



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

**Chamber Ref: FTS/HPC/EV/20/0586**

**Re: Property at 17 Calderview, Motherwell, ML1 1EQ (“the Property”)**

**Parties:**

**Miss Laila Shah, 15 Grenadier Gardens, Motherwell, ML1 2SF (“the Applicant”)**

**Miss Sarah Dingwall, 17 Calderview, Motherwell, ML1 1EQ (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession against the Respondent.**

**1. Background**

1. This was a Hearing to consider the application made by the Applicant Ms Shah for an order for eviction of the Respondent from the Property.
2. The Application had been lodged on 19<sup>th</sup> February 2020 but due to the Covid 19 pandemic a case management discussion (CMD) took place on 30<sup>th</sup> July 2020 at 2pm by teleconference.
3. Prior to that CMD the Tribunal had sent a Direction to the Applicant asking for an up to date rent statement and clarification of the grounds the eviction was based on as the application referred to grounds 8 and 10 which was a reference to the Housing (Scotland) Act 1988, whereas the tenancy in this application is a private rented tenancy governed by the Private Housing (Tenancies) Scotland Act 1988.

4. On 29 July 2020 the Applicant's representative had sent an updated rent statement. The new rent statement showed arrears of rent amounting to £7335.
5. The papers lodged with the application were:-
  - a. A copy of the tenancy agreement dated
  - b. A copy of the notice to leave dated 9<sup>th</sup> January 2020
  - c. A copy of the e-mail to the Respondent enclosing the notice to leave dated 9<sup>th</sup> January 2020
  - d. A copy of the s11 certificate to the local authority
  - e. A copy of the e-mail "read" receipt from the local authority dated 9<sup>th</sup> January 2020.
6. Prior to the CMD the respondent provided a written response dated 12<sup>th</sup> July 2020 advising that In November (presumably 2018) she had a power cut and when she phoned the agent she was told the agent had to contact the landlord for a repair and after fixing it herself she advised the agent promised to send an engineer to see if there were any issues but she never did. The written response goes on to record the following specific issues:-
  - a. Rats in the garden in November 2018 due to a shed and trees coming down next door. No response to that for months with the tenant claiming she phoned environmental health herself and then the landlord finally sending them twice.
  - b. Needing new bins because the rats ate a hole in them and stating the landlord was refusing to pay. No more treatments provided even though the tenant claims to have continually complained about rats in the next doors property the gardens the home and kitchen and in the area.
  - c. Faulty fire alarm beeping which she is still waiting for.
  - d. One working radiator in the property and the Respondent confirmed that "when I had to ask for an electrician to come out due to a faulty switch which caught fire he (the electrician) said the property was unliveable and a disgrace and told me he would provide a report." No working fire alarms, illegal electric box and no electrical installation report since 2011.
  - e. I have 3 children in one room due to heating and space. My health visitor wrote to the landlord stating problems in the property months ago but nothing has been done. I am currently staying in the property with no hot water supply and paying huge electric bills due to using the kettle a lot and only source of hot water is the shower with no heating had to buy electric heaters and fans to keep the house warm.
7. At the CMD the Applicant, her Representative, Mr Hemmings, and the Respondent were all in attendance.
8. The Applicant's representative had recently changed due to the previous representative, Puffin Properties, going into administration.
9. The legal member then went on to clarify with the Applicant that the grounds she was seeking were eviction based on over 3 months' rent arrears which is the ground stated in the Notice to Leave and she confirmed it was. This was noted and noted that this is Ground 12 in the 2016 Act and that the application should be altered accordingly.

10. The following facts were also agreed.

### **Facts Agreed at the CMD**

- a. It was agreed that the Respondent is the tenant in the Property and the Respondent indicated she signed and took entry on 10<sup>th</sup> October 2018.
- b. The Respondent agreed the rent due in terms of the lease is £475 per calendar month.
- c. The Respondent agreed she has not paid all the rent due but disagreed with the sum shown as outstanding on the rent statement saying she paid sums in June 2019 and again in February, March and April 2020 when Universal credit was paid again directly to the Landlord. The Applicant admitted that she believed 2 payments were made directly to Puffin Properties perhaps in February and April that have not been disclosed in their rent statement.
- d. Both parties agreed that the Respondent is still in the Property and was currently not paying any rent.

