged render has been repaired.

- (v) Gutters. As advised, the gutters have been coated with the same product as the render.
- (vi) Kitchen. The carpenter who attended at the property on 9 July 2020, but did not get access, had been instructed to attend to the repairs to the kitchen unit and kickboard. This is therefore still outstanding.
- (vii) Bathroom. A plumber had also attended on 9 July 2020 to attend to the bathroom repairs, but also did not get access.

**11.** Mr Daniel advised the Tribunal that access has been an issue in relation to the repairs. Mr Beese went to the property in July 2019, with a glazier, and arranged for repairs to be carried out. However, there have been problems making appointments for contractors, due to the Respondents failure to cooperate. The glazier who attended in March 2020 was verbally abused and refused to carry out the work. The appointment for the carpenter and plumber on 9 July 2020 had been arranged with the Respondents. These contractors did not get access and reported back that they could hear noise from the property, which suggested someone was home. The Applicant does not believe the Respondents subsequent explanation, that Ms Clark had been involved in a car accident and was at the hospital when the contractors had attended. There has been no communication since that date and no further appointments made, until the message from the Respondents that they were moving out on 31 July but intend to retain the keys to see if the remaining repairs are carried out. In response to questions from the Tribunal, the Applicant conceded that the principal reason for repairs not being carried out between March and July 2020, is the COVID 19 lockdown.

**12.** In response to questions from the Tribunal Mr Daniel confirmed that the Respondents notified the Applicant in May 2019 that they had stopped paying rent because of the repairs issues at the property.

### **The Respondents evidence**

**13.** The Respondents advised the Tribunal that the windows have not been repaired or replaced and are in the same condition as at the date of the Tribunal's inspection on 24 February 2020. They were not re-sealed by the building contractor. A window contractor did come to measure up during lockdown. They also confirmed that work to the render and gutters was carried out. This involved walls and gutters being spray painted. The appearance has improved, but the gutters still leak, and the house is still damp. When a bedroom wardrobe was recently moved, the wall behind it was found to be very damp. The paint on the gutters is flaking off and a broken metal bracket has not been fixed. The fire has not been replaced, the socket not fixed, and the kitchen and bathroom repairs are still outstanding. In response to questions, the Respondents confirmed that they did not contact the Applicant following completion of the building work, to advise that the dampness and gutter issues had not resolved. They explained that they thought the contractor ought to have followed up to check that the work had been successful.

14. The Respondents advised the Tribunal that they have always tried to accommodate access to the property. This can be difficult, as they both work. However, access has been provided for inspection and repairs, including the dampness survey in February 2020. Ms Clark stated that due to the volume of messages from the Applicant and his contractors she told the Applicant only to contact her before 5pm and not at weekends. On 9 July 2020, she was involved in a car accident on her way home. She contacted her husband. He collected her. They dropped the damaged vehicle at home, before going to the hospital as she had been injured. They did not return to the property until after 7pm and missed the visit by the contractors. She advised that they have a cat, who may have been making noise in the house, giving the impression that someone was at home.
15. The Respondents dispute the allegation that mould at the property is due to lack of ventilation and heat. They advised the Tribunal that they have to heat the property, due to health problems. They also advised that they had asked for a new extractor fan in the bathroom when they moved into the property in July 2018, and this was not provided until September 2019.
16. The Respondents advised the Tribunal that the repairs issues at the property have affected their use of the property and caused a great deal of inconvenience. They stated that they have essentially lived in their bedroom, using the bathroom and kitchen, but not the living room, due to the damp and cold. When they asked the Applicant about the dampness, shortly after moving in, they were told that they would have to wait as they were third on the list for repair work. They advised the Tribunal that clothes kept in a wardrobe in the second bedroom often had to be thrown away as they were damaged by damp and sometimes had mould spots. At times, clothes had to be tumble dried before they could be worn, because they felt damp and cold coming out of the wardrobe. Curtains were also discarded for the same reason. In response to questions the Respondents confirmed that they are the only residents at the property. The attic was used by their son, to work in, but he lives elsewhere.

### **The Applicant's submissions**

17. Mr Daniel advised the Tribunal that there was no evidence to support the claim that the Respondents lived in their bedroom and could not use the living room at the property. He also advised that when he was at the property, for the Tribunal inspection in February 2020, it appeared that there were a number of people living there, and the attic appeared to be used as a bedroom. He advised that the Respondents had accepted the property in the condition it was in when the tenancy started. They paid the deposit and the monthly rent from the start date until April 2019, although it was often late. They did not complain about dampness until October 2018. In May 2019, they stopped paying rent and advised it was because of repairs issues. The Applicant has made significant efforts to address these repairs. Work was carried out to both the windows and the render, although neither appears to have been successful. The Respondent did not submit a repairing standard application until the Notice to Leave was served on them. It is disputed that the property is uninhabitable. Mr

Beese advised the Tribunal that he is regretful about the situation with the property that he has tried to get things repaired. In response to questions from the Tribunal, Mr Daniel said that the Applicant conceded that some abatement of rent might be appropriate. Having discussed matters, the Applicant believes that an abatement of three months rent out of the fifteen months which are unpaid would be appropriate, the equivalent of 20 per cent.

### **The Respondents submissions**

18. The Respondents stated that they believe that they are entitled to a full abatement of rent for the relevant period as the property has not been wind and watertight. Some repairs have been outstanding since the beginning of the tenancy. The property has not been habitable. Initially they were told that they would have to wait for repairs to be carried out, as the Applicant was working on other properties. They were also told that a new kitchen would be installed, but this did not materialise.

