



**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**

**Chamber Ref: FTS/HPC/CV/20/2633**

**Property at 13 Union Street, Troon, KA10 6BS (“the Property”)**

**Parties:**

**Mr Alexander White, 286 Glasgow Road, Waterfoot, Glasgow, G76 0EW (“the Applicant”)**

**Ms Jade O'Brien, 13 Union Street, Troon, KA10 6BS (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the sum of £4544.68 should be granted against the Respondent in favour of the Applicant.**

**Background**

1. By application received on 18 December 2021 the Applicant seeks a payment order in relation to arrears of rent. Documents lodged in support of the application include a copy tenancy agreement and bank transaction records in relation to payments of rent. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 26 January 2021. Both parties were notified that a case management discussion (“CMD”) would take place by telephone case conference on 25 February 2021 at 11.30am and that they were required to participate.
2. Prior to the CMD the Respondent lodged written representations and a bundle of documents which included photographs and copies of emails. The Applicant lodged a rent statement showing a balance due of £3617.68 as at February

2021. He also submitted photographs. On 23 February 2021, the Respondent requested a postponement of the CMD which was refused.

3. The case called for a CMD on 25 February 2021 at 11.30 am. Both parties participated. Following discussion with the parties, the Legal Member determined that the case should be continued to a further CMD. Prior to the CMD the Applicant lodged an updated rent statement showing a balance due of £4544.68. The Respondent lodged two sets of photographs and a brief written submission which states that the photographs show the door being accessed, giving exposure to the Respondent's gas and electrical appliances, her daughter's toys and the door being left open during the night.
4. The second CMD took place by telephone conference call on 15 April 2021 at 10am. Both parties participated.

### **Case Management Discussion**

5. Ms O'Brien advised the Legal Member that she had received a copy of the updated rent statement and accepted that the sum specified of £4544.68 is unpaid. Her position is that the rent is not due, for the reasons outlined in her written submissions. The Legal Member noted (and the Respondent confirmed) the following to be the Respondent's grounds for withholding rent and seeking an abatement of rent; -
  - (i) The Applicant placed the Respondent and her family in danger by allowing a male and two aggressive dogs to live at the commercial unit underneath her property. This was illegal as the property is not residential.
  - (ii) The occupant of the unit used the shared main door to the street late at night, causing noise and disturbance, and left it open.
  - (iii) The occupant's dogs were aggressive to the Respondent's dog.
  - (iv) The Respondent's daughter is scarred of dogs due to a bad experience as a younger child when she was bitten and required medical treatment.
  - (v) The occupant of the unit had numerous visitors and parcels delivered.
  - (vi) The occupant regularly used the Respondent's bin to dispose of rubbish.
  - (vii) The back yard at the commercial unit was covered in dog's faeces which the occupant failed to pick up, causing a bad smell and flies.
  - (viii) The occupant smoked on the premises although there were no smoke alarms and the Respondent's alarms are faulty.

- (ix) The Applicant attempted to access the property in connection with the smoke alarms and for other purposes, in breach of COVID 19 regulations.
  - (x) The occupant of the unit was aggressive to the Respondent's partner.
  - (xi) The Respondent made complaints to various agencies regarding the Applicant and the commercial unit including the police, local authority, and Fire Service. She has received no response to these complaints from any of the agencies and no formal action has been taken.
  - (xii) The unit occupant moved out in December 2020. A new commercial tenant moved in and the Respondent has no complaints or concerns regarding this tenant.
  - (xiii) The smoke alarms at the property remain defective.
6. At the previous CMD, in response to questions from the Legal Member, the Respondent said that there were repairs issues at the property. In addition to the defective smoke alarms, the bathroom taps needed to be replaced and there was a leak at the bathroom ceiling. However, she advised that her principal reason for withholding rent had been the effect of the Applicant's conduct toward her and her family, particularly in relation to the occupation of the commercial unit.
7. The Legal Member noted that the following facts are agreed by the parties: -
- (i) The commercial unit was occupied between September and December 2020.
  - (ii) The occupant vacated the unit in December 2020. A new commercial tenant has occupied the unit since that time.
  - (iii) The Respondent has no issues with the new tenant of the unit and has made no complaints regarding him.
  - (iv) The tenancy agreement lodged by the Applicant with the application is a copy of the tenancy agreement signed by the Respondent.
  - (v) The Respondent made complaints to the police, the fire service, and the local authority about the former occupant of the commercial unit and his use of the property, including a concern that he was living there.
  - (vi) The property shares a street access with the commercial unit. On entering through the street door there is a second door which leads to the yard and the commercial unit office. From the street door, there is also a staircase which leads to the door of the property. The Respondent was aware of the existence of the commercial unit and yard when she became the tenant of the property.