### **The following issues were discussed and it was determined that a full hearing would be required to determine the following:-**

1. The amount of rent outstanding needs to be clarified by both Parties.
2. The Respondent is claiming that she has withheld rent due to the lack of repairs to the Property which she has requested and that rent is therefore not lawfully due. She is alleging in particular:-
  - a. That the Property was infested with rats from around November 2018 that she requested this be dealt with but that she had to phone Environmental Health herself and she still sees them in the garden although they are no longer coming into the house.
    - i. The Applicant's response to this is that her agent did contact Environmental Health who did attend the Property that bait was left out but wasn't taken by rats. She also advised that her agent had tried several times to go out to inspect the Property but could not get in. Specifically they tried on 30/7/2020, 4/9/2020, 8/1/2020 and 14/1/2020.
  - b. That the Applicant did not supply a bin fit for purpose as the rats had eaten a hole in it and she advised the agent Puffin Properties told her to phone the council herself and expected her to pay for the replacement bin.
    - i. The Applicant alleges that her agent told that tenant to contact the council to arrange for another bin but that the cost would be met by the Applicant. The Applicant also believes the tenant has procured another bin herself.
  - c. The Respondent alleges she does not have a working boiler, that she has no hot water and only one working radiator since around May 2019. She advised that a plumber came to the house but as he was peering in the window and she didn't feel comfortable she did not let him in initially. A plumber came out again and she did let him in, he looked at the boiler, got the water working for two days but it stopped again and is still not working. Re a leak in the bathroom the Respondent advises she fixed this by putting more sealant around the

bath but left it to the plumber to decide if he should check it or not and he chose not to. The Respondent advised she uses kettles to for hot water to wash with and as a result has a large electric bill.

- i. The Applicant advised that there was a complaint about a leak from the bathroom upstairs. That the Respondent did not allow the plumber in at first around 18<sup>th</sup> December 2019, and she was sent a bill for attending with no access. The Applicant then gave the tenant a number to call and arrange access with the plumber directly. Access was given around 7<sup>th</sup> January 2020 and he fixed the heating but wasn't allowed to look at the leak because the tenant said she had fixed it.
- d. The Respondent finally alleges that there is no current electrical report. She has continually asked for working fire alarms and there are none. She admits the Applicants agent sent an electrician out to the Property but she refused him access because he felt she was a friend of the Applicant and could not be trusted. She advised that a socket went on fire one night and as a result she called an electrician in or around December 2019 and he went through the whole property and told her of various issues including that a plug was unsafe; that the electric box was unsafe; that the 5 year electrical safety certificate was out of date. The Respondent advised that she contacted the agent to ask for further repairs but the agent refused to contact her again saying she was going to ignore the Respondent's e-mails.
  - i. The Applicant confirms that she is aware the electrical report is out of date but claims she let her agent handle these matters and the agent only reported that the report needed renewed by the end of 2019 and that the failure to have it inspected is the Tenants for refusing to allow the electrician that was arranged access to the Property on or around 19<sup>th</sup> December 2019. The Applicant confirmed this is stressing her out and she wants the report done and gave the Tenant number to phone. The Applicant also confirmed the electrician was to have wired the smoke alarms in the property which she said were put in by the fire brigade and are not wired in.

e. the Tribunal requested and issued a direction to the Parties to lodge the following within 4 weeks of the date of the CMD:-

3. The Applicant needs to lodge a revised rent statement showing the rent due, rent paid and balance outstanding for each month of the lease to date.
4. The Applicant should lodge all correspondence, e-mails and reports she is seeking to rely on to show what complaints were made and how they were responded to by herself or her agents relating to all of the issues mentioned above.
5. The Applicant should lodge any reports from Environmental Health or her plumber and electrician including any reports of attempts to attend the Property and why they could not attend and any reports relating to any work actually carried out.
6. The Applicant should lodge any reports of attempts to inspect the Property by the Agent or herself and why they did not take place.

7. The Applicant should lodge the last electrical condition report.
8. The Applicant should lodge a short summary of why she believes the rent is lawfully due.
9. The Respondent should lodge any evidence of the payment she has made or have been made on her part for the rent including what month they are payments for.
10. The Respondent should lodge copies of all e-mails she is seeking to rely on complaining about the condition of the Property or requesting repairs to be carried out to the Property and any response from the Agent or Landlord throughout the period of the lease.
11. The Respondent should lodge any reports she has from any other party such as a letter from her health visitor, electrician or other party who has visited the Property supporting her position.
12. The Respondent should lodge any e-mail or response from the Letting agent refusing to speak or deal with herself as the tenant.
13. The Respondent should lodge a short summary of why she believes the repairs she alleges are outstanding mean she is not due to pay the rent that was agreed. She should also confirm how much she is holding in a separate account as withheld rent.
14. It was noted that that at the end of the CMD both parties agreed an electrical inspection should be carried out as soon as possible by a qualified contractor. Both parties agreed they would try and arrange this and the report from that inspection should be submitted to the Tribunal.
15. The legal member also advised both parties that they may wish to seek legal advice and this could be obtained from a solicitor or a charitable organisation such as Shelter or Citizen's Advice.

