



**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/CV/20/1681**

**Re: Property at Workshop Cottage, Glendaruel, Argyll, PA22 3AA (“the  
Property”)**

**Parties:**

**Mr Paul Morley, Ms Dawn Evelyn Morley, The Old Steading, Glendaruel, Argyll,  
PA22 3AA (“the Applicants”)**

**Mr Robert Hayes, 20 Kilmun Court, Kilmun, Argyll, PA23 8SF (“the  
Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application be dismissed and that no award be  
made for the reasons given in this decision**

**Background**

[1] This is an application for a payment order dated 9<sup>th</sup> August 2020 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicants seek payment of arrears in rental payments of £501.00 in relation to the Property from the Respondent, and provided with their application copies of a short assured tenancy agreement and substantial documentation in evidence.

[3] A Case Management Discussion was held on 29<sup>th</sup> October 2020 by Tele-Conference. Both parties accepted that there were clear and substantial factual

disputes between them as to the circumstances surrounding this matter, which could only be determined by the Tribunal after hearing evidence, and for that reason the Tribunal set a Hearing.

## **Hearing**

[4] A Hearing was held at 10.00 on 14<sup>th</sup> December 2020 by Tele-Conference. The Tribunal noted that both parties had submitted written statements from various persons that they appeared to wish to rely on in evidence before the Tribunal. The Tribunal, however, had not received lists of witnesses nor confirmation of contact details for those potential witnesses.

[5] Both parties explained that they did not realise that the witnesses that each wished to use in evidence required to give their evidence in person to the Tribunal. The parties had both thought that they could lodge written statements and letters from their witnesses. The Tribunal explained that although the parties were welcome to lodge witness statements in advance of a hearing, the Tribunal would expect to hear oral evidence given to it by any such witnesses if parties wished the Tribunal to accept what those witnesses might say.

[6] Both parties indicated that they wished to lead witnesses in evidence, and the Tribunal adjourned the Hearing to allow witnesses to be lead in evidence.

[7] A continued Hearing was held on 28<sup>th</sup> January 2021 by Tele-Conference, at which evidence was led by the Applicants. The Hearing was continued for the purpose of hearing further evidence.

[8] Prior to the continued Hearing, the Applicants e-mailed the Tribunal advising that they wished to lead evidence from a number of witnesses regarding allegations by them that the Respondent engaged in domestic abuse of his wife. The Tribunal in advance of the continued Hearing advised the parties that it would not hear further evidence at the continued Hearing, but would invite the parties to address it on the scope, extent, relevance and purpose of such evidence in relation to this application.

[9] A continued Hearing was held on 26<sup>th</sup> March 2021 by Tele-Conference, at which both parties addressed the Tribunal with regard to the scope, extent and relevance and purpose of evidence to be led regarding those allegations. The Tribunal explained to the parties the legal concept of relevance, and the issues which the Tribunal had to consider in this application, and the issues which it did not. Having done so, and after discussing progress and scheduling issues with the parties, the Tribunal further continued the Hearing to 5<sup>th</sup>, 7<sup>th</sup> and 11<sup>th</sup> May 2021.

[10] The Tribunal heard evidence on behalf of the Applicants from both Applicants, Ewan Morley, Hannah Morley, Mr Alistair Bradley, Mr Alex Robertson, Mrs Jean MacKellar, Mr Colin Steadman and Mr Graham Sharp. The Tribunal then heard evidence on behalf of the Respondent from the Respondent, Mrs Janice McLaren, Brenda Vaughan and Mr Michael Hayes.

## **Findings in fact**

[11] After hearing all the evidence led by both parties on the issues in dispute between them and upon which the Tribunal requires to reach a decision, the Tribunal found in fact:

- 1) That the Respondent was tenant at the Property for a period commencing 1<sup>st</sup> July 2009 until he left on 11<sup>th</sup> January 2020 when the tenancy ended.
- 2) That the monthly rent for the Property was £300.00.
- 3) That the Respondent lived in the Property with his wife throughout his period of occupation of it.
- 4) That the Respondent advised the Applicants in early 2019 that he intended to end the tenancy, and was looking for alternative accommodation to allow him to do so.
- 5) That the personal relationship between the parties broke down in or around November 2019.
- 6) That the First Applicant, Mr Paul Morley, entered the Property on 14<sup>th</sup> November 2019 whilst the Respondent and his wife were not there, and after inspecting the Property, changed the locks and turned off the water supply to it from the lane outside.
- 7) That the Respondent returned to the Property later on 14<sup>th</sup> November 2019 and called the police.
- 8) That the Applicants provided the Respondent with a key to the new lock on the door of the Property, but thereafter refused to turn the water supply to the Property back on.
- 9) That the Respondent withheld paying rent from 1<sup>st</sup> December 2019 until he left the Property as a result of the Applicants' refusal to restore the water supply to the Property, which withheld rent amounts to £501.00.

## **Finding in law**

[12] The Tribunal found in law:

- (1) That the Applicants by discontinuing the water supply to the Property were in material breach of the tenancy agreement.
- (2) That the Respondent was entitled to withhold payment of rent for the period during which the Property had no water supply.

## **The Evidence**

[13] The Tribunal heard evidence from a number of witnesses, but only the Applicants and the Respondent gave evidence on the issue of the water supply to the Property.

[14] Both parties were clear and measured in explaining their respective positions. They were both in agreement that the First Applicant had turned off the water supply to the Property on 14<sup>th</sup> November 2019, and that the First Applicant did not turn it back

on again until after the Respondent left the Property and the tenancy ended. The Respondent's position was that he requested that the Applicants turn the water supply back on.