- (vii) The Respondent refused to allow the Applicant to access the property in connection with the smoke alarms. She is currently not prepared to allow access to the Applicant.
8. Mr White advised the Legal Member that the occupant of the commercial unit between September and December 2020 had operated a business from the premises. He built and sold computers. He did not reside there. He had accommodation in Troon. However, he did work long hours and was often there in the early hours of the morning. He further advised that a fire plan had been put in place for the unit. There are smoke detectors in place and the lock was removed from the street door, as recommended by the fire service. He said that the Respondent had noticed mattresses and concluded that the occupant was living there. This was not the case. These were old mattresses, used by the occupant's dogs. Following complaints by the Respondent, the Applicant engaged with the police, the local authority and fire service. They inspected, were happy with the arrangements and satisfied that the unit was not being used for residential purposes.
9. Mr White advised that he visited the property in July 2020. At that time, he had a good relationship with the Respondent. He attended to deliver a new fridge, at the Respondent's request. No complaint was made about the smoke alarms or any other issues at that time. He previously asked a plumber to fit new taps. He assumed it had been carried out but concedes that he failed to follow up to make sure. He has recently cleared out the gutters at the property, to address any potential issue with dampness on the ceiling. He had planned to visit with an electrician to check the smoke alarms but was told by the Respondent that access would not be provided. He has received no recent complaints regarding any repairs. He cannot understand why Ms O'Brien has continued to withhold her rent and confirmed that he seeks a payment order for £4544.68, the sum currently outstanding.
10. Ms O'Brien advised the Legal Member that the smoke alarms go off at random times and frequently when she is cooking. The taps in the bathroom leak and have not been replaced. The dampness on the bathroom ceiling is possibly worse since the gutters were cleared. She confirmed that she is not prepared to allow Mr White into the property, due to COVID 19 restrictions. She had been willing to allow access to the electrician, but Mr White insisted on attending too. Ms O'Brien also said that the occupant of the unit had been living there on a full time basis and that there have been no visits or inspections by the local authority or fire service. She has had no response to her complaints.
11. The Legal Member noted that the issues with the commercial unit resolved in December 2020, when the previous occupant moved out. The Respondent has no concerns about the current occupant. The Legal Member also noted that the Respondent has failed to pay rent since December 2020. Ms O'Brien stated that she has continued to withhold rent because "the damage is done". She said that the Applicant had intimidated her. She does not want to live there any longer, due to the bad relationship which now exists, but has been unable to obtain suitable alternative accommodation. She said that she has had no response from any of the agencies she made complaints to – police, fire, and

local authority. Mr White is lying when he claims that these agencies have investigated – no one came out to inspect. She made it clear to these agencies that she would withhold rent until her complaints were addressed.

12. In response to further questions, Ms O'Brien indicated that she could not direct the Legal Member to any clauses in the tenancy agreement which relate to the commercial unit or the landlords' obligations to her in relation to same. She said that Mr White had ignored his duties as landlord. She concluded by stating that he was "the devil" and that he would never get another penny in rent from her.

### **Findings in Fact**

13. The Applicant is the owner and landlord of the property.
14. The Respondent is the tenant of the property in terms of a tenancy agreement dated 6 May 2017.
15. The Respondent is due to pay rent at the rate of £450 per month.
16. The Respondent has been in arrears of rent since September 2020.
17. The Respondent owes the sum of £4544.68 in unpaid rent to the Applicant.

### **Reasons for Decision**

18. The Legal Member considered the application, the submissions by both parties and the information provided by the parties at both CMDs.
19. The Respondent does not dispute that she stopped paying rent in September 2020 and that the sum of £4544.68 is unpaid. She denies that this is due to be paid to the Applicant for the reasons outlined in paragraphs 5 above. In addition, she says that there are outstanding repairs at the property in connection with defective taps, smoke alarms and dampness on the bathroom ceiling.
20. The Legal Member notes that the Respondent stopped paying her rent due to the Applicant's conduct in relation to the commercial unit and the impact on her and her family of the behaviour of the former occupant. She has not provided any evidence that the rent has been retained. Furthermore, she does not dispute that the problems with commercial unit resolved in December 2020 or that she has continued to withhold rent since that date. It therefore seems doubtful that the Respondent's actions could be viewed as a genuine "rent strike". In any event, the Respondent's principal argument is that she is entitled to a full abatement of rent from September 2020 onwards. She has made it clear that she does not intend to resume payments of rent at any point in the future. For the various reasons stated, the Respondent claims that the rent is not due.