### **The Hearing**

16. The hearing was originally scheduled for 29<sup>th</sup> September 2020 at 10am, however the Applicant obtained a new representative Mr Buttery of Freelands solicitors and he wrote to the Tribunal on 1<sup>st</sup> September 2020 indicating that the Respondent had not responded to the Direction asking her to lodge various pieces of evidence as described above and also advising that he would be on holiday on 29<sup>th</sup> September 2020 and that for those reasons he was requesting a discharge of the hearing to allow a further CMD to be fixed where he hoped to narrow the scope of any evidence the applicant may require to lead as the Respondent had not given notice of her case.
17. The Tribunal agreed to grant the postponement because it agreed it was in the interest of justice to allow the Applicant to have her representative there however it did not see any reason to discharge the Hearing and replace it with a CMD as the issues stated by the Respondent seemed quite clear. The fact she had not responded in full to the Direction would be a matter for the hearing itself.
18. Both parties have lodged documents they wish to rely on at the hearing. The Applicants lodged a List of Productions amounting to 62 productions including

e-mails between the parties and Puffin Properties and the Respondent, invoices from the plumber and the original electrical certificate and other invoices for work done at the property. They then lodged a second list of productions namely productions 63 and 64 showing a revised sum due of £6385. These productions were sent to the Tribunal on 24<sup>th</sup> August and 31<sup>st</sup> August 2020 respectively. The Applicant has since then lodged a third list of productions on 23<sup>rd</sup> October 2020 and numbered 65-81 consisting of e-mails regarding universal credit payments between the Applicant and Puffin Properties and then other evidence including e-mails between the new letting agent Hemming Properties and the Respondent and Applicant regarding access for an electrician, a new electrical condition report and invoice for electrical work done at the Property.

19. The Respondent has lodged a series of e-mails dated 17<sup>th</sup> August 2020 which narrates her position that she had no hot water or heating in the property since November/December 2018; problems with rats and that she stopped paying rent in June 2019 due to continuous complaints to the agent Sharon regarding repairs, no electrical certificate and a socket going on fire in the night which she had repaired. The Respondent denies she has prevented electricians or plumbers attending and claimed she felt intimidated by the landlord sitting outside of the property. She also advised the trees on the Property were not being maintained by the Applicant and stated she has no hot water or heating. She summarises her position by saying she has not been provided with satisfactory accommodation to live in with her children and does not need to pay the outstanding rent. The Respondent then wrote again on 30<sup>th</sup> August 2020 enclosing copies of a pictures of a socket with a black hole on it and plug with blackened edged and copies of texts with the letting agent about defects with the electrics which the agent responds to by saying that the Respondent has not allowed access to their plumber or electrician and that the Respondent has the numbers to call and should call them the Applicant will pay for everything.
20. The Respondent submitted another e-mail on 31<sup>st</sup> August 2020 with a summary of her contact with the new letting agent, mentioning that she had contacted Safe deposit for the return of the deposit and that she has been looking at other properties but is very busy with 3 children and a part time job and is stressed. She denied refusing tradesmen access claiming "why would I want a rat infested freezing house and why did the landlord not come to the Property or send someone out". She also alleged Sharon's (the previous letting agent) number kept ringing out.
21. The Respondent provided further written representations on 23<sup>rd</sup> October confirming that the garden was still a mess, the neighbours were cutting branches down and the hot water not sorted. A final representation was submitted by the Respondent in the early hours of 26 October 2020 with which she attached a screenshot of an exchange of text messages between herself and the new letting agent.

On the morning of the hearing the Respondent did not call in to the Teleconference by 10.10. The Applicant and her Representative, Mr Buttery, had both entered the conference call by 10.00. The clerk advised the members of the Tribunal that the Respondent had e-mailed that morning at 8.55 to advise she had lost the contact details and could they be sent again.

The clerk had e-mailed the dial in details at 9.32. The members agreed in view of the Respondent wishing to attend that the clerk should try phoning her number. The clerk tried 4 times and latterly it was switched off. The Members then attended on the teleconference call and having heard nothing from the Respondent indicating she had been delayed or requesting a postponement, and being satisfied she had full notice of the Hearing, the Convenor proceeded to make introductions and explain how the evidence would be taken. The Convener emphasised that the Tribunal is a proactive one and would be looking to hear from the Applicant on the points the Respondent had raised in her written submissions.