### **Findings in Fact**

19. The Applicant is the owner and landlord of the property.
20. The Respondents are the tenants of the property in terms of a private residential tenancy agreement which started on 20 July 2018.
21. In terms of the tenancy agreement rent is due at the rate of £595 per month.
22. The Respondents have not paid rent since 20 April 2020. The sum of £8925 is unpaid.
23. On 30 May 2019, the Respondent notified the Applicant that they had stopped paying rent because the Applicant had failed to carry out repairs and ensure that the property is wind and watertight.
24. On 7 March 2020, an RSEO was issued by the Tribunal which requires the Applicant to carry out certain repairs at the property. The Applicant has until 28 August 2020 to complete the repairs.
25. On 27 March 2020 contractors instructed by the Applicant carried out work to the render and gutters of the property.
26. The Applicant has instructed replacement windows which are due to be installed in August 2020.
27. The defective fire at the property has not been replaced.
28. The damaged kitchen units have not been repaired and missing kickboards have not been replaced.

29. The defective electrical socket at the property has not been repaired or replaced
30. The bath seal, shower hose and bath panel have not been repaired or replaced
31. On 16 October 2019, a Notice to leave was served on the Respondents

## **Reasons for decision**

32. Section 51(1) of the 2016 Act states, “ The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 12 states “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (2) The First-tier Tribunal must find that the ground named in sub- paragraph (1) applies if – (a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant – (i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and (ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more continuous months, and (b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.”
33. In order to determine whether the Applicant has established the eviction ground, namely three or more consecutive months of rent arrears, the Tribunal requires to first determine whether rent is due for the relevant period, and if so, how much rent. The Respondents have confirmed that the only reason for non-payment of rent is the failure by the Applicant to carry out repairs. The Applicant concedes that the Respondents are entitled to an abatement of rent in relation to this failure and invites the Tribunal to conclude that this abatement should be restricted to 20 per cent of the unpaid rent.
34. The Tribunal is satisfied that the Applicant has failed to carry out repairs to the property. In particular, the property has been affected by water ingress and dampness. The windows are also not wind and watertight. The Applicant was made aware of these issues by the Respondent before they stopped paying rent, in May 2019. Some repairs were carried out, to the windows and the render, but this work did not resolve the issues at the property. The Tribunal inspected the property in February 2020, in connection with the Respondent's repairing standard application. The Tribunal determined that the property did not meet the repairing standard and issued an RSEO which requires the Applicant to repair or replace the windows, replace the fire, carry out repairs to address the dampness and water ingress, repair cracked render, repair the gutters, replace missing kickboards and repair damaged units in the kitchen, replace a damaged socket and replace the bath seal, shower hose and bath panel. The majority of this work has not been carried out and the property remains in substantially the same condition as at the date of the Tribunal's inspection. On 27 March 2020, some work was carried out to the render and



gutters at the property and the water ingress may have been partially addressed by this work.

35. The Tribunal is satisfied that the failure by the Applicant to carry out repairs between March and July is partly due to COVID 19. However, no satisfactory explanation has been provided for the period between May 2019 and March 2020. The Tribunal is not persuaded by the Applicant's argument that access has not been provided by the Respondents. Contractors have had access to the property on various occasions, including the 27 February 2020, when a dampness survey was carried out. The Tribunal is satisfied that the Respondents may have refused or failed to provide access on occasion, leading to delay, but this has not prevented repairs being arranged. The only specific example of failure to provide access referred to by the Applicant is on 9 July 2020. However, The Tribunal is not persuaded that one instance of access not being provided, for whatever reason, can explain a failure by the Landlord to fulfil his obligations in relation to the condition of the property. The Tribunal notes that the Applicant acknowledges that complaints about dampness were first made in October 2018 and the defective windows were reported prior to May 2019. The Tribunal also notes that the Landlord has only visited the property on 2 occasions in the last 12 months and has not contacted the Respondents, following work being carried out, to check whether it has been successful.
36. The Tribunal is satisfied that the Applicant is in breach of his obligations to the Respondents and that the Respondents have not had full enjoyment of the property and have experienced inconvenience as a result of its condition. However, the Tribunal is not persuaded that the property (or any part of it) is currently uninhabitable. It did not appear, at the Tribunal's inspection, that the living room could not be used. The Respondents may have chosen not to use it on a regular basis, due to the damp and the lack of a working fire, but the room appeared to be capable of being used. The Tribunal therefore determines that an abatement of rent is appropriate, but that the Respondents are due to pay some rent in relation to the property. The Tribunal concludes that the Respondents are entitled to an abatement of 30 per cent of the contractual rent due from 20 May 2019, until the date of the hearing. Accordingly, the Tribunal determines that the Respondents were due to pay rent at the rate of £416.50 per month and that the total sum due to the Applicant is £6247.50.
37. On the basis that the Tribunal has concluded that the Respondent is liable for 70% of the contractual rent charge from 20 May 2019, being the sum of £416.50 per month, the Tribunal is satisfied that the Respondents have been in arrears of rent since 20 May 2019. The Tribunal is also satisfied that, at the date of the hearing, the Respondents owe the sum of £6247.50 in unpaid rent. The Tribunal therefore determines that the eviction ground has been established and that the Tribunal is required to grant an eviction order.

## **Decision**

38. The Tribunal therefore determines that an eviction order should be granted in favour of the Applicant against the Respondents

## **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.**

30 July 2020

\_\_\_\_\_  
Legal Member/Chair

\_\_\_\_\_  
Date

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