[15] The dispute between them concerned the reason why the Applicants turned off the water supply, and the reasons why they did not turn it back on again.

[16] The Applicants' evidence was that they realised that the Property was empty and entered the Property. On finding no-one was within, they turned off the water supply as they were concerned that the outside temperature had dropped to minus 8 degrees centigrade and that as the Property was unoccupied and unheated the internal water pipes might freeze and sustain damage.

[17] The Applicants' evidence was that they changed the locks to the Property to force the Respondent to contact them, as they were also concerned by the internal condition of the Property which they thought was a fire hazard.

[18] The Applicants' evidence was that when the Respondent returned to the Property later on 14<sup>th</sup> November 2019, he contacted the police, who mediated between the parties and advised the Applicants to provide the Respondent with a key to the new lock so that he could obtain access to the Property.

[19] The Applicants accepted that they did not restore the water supply to the Property until after the tenancy ended, as they were concerned about the condition of the Property and that restoring the water supply might cause further damage to it.

[20] The Respondent's evidence was that the relationship between the parties has broken down, and that the Applicants refusal to restore the water supply to the Property as he requested was malicious, and intended to force him and his wife to leave the Property.

[21] Ultimately, the Tribunal considered that it did not require to consider the motivations of the parties in relation to the issue of the removal of the water supply to the Property. Both parties agreed that the water supply had been turned off by the Applicants from 14<sup>th</sup> November 2019 until the end of the tenancy.

### **Submission on behalf of the Applicants**

[22] The Applicants submitted that the Respondent was obliged to pay the rent until the tenancy ended. The Respondent did not pay rent in relation to the period 1<sup>st</sup> December 2019 to the end of the tenancy on 11<sup>th</sup> January 2020, which unpaid rent totalled £501.00. The Applicants submitted that the Respondent was obliged to pay them this sum, which remains due by him to them.

## Submission on behalf of the Respondent

[23] The Respondent submitted that the Applicants in turning off the water supply and refusing to restore it despite his requests for them to do so were in material breach of the lease agreement. As a result of that material breach, he was entitled to withhold payment of the rent otherwise due for the period when the Property had no water supply, and accordingly he was not obliged to pay the sum sought in this application.

## Statement of Reasons

[24] Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

[25] Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicants) for payment of unpaid rental and damages against a tenant (such as the Respondent) under a short assured tenancy such as this.

[26] The Tribunal did not require to consider the credibility and reliability of the parties in relation to the short issue in dispute between them, in circumstances where they were agreed on the material facts. The motivations for the Applicants' actions in turning off the water supply and refusing to restore it, despite the Respondent's assertion that he requested that they do so after the Respondent returned to the Property, are not critical to the Tribunal's decision.

[27] A tenant is entitled to retain rental otherwise due where the landlord will not fulfil their obligations. Once the landlord complies with their obligations, the rent becomes due in full (see, for example, *Stair Memorial Encyclopedia – Landlord and Tenant (2<sup>nd</sup> Reissue)* at para 196, *Rennie – Leases (SULI)* at paras 17-52 and 17-53, *Robson & Combe – Residential Tenancies (4<sup>th</sup> Ed.)* at para 4-23, and *Stalker – Evictions in Scotland (2<sup>nd</sup> Ed.)* at page 128).

[28] The question for the Tribunal is whether the Applicants were in breach of their legal obligations in turning off the water supply to the Property and thereafter refusing to restore it despite requests from the Respondent.

[29] Clause 4.4 of the tenancy agreement provides that the landlord will not interrupt or interfere with the enjoyment of the property so long as the tenant complies with the terms of the agreement. In turning off the water, the Applicants were in breach of that provision, as the Tribunal considered that removing the water supply to the Property, which is an essential service for any residential property, interrupted or interfered with the Respondent's enjoyment of the Property.

[30] It may be that the Applicants were not in breach of this provision in turning off the water supply in circumstances where they believed that no-one was residing in the Property, it was unheated, and that due to the low temperature there was a risk of frost damage if the water supply remained turned on in terms of clause 3.8 of the tenancy agreement.

[31] However, once the Applicants became aware that the Respondent had returned to the Property, their refusal to restore the water supply was a breach of the tenancy agreement. The withdrawal of a water supply by the landlord would also almost certainly be a breach of the repairing standard.

[32] Further, there is a common law obligation on a landlord of a residential tenancy to provide subjects reasonably fit for the purpose for which they are let and which are in a habitable and tenantable condition (see *Rennie – Leases (SULI)* at paras 14-07 and 21-22). A landlord is in breach of that obligation if the water supply is completely inadequate (see *Stair Memorial Encyclopedia – Landlord and Tenant (2<sup>nd</sup> Reissue)* at para 157, and the analysis of the learned Sheriff of previous legal authorities on this point contained at paragraphs 20 to 30 of *The Royal Yacht Forth Club v Granton Central Developments Ltd 2020 SLT (Sh. Ct.) 77* with which analysis the Tribunal respectfully agrees).

[33] The Tribunal considers that the provision of a water supply is essential in the context of a residential tenancy, and that the absence of a water supply rendered the Property as not habitable and tenantable. In those circumstances, the Respondent was entitled to withhold the rent otherwise due for the period during which the water supply was turned off, and accordingly the Tribunal found that he was not under legal obligation to pay the sum sought in this application.

## **Decision**

[34] For the above reasons, the Tribunal will dismiss this application.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a**

**point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Neil Kinnear

**11 May 2021**

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**Legal Member/Chair**

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**Date**