22. The Tribunal then invited Mr Buttery to provide his submissions in respect of the principal ground of the application that there is rent outstanding. Mr Buttery referred to the revised rent statements lodged in the second list of productions and confirmed that this is now an accurate statement with Ms Shah confirming that when she checked she did receive 2 payments from universal credit towards the rent in January and April 2020. The total outstanding is now showing as £6385 as at July 2020, although Mr Buttery advised this would now be higher and Ms Shah confirmed no further monies have been paid. She referred to the copy bank statements lodged in her list of productions and said apart from that she has received no rent from the Respondent since April 2019. She also advised that although she thought she was going to be paid directly from universal credit after January 2020 it appears the respondent changed her details again which meant the rent payment stopped going to the landlord and returned to the tenant. Ms Shah referred to productions to show she had discussed this with her letting agent.
23. Mr Buttery then confirmed that the landlord is asking for an order for eviction on the basis of Ground 12 of the 2016 Act namely that the tenant was in 3 months arrears at the date of the Notice to Leave and is still well over 3 months arrears at today's date so he submitted the rent is due and owing and the grounds are met.
24. Given the Respondent's written representations the Tribunal confirmed that the principal matter in dispute which they wished to hear evidence from Miss Shah was the matter of whether the rent is lawfully due or whether Ms Dingwall was entitled to withhold rent in respect of the repairs that she claimed had not been attended to.
25. Mr Buttery then led his client through each of the remaining items in the first set of productions starting with 1/5.
26. Productions 1/5 to 1/12 are a series of e-mails between the Respondent and the letting agent Sharon Cuthbert of Puffin Properties from December 2018 to September 2019 which relate to reasons why the Respondent had not paid the full amount of rent. The first e-mail dated December 2018 talks about the tenant's wages being down and saying she will pay the shortage asap. The agent follows this up on 15<sup>th</sup> January 2019 and asks when the balance will be transferred. The Respondent advises she has been off sick and universal credit is starting so will pay the £100 owed and again apologises. On 17<sup>th</sup> May 2019 the Respondent again advises there is a problem with her wages and universal credit but says it should be fixed at the end of the month and apologises again. On 3<sup>rd</sup> June 2019 the Applicant e-mails the agent to ask if it is sorted and also asking if an inspection is needed so that "I know everything is being kept in good repair." On 11<sup>th</sup> June 2019 the Respondent advises

Sharon Cuthbert she has lost her job and has to claim benefits it should be 3 weeks and she will get backdated money. The Respondent again apologises and says she doesn't want to be handed her notice. On 8<sup>th</sup> July 2019 the Respondent advises she has heard nothing further from housing benefit but will pay backdated money into the account as soon as possible and thinks the best option is to "hand me my notice as I am pregnant and can't afford the property anymore and will be unable to stay here after November". On 30<sup>th</sup> July 2019 the agent asks if the Respondent is around to allow her to pop in. The Respondent replies saying "sorry but no". She again promises to make payments of any benefits. Item no 1/12/1 and 2 are e-mails between the agent and the Respondent about the eviction action that has been raised and the notice period to be given.

27. Ms Shah in her evidence about these e-mails confirms these are the only ones she has from this time. She confirmed that at no point during the period from the start of the tenancy to December 2019 did the Respondent raise any issue about the lack of hot water or heating. Ms Shah advised that she said Sarah had lost her job, had to claim benefits and she has said she would get back to us when the benefits were backdated. When there was no news about the money she then asked to be evicted. Ms Shah confirmed a notice to leave was issued but there was an error in the dates on it and it could not be pursued. The Applicant confirmed at no point in this correspondence about jobs and rent was there any mention of the need for repairs. She then advised that her agent contacted universal credit to see about getting it paid to the Applicant and this finally happened in January 2020. She confirmed she received one payment but then was advised that due to the Respondent's circumstances changing again the benefit was sent once more to the Respondent. The Applicant received one more payment of benefit directly in April 2020 but again was advised by the letting agent that the Respondent's circumstances had changed and the benefit was once more going directly to the Respondent.

28. This issues with the Property:-

a. The Boiler

i. The Applicant was then asked about the issue with the boiler needing repaired. She advised the first she or the letting agent heard about any issue was in an e-mail from the Respondent's health visitor to Puffin Properties on 12<sup>th</sup> December 2019 saying hat the Respondent had outlined very concerning issues with their tenancy at 17 Calderview Motherwell which she states the landlord is not addressing. I am looking for your assistance as letting agent to assist with the following in prompt fashion -

Repeated and ongoing infestations of rats apparently poison has been laid previously with limited success rats gain entry via the loft and also the family have blocked the patio doors outside with old pieces of furniture as this was one route of access, for rats into the house my concern is this blocking an important fire exit for the family.