## **The repairs issues.**

21. In her written and oral submissions, the Respondent made it clear that the main reasons for her failure to pay rent were the problems with the occupant of commercial unit and the Applicants failure to deal with the matter when it was brought to his attention. The only complaint specified in her written submission which related to repairs was the defective smoke alarms. At the first CMD (and in response to questions from the Legal Member) the Respondent raised two additional repairs issues – leaky taps and a leak affecting the bathroom ceiling. She did not provide any further details of these prior to the continued CMD. At the CMD she advised that the tap repair had been outstanding for years and that the ceiling dampness was unresolved. She further advised that the smoke alarms go off at random times, during the night and when she is cooking. No evidence was provided of the defects.
22. It appears to the Legal Member that the Applicant has been aware of the complaints regarding the taps, smoke alarms and leak. He has taken some steps to deal with the alleged leak, although he has not been able to inspect. It is disputed that the gutter clearance has been effective in addressing the leak. The Applicant does not dispute that replacement taps are needed and concedes that he ought to have made sure that these had been fitted. He thought that the smoke alarms were working but has not been given the opportunity to investigate.
23. It would appear from the information provided that the Respondent has not made any recent complaints about repairs (other than at the CMDs) and that she has been unwilling to allow the Applicant any access to the property, for inspection and repair. The Applicant is therefore unable to comment on the condition of the ceiling or the smoke alarms. The Legal Member notes that although COVID restrictions have been in place, essential repairs are an exception to the general rule and the Applicant is legally entitled to access to the property for inspection and repair. In any event, it is clear from the submissions, that repairs are not the reason for the rent being withheld. All the evidence and submissions lodged by the Respondent relate to the dispute over the commercial unit and the impact this matter had on the Respondent and her family. It also appears that the repairs issues have not deprived the Respondent of the full use and enjoyment of the property. The Legal Member is satisfied that the Respondent has not established that she is entitled to an abatement of rent in relation to a failure by the Applicant to fulfil his contractual obligations in relation to repairs.

## **Abatement of rent**

24. The legal basis for a claim for abatement of rent is that the landlord is not entitled to be paid rent for a period during which he has failed to fulfil his contractual obligations to the tenant. Usually, the contractual obligations relate to the carrying out of repairs. The Respondent confirmed that the tenancy agreement submitted by the Applicant is the tenancy contract entered into by the parties. This is a six page document which contains a number of clauses which outline the various obligations of the parties. There are clauses relating

to maintenance and repair, use of the property, alterations, access for inspection and repair, insurance, occupation, and termination of the tenancy. The subjects are described in the pre-amble as 13 Union Street, Troon, and include all fixtures, fittings, furniture, and furnishings. The commercial unit is not mentioned. There are no obligations specified in relation to the shared main door, the commercial unit and yard or the occupation of that unit.

25. The Respondent stopped paying rent in September 2020 when the commercial unit was leased to the former occupant. It does not appear to be in dispute that he was running a business from the unit. Where the parties disagree is in relation to the issue of his residence. Whatever the circumstances, it appears that the Respondent and her family experienced considerable nuisance and annoyance during this period. She complained to the Applicant, as he is the landlord of the unit and therefore responsible for the conduct of his tenant. The Respondent was dissatisfied with the Applicant's failure to address her concerns and made complaints to various agencies. It appears that she did not receive a response to these complaints, which is certainly unsatisfactory. However, it also appears from her statements at the CMD that she holds the Applicant responsible for this lack of response and believes that she is not liable for the rent until she is satisfied that her concerns have been addressed. On the other hand, the Applicant appears to have been told that the police, fire service and local authority had no concerns about the unit or the occupant of same.
26. The Applicant disputes the majority of the complaints made by the Respondent. However, even if the complaints were accepted or established, there are no clauses in the tenancy agreement which prevent the Applicant from letting out the commercial unit to a tenant. Although it may be illegal, there are no clauses in the contract which prevent the Applicant from allowing a tenant to sleep at the unit. There are no clauses which relate to the behaviour of that tenant, although the Respondent may have had grounds to complain to the Respondent (as landlord of the unit) and to the police or local authority, if that behaviour amounted to antisocial behaviour or illegal activity. There are no clauses which prevent the Applicant from leasing the premises to someone with dogs. Again, the behaviour of those dogs might give rise to a complaint to the police, the local authority or to the Applicant (as landlord of the unit), but not to a claim of breach of contract. There are no clauses which require the Applicant to take account of the Respondent's health and wellbeing when making arrangements for the unit. The Legal Member is therefore satisfied that the Applicant's arrangements for the unit, and the impact of these on the Respondent, are not matters which establish a failure by the Applicant to fulfil his contractual obligations to the Respondent and therefore, do not establish grounds for abatement of rent.
27. Even if the problems experienced during September to December 2020 had been grounds for an abatement of rent, the Legal Member notes that from 7 December 2020 onwards, there have been no further problems with the commercial unit. The Respondent has not paid rent for the period December 2020 to April 2021 and has indicated that she intends to continue to withhold rent. Her reasons appear to be – lack of trust in the Applicant, the continued

impact on her mental health of the problems experienced between September and December, and the failure by the various agencies to respond to her complaints. The relationship between the parties has certainly been damaged and the Respondent may be suffering from stress and anxiety. However, these are not grounds for withholding rent or matters which entitle the Respondent to an abatement of rent. Furthermore, the Applicant is not responsible for the failure by the police, fire service and local authority to provide the Respondent with a response to her complaints.

28. The Legal Member is satisfied that the Respondent has failed to establish that she is entitled to an abatement of rent and determines that the Applicant is entitled to an order for payment for the sum of £4544.68.

### **Decision**

29. The Legal Member determines that a payment order should be granted against the Respondent for the sum of £4544.68.

### **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**

---

**Josephine Bonnar, Legal Member**

**15 April 2021**