Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/PR/19/0836

Re: Property at 8 Robslee Crescent, Giffnock, Glasgow, G46 7AP ("the Property")

Parties:

Dr Michelle McAllister, 11 Winton Avenue, Eaglesham, G76 0LE ("the Applicant")

Mr Mordecai Bamberger, 86 Hillside Road, London, N15 6NB ("the Respondent")

Tribunal Members:

George Clark (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application for an Order for Payment should be refused.

Background

By application, received by the Tribunal on 13 March 2019, the Applicant sought an Order for Payment of damages for alleged breach of contract by the Respondent. She was seeking repayment of the rent or half of the rent she had paid in respect of the Property from June 2018 until February 2019, when she had vacated the Property as a result of the alleged failure of the Respondent as Landlord to keep the driveway in a safe state of repair and to repair an uninsulated boiler wire.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 10 November 2017 at a monthly rent of £660, photographs of the driveway and copies of Landlord Gas Safety Records Reports dated 11 January 2018 and 7 January 2019.

In her application, the Applicant contended that the Respondent had failed to safeguard entry at the front and rear of the Property. The driveway and back porch were dangerous, and this had resulted in many falls. This matter, along with the

issue of an uninsulated boiler wire, had originally been reported to the Respondent's letting agents in June 2018. The problem of the uninsulated wire had been highlighted in two successive Gas Safety Records Reports.

The Applicant had left the Property on 10 February 2019. From June 2018 until February 2019, no repairs had been carried out, although the Applicant had made complaints. She had rejuvenated every other part of the Property and had spent a great deal of money in the process.

The Respondent made written representations, received by the Tribunal on 18 June 2019, in which he denied liability. He stated that, following the Applicant's complaint, he had asked his letting agents to check the driveway and it had not been considered to be in any way a danger. When she took on the Property, the Applicant had accepted that it was in good tenantable condition. She had inspected the Property in daylight and would have mentioned the driveway if she had thought, as she now alleged, that it was extremely dangerous. The Respondent could find no mention in the Gas Safety Records Reports of a problem with an uninsulated boiler wire. A different problem had been mentioned in the 2018 Report and had presumably been attended to at the time, as it was not repeated in the 2019 Report. Both Reports had declared everything safe.

A Case Management Discussion was held on 3 July 2019, at which a representative of the Applicant told the Tribunal that the Applicant had been promised before she moved into the Property that the driveway and boiler would be fixed There were always issues with the boiler, but the Applicant's representative confirmed that it worked and there was always heating and hot water. The Applicant had received a rebate of rent totalling £900 over a few months in recognition of work she had done in and around the Property. The Applicant had complained about the driveway before she had taken entry to the Property and refuted the claim by the Respondent that she had accepted the Property as it stood.

As the Parties were not in agreement over the state of the Property at the start of the tenancy or throughout the duration of the lease or whether the driveway was a hazard and as such a breach by the Respondent of his obligations under the lease, the Legal Member at the Case Management Discussion decided that a hearing was necessary, in order to ascertain:

1. Whether there is a breach of contract by the Respondent which has given rise to a loss on the part of the Applicant
2. In particular, is there a breach of Clause 11(d) which states "the landlord will keep the subjects of let including associated buildings lands and gardens in a tenantable and habitable condition".
3. Did the Applicant accept the Property in good tenantable condition and repair at the start of the lease and were the cracks in the driveway present then?
4. What loss(es) has the Applicant suffered if it is found that the Respondent has breached the terms of the contract?
5. Were these caused by the state if the driveway or by any other cause?
6. What fault is there with the boiler and what loss or inconvenience has this caused the Applicant
7. What is the quantification of the Applicant's loss for both alleged breaches?

The Tribunal issued a Direction requiring the Applicant to provide confirmation of the sum she was claiming in Pounds in respect of her claim, confirmation of what heads of loss she was claiming to have suffered as a result of the hazards she alleged had not been attended to by the Respondent and what sums of money each loss

amounted to and how this was made up. The Applicant dd not provide any further documentation to the Tribunal.

The Hearing

A Hearing was held at Glasgow Tribunals Centre on the afternoon of 24 September 2019. The Applicant was not present but participated by means of a telephone conference facility. The Respondent was present.

The Applicant told the Tribunal that she had not provided the requested documentation as she wished to address the Tribunal directly on the question of losses. She felt that by paying a full rent when the Respondent was not fulfilling his obligations under the lease constituted a loss to her. She had expected that the letting agents would come to look at the driveway when she complained about it, but she had had to wait until a routine inspection before the letting agents came to the Property. She had noticed the cracks in the driveway when she first went to see the Property and the person showing her round had told her that the Respondent would deal with filling in the cracks. She accepted that the boiler did not fail the inspections, but the engineer had pointed the uninsulated wire out to her and had said that in the event of a fire at the Property, it would ignite. He had said that he would e-mail the letting agents to let them know.

The Applicant said that she had been a very good tenant. She had been concerned that future tenants might be affected by the problems, so had mentioned them again to the letting agents before she vacated the Property.

The Respondent said that he had asked the letting agents to deal with the driveway issue in July 2018 and they had reported back that it was not dangerous. Had they said it was dangerous, he would have taken care of it. There had been nothing in the Gas Safety Records Reports which appeared to relate to the issue about which the Applicant had complained. He repeated that had he considered there was anything dangerous, he would have attended to it.

Reasons for Decision

The Tribunal considered the terms of Clause 11(d) of the Short Assured Tenancy Agreement. It obliges the landlord to undertake the upkeep and repair of the Property including, *inter alia*, lands and gardens, but the obligation is to maintain them "in a tenantable and habitable condition". The view of the Tribunal was that the Applicant had not made the case for holding that the Property was not in a tenantable and habitable condition as a result of the defects she had highlighted. The Tribunal was satisfied from the photographs provided by the Applicant that the cracks in the driveway represented a tripping hazard but was not satisfied that this resulted in the Property being untenantable or uninhabitable.

The Tribunal was unable to find in the Gas Safety Record Reports any reference to an uninsulated wire and the Gas Safe engineer who issued the Reports had not indicated that the installation was unsafe.

The Applicant might have pointed out the need for repairs to the driveway when she moved into the Property, but in signing the lease she had accepted the Property as "in good tenantable condition and repair" (Clause 6 of the Short Assured Tenancy Agreement).

The Tribunal determined that, even if it had found that the Respondent had been in breach of Clause 11(d) of the Agreement, the Applicant had failed to establish or quantify any resultant loss to her. She would not have been entitled to withhold rent

pending the carrying out of repair work and no head of loss had been established or quantified.
The Tribunal sympathised with the Applicant, who had stated that she was acting on principle to ensure that future tenants were not endangered, but the proper remedy open to the Applicant during the time she occupied the Property would have been to apply to the Tribunal for an Order under Section 24 of the Housing (Scotland) Act 2006 that the Property failed to meet the repairing standard.
Having considered all the written and oral evidence before it, the Tribunal was not prepared to make an Order for Payment against the Respondent.

Decision
The Tribunal determined that the application for an Order for Payment should be refused.

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.

George Clark
Legal Member/Chair

24 September 2019
Date