Faulty electric boiler has only 2 working radiators and only source of hot water is via shower.

Water leak in electric cupboard



and needs new bins

- ii. Ms Shah confirmed that the letting agent arranged for an engineer to attend the property on 16<sup>th</sup> December 2019 in response to the concerns and the Respondent refused him access. The Applicant spoke to the e-mails lodged and numbered 1/23 where the letting agent responded immediately to the Health Visitor explaining that the council had been contacted about the rats, that Sarah had been asked to get rid of the couch as it was a place where the rats could nest and that she had refused the letting agent access. Ms Cuthbert also states in her e-mail response e that "if Sarah does not report these things we cannot deal with them and had we access for inspections also these things could be dealt with". Ms Shah then confirmed that the plumber was refused access. She referred to e-mails numbered 1/27 and 1/28 and 1/29, which confirm that the plumber was refused access. Ms Shah spoke to confirm that she sent an e-mail dated 17<sup>th</sup> December 2019 to the letting agent Sharon Cuthbert which states that "I got a call from a plumber saying that a man answered the door and said she was out and he was looking after the kids and wouldn't give access. He said he had Christmas presents in the cupboard. The Applicant advised it had been hard to get a plumber at that time of year and the Respondent had said she would be in all day and then revised her position to after 3pm as she had things to do in the morning. A further e-mail from the letting agent to the Respondent on 17<sup>th</sup> December 2019 asks why the tenant wasn't in when he arrived after 3 as she requested, and the letting agent had asked the Respondent for a telephone number for the engineer to call her and did not receive one. The applicant then said she received an invoice from Scot-heat Heating and Plumbing Ltd which the Applicant advised is for a call out charge of £48. The Applicant then advised that a plumber and electrician were organised to attend at the beginning of January 2020 and that the letting agent was also going to do an inspection of the property. She referred to and spoke to e-mails lodged in productions 1/13 and 1/14 between the Respondent and the letting agent. The Applicant referred to an e-mail from the tenant on 8<sup>th</sup> January 2020 where in response to a request to arrange for an electrician and plumber to attend the Property the Respondent advised she would like "to reschedule as she would not be in until late and wanted a bit more notice as she has 3 children and a busy life." The tenant also asks if the tradesmen work after 6. On 9<sup>th</sup> January 2020 the Respondent has sent an e-mail saying she is not agreeing to an inspection of the Property, on the ground the letting agent hasn't done one before this point. She also accuses the landlord of being near the property without permission and states "I am not having a stranger who I am not on good terms with look about the property I am staying in ...I will arrange a time and date for the electrician and plumber to attend here". The letting agent had

arranged a visit for 14<sup>th</sup> January 2020 but the Respondent refused access and the landlord then gave the letting agent permission for her to send the tenant numbers to call and arrange the plumber and electrician herself at times and dates that suited her. The Applicant advised that the Respondent had required to get additional keys cut for the patio door and she had called the tradesman herself and arranged it with the landlord paying the bill. As this had worked well the Applicant thought it might be easier and quicker if the Respondent called the plumber and electrician herself. She gave instructions to her letting agent on 18<sup>th</sup> January 2020 to just give the Respondent the numbers of the electrician and plumber as “really need repairs and electrical safety done in the house tell Sarah I need this done as the water leak is very serious and I need it dealt with. Tell her they can invoice us again or tell I need definite dates as it is not easy to arrange access.” The Applicant confirmed that that the plumber finally got access on 27<sup>th</sup> January 2020 and refers to an e-mail from the plumber in which he states that he was only allowed to look at the boiler, which was located in a cupboard in the entrance hall, and not the bathroom upstairs where the Applicant was concerned about a leak into the boiler cupboard and the seals round the shower or bath. Further e-mails between the Respondent and the letting agent confirm the tenant was encouraged to phone the plumber and electrician if she needed them. The Applicant then refers to an email showing that the Respondent appears to accept the boiler is working now but stops again on 3<sup>rd</sup> February 2020. The Applicant advised that her letting agent responds immediately the same day confirming that the Respondent should give the engineer another call and advise that she has hot water. Ms Shah went on to confirm that throughout February 2020 the letting agent tried to confirm with the Respondent that the electrician has been called and allowed to attend to check the heaters, check all electrical items and prepare an electrical certificate. The Applicant again refers to another e-mail from Lite-Up Electrical dated 8<sup>th</sup> February 2020 stating “Hi Laila, mob got cancelled yesterday as the tenant forgot I was coming. I’ll need to arrange for another date.” The Applicant does accept the Respondent phoned her own electrician one night due to a plug going on fire but stated that this would not have happened if she had let the tradesmen that were organised in. She again confirmed that the Respondent had been given the numbers of the tradesmen to call that she as landlord would pay for any repairs and stressed that this was making her very stressed as she would always want to look after the Property and ensure everything was working properly. On 18<sup>th</sup> February 2020 the electrician from LiteUp Electrical advises he has an appointment to go tomorrow 19<sup>th</sup> February 2020 to the Property, however on 19<sup>th</sup> February 2020 the Respondent cancels and sends an e-mail to the letting agent saying “ I had to get an emergency

electrician out which has still not been paid. Have you seen the e-mails I've sent you I wasn't letting another electrician in to not be paid?" The letting agent responds advising no one has been demanding money from the Respondent.

- iii. Ms Shah when asked confirmed that there were no complaints received from the tenant regarding the heating or hot water until July 2020 when the tenant responded to this application.
  - iv. Ms Shah also confirmed that she had found a trusted trader site and he was not a friend but a qualified tradesman who came recommended and she found to be trustworthy.
- b. The Rats
- c. Ms Shah advised that this was raised in September 2019 and the letting agent arranged for environmental health to go out on 19<sup>th</sup> September 2019 and the letting agent then followed this on 1<sup>st</sup> October 2019 to ask the Respondent how the issue of the rats was. The Respondent replied and advised that Environmental Health came out and left poison but it never took and she claimed it did not work and she was still being troubled by rats in the garden and gnawing through the bin.
  - d. Ms Shah then advised that Environmental health came out again and although they don't normally prepare a report she asked for one and received a letter from Paul Black a senior environmental health officer who confirmed that pest control attended on 19<sup>th</sup> September 2019 and said that at the visit there was very little evidence of rat activity but bait was left in place and when there was a revisit there was no take on the bait so it was removed. A further visit was made on 4<sup>th</sup> November 2019 after a call on 31<sup>st</sup> October 2019 and this time droppings were found but the Respondent advised that the resident of 15 Calderview is treating the property so no further bait was put down. Further contact was received from the health visitor in March 2020 asking if a shed could be removed as she mentioned the rats were there. The Applicant advised she responded to this request and advised the health visitor of the issue with access the Respondent had posed for repairs, mentioning the rent arrears and advising the report from environmental health said the bait had not been taken and it was important that the Respondent used her agent to make complaints or ask for repairs. The Applicant refused the request to remove the hut advising she did not see that this was the problem.
  - e. The garden – the Respondent has raised this issue in her more recent submissions complaining that the garden is overgrown and needs attention, complaining it is a complete mess and needs attention and has sent photographs of trees outside the Property. Mr Buttery asked the applicant to confirm that in fact the garden is the responsibility of the Respondent as tenant and she confirmed that indeed it is although Ms Shah did say if she felt it was needed she would arrange for trees to be pruned.
  - f. Finally the Applicant spoke to the third set of productions which consist of a number of e-mails between the new letting agent Hemming Homes

and the Respondent. In particular Ms Shah advised that Mr Craig Hemmings wrote initially to the Respondent immediately after the Case Management Discussion to ask for available dates to allow him to do an inspection, and see what needs rectified, mentioning that it is mainly hot water and safe electrics that are his concern. Mr Hemmings had to send a reminder for dates on 14<sup>th</sup> August 2020 as the Respondent had not replied. Mr Hemmings obtained access on 25<sup>th</sup> August 2020 and the Applicant confirmed that she again instructed her electrician to do whatever was required and she would pay for it. However the Applicant then advised the Respondent did not want Lite-Up Electrical and Mr Hemmings advised he would instruct one of his electricians. Ms Shah then confirmed that the electrician did finally get access and completed the overdue electrical certificate, checked and replaced two heaters and noting that the electrician wasn't going to finish other works until 10<sup>th</sup> October 2020 as that's the earliest the tenant will give access.

- g. The Applicant then confirmed that the final productions are of the new electrical certificate and of e-mails confirming a blue and green bin have been ordered.

### **Findings in Fact**

1. The parties entered into a lease of the Property which commenced on 29<sup>th</sup> September 2018.
2. The Rent due in terms of the lease is £475 per calendar month payable in advance
3. The tenant is still living in the Property
4. The Applicant produced a statement of rent showing that since May 2019 rent has been continually in arrears.
5. There were over 3 months' rent outstanding at the date of service of the Notice to Leave.
6. As at the date of the Application there was £4010 of rent outstanding.
7. The rent outstanding today is over £6385, which is over 3 months' rent.
8. The rent is lawfully due.
9. The repairs to the boiler and heating that the tenant complained of were responded to timeously by the Applicant and were either fixed or the tenant refuse to allow tradesman access to the property
10. The complaint of rats in the garden was responded to by the Applicant who sent Environmental health to deal with it on two occasions. The Respondent refused to allow Environmental health to carry out any further treatment as a neighbour was dealing with it.
11. The bin had a hole in it and has not been replaced until recently although the tenant was advised to order one and the landlord would pay.
12. The trees in the front garden have not been cut but the responsibility to keep the garden is the tenant's in respect of the lease.
13. The arrears of rent first accrued in May to December 2019 before any request was received to attend to a lack of heating or hot water in the Property.
14. The Respondent has a part time job and universal credit was paid but stopped to the Applicant after one payment in January and one in April.

There has been no payment of any money towards the arrears or further rent due by the tenant herself. The arrears are not wholly or partly due to a delay or failure in payment of a relevant benefit.

15. A notice to leave was served on the Respondent on 9<sup>th</sup> January 2020 by e-mail confirming that no proceedings would be raised before 10<sup>th</sup> February 2020.
16. These proceedings were raised on 19 February 2020 and the application included a copy of the Notice to Leave which specified Ground 12.

## **2. Reasons for Decision**

3. The Tribunal was satisfied that the Respondent had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 12 of Schedule 3 of the Act as the relevant ground of eviction.
4. The Notice to Leave was also accompanied by evidence of how the ground was met namely the rent statement showing arrears due from 1<sup>st</sup> May 2019.
5. The Notice also set out the relevant notice period which expired on 10<sup>th</sup> February 2020
6. The Application was lodged on 19 February 2020 it was therefore lodged after the expiry of the Notice period and within 6 months from the date of the expiry of the notice period and therefor complies with Section 55 of the Act.
7. Ground 12 of Schedule 3 of the Act states “
  - It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
  - The First Tier Tribunal must find that the ground named by subparagraph (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 is
      - i) 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 consecutive months and
      - iii) 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.”
8. The Tribunal accepted the verbal averments and written statement of rent arrears from the Applicant who was credible in her evidence of the Respondent having failed to pay the rent throughout the majority of the duration of the tenancy.
9. The rent statements lodged and the verbal submissions confirmed that the rent outstanding as at today’s date amounts to more than one month’s rent and that arrears have been due and owing for more than 3 months.

10. The response from the Respondent is that the rent is not due and owing due to the repairs she alleges the Applicant has not carried out for the duration of the tenancy.
11. The Respondent was instructed to lodge her e-mails or text messages asking for repairs to be done. The only one she has lodged is from the health visitor on 12<sup>th</sup> December 2020. She has not lodged any copies of texts or e-mails to show she raised the issue of repairs being required prior to 12<sup>th</sup> December 2020. The Applicant has lodged copies of e-mails showing that when advised of an issue by Health visitor the letting agent responded within 2 days confirming on 14<sup>th</sup> December that an engineer would attend on Monday 16<sup>th</sup> December. She also advised and it is supported by e-mails numbered 1/27 and 1/28 and 1/29, that the plumber was refused access. An e-mail dated 17<sup>th</sup> December 2019 from the landlord to the letting agent Sharon Cuthbert states that " I got a plumber saying that a man answered the door and said she was out and he was looking after the kids and wouldn't give access. He said he had Christmas presents in the cupboard. The Applicant advised it had been hard to get a plumber at that time of year and the Respondent had said she would be in all day and then revised her position to after 3. The Applicant's position is supported by a further e-mail from the letting agent to the Respondent on 17<sup>th</sup> December 2019 asking why the tenant wasn't in when she said he arrived after 3 as she requested and the letting agent advised she had asked the Respondent for a telephone number for the engineer to call her and did not receive one. This evidence is also supported by an invoice from Scot-heat heating and Plumbing Ltd which the Applicant advised is for a call out charge of £48. The Applicant then advised that a plumber and electrician were organised to attend at the beginning of January 2020 and that the letting agent was also going to do an inspection of the property. This is again supported by e-mails lodged in productions 1/13 and 1/14 between the Respondent and the letting agent. On 8<sup>th</sup> January 2020 the tenant advised she wanted to reschedule as she would not be in until late and wanted a bit more notice as she has 3 children and a busy life. She also asks if the tradesmen work after 6. On 9<sup>th</sup> January 2020 the Respondent has sent an e-mail saying she is not agreeing to an inspection of the Property, on the ground the letting agent hasn't done one before this point. She also accuses the landlord of being near the property without permission and states " I am not having a stranger who I am not on good terms with look about the property I am staying in ...I will arrange a time and date for the electrician and plumber to attend here". The letting agent had arranged a visit for 14<sup>th</sup> January 2020 but the tenant refused access and the Applicant gave the letting agent permission for her to send the Respondent numbers to call and arrange the plumber and electrician herself at times and dates that suited her. The plumber finally got access on 27<sup>th</sup> January 2020 which is supported by evidence from the Applicant and the written evidence from the plumber himself who advises he was only allowed to look at the boiler and not the bathroom upstairs where the Applicant was concerned about a leak into the boiler cupboard and the seals round the shower or bath. Further e-mails between the Respondent and the letting agent confirm the Respondent was encouraged to phone the plumber and electrician if she needed them. The Respondent appears to accept the boiler is fixed but then stops working on 3<sup>rd</sup> February 2020. Throughout February 2020 the letting agent tries to confirm

- that the electrician has been called and allowed to attend to check the heaters, check all electrical items and prepare an electrical certificate.
12. The Tribunal accepted the Applicant's evidence as honestly given, clear and credible. She had instructed her letting agent to handle all repairs and requests from her tenant. The evidence she presented showed that on the whole the letting agent had responded timeously to those complaints. The Respondent had only complained via her health visitor on 12<sup>th</sup> December 2019, but despite complaining did not allow the plumber in until the end of January 2020 despite appointments being arranged on 16<sup>th</sup> December 2019, 10<sup>th</sup> January 2020 and again on 14<sup>th</sup> January 2020. That thereafter the Applicant had agreed it would be easier if the Respondent phoned the tradesmen herself which she had done to get new keys for the patio doors. The Respondent has not shown any evidence of complaints to the letting agent between March 2020 and July 2020 after this action was raised.
  13. The claim that the property is infested with rats is not supported by the written evidence of Environmental Health Officer who reported that he did not find evidence of rats in the Property as they had not taken the bait and when he returned to put down more treatment the tenant advised that someone else was dealing with it. The Tribunal does find that the letting agent failed to procure a new bin for the tenant although they had advised the Respondent that she could order one and the Applicant would pay for it. The Tribunal feels that this could and should have been ordered by the Applicant however this does not impact greatly on the Respondent's liability to pay the rent as it does not have a serious impact on her occupation of the Property. It is noted that a bin has been ordered by the new letting agent and cost £53.
  14. The electrician was instructed in January 2020 however the Respondent has unreasonably refused to let him have access. It is also noted that when asked on 3<sup>rd</sup> August 2020 by the new letting agent Mr Hemming for suitable times and dates for the electrician to visit the Respondent did not reply, she had to be sent a reminder and the electrician only finally visited at the beginning of September 2020.
  15. The Tribunal carefully weighed up the evidence from the Applicant both written and verbal and the written submissions from the Respondent and prefers the evidence from the Applicant that any issues raised by the Respondent were responded to by the Applicant through her letting agent. The Tribunal finds that on balance the Respondent may have had some issues with the Property but she has not raised this with the Applicant and when it was raised by the health visitor has not allowed access to tradesmen who could fix the problems. She has not allowed access for the electrical certificate to be carried out from December 2019 until September 2020. It is accepted that the Applicant should have had an electrical certificate by the end of 2018 and not 2019 but the delay in asking for an electrician to attend appears to have been an error on the part of Puffin Properties who advised the Applicant that it was due at the end of 2019. The Tribunal does not find that this delay has caused the Respondent any right to abatement of rent. If the Respondent had allowed an electrician to visit in January 2019 any issues would have been found and attended to.
  16. The Respondent is also claiming that that Applicant should be maintaining the garden and she is not. However the lease makes it clear the maintenance of the garden is the obligation of the tenant.

17. As the Tribunal is satisfied for the reasons given above that the rent of £6385 is due and owing the Tribunal is satisfied in terms of S 51 (1) of the Act that one of the eviction grounds named in Schedule 3 of the Act, namely Ground 12, is met, the Tribunal has no discretion if this ground is met and therefore determined that the order for eviction sought by the Applicant should be granted.
18. There was no evidence presented that arrears have accrued as a result of a delay or failure in payment of a benefit.

### **Decision**

19. The order for possession was granted.

### **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.**

# Jan Todd

29<sup>th</sup> October 2020

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Legal Member/Chair

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Date