



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/20/2427

Re: Property at 3/2 9 Robertson Street, Greenock, PA16 8DB (“the Property”)

Parties:

Miss Chiara Louise Cacioppo, 7 Gleneagles Drive, Gourrock (“the Applicant”)

Mr Lee Doherty, Flat 3/2 9 Roberston Street, Greenock, PA16 8DB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £2100.00.

Background

1. By application dated 19 November 2020 the Applicant through her representative Mr Gioacchino Cacioppo acting under a Power of Attorney sought payment of alleged rent arrears arising from a Short Assured Tenancy Agreement with the Respondent. The Applicant’s representative submitted a copy of the Tenancy Agreement and bank statements in support of the application.
2. By notice of Acceptance dated 15 December 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. The application was conjoined with Case Reference FTS/HPC/CV/20/1435 and a Case Management discussion was held by teleconference on 1 March 2021.

At that time the sum claimed was amended to £2375.00 and a hearing was fixed.

4. Both parties submitted productions in advance of the hearing.

The Hearing

5. A hearing was held by teleconference on 20 April 2021. The Applicant did not attend but was represented by Mr Gioacchino Cacioppo. The Respondent did attend and was represented by Ms Helen McHugh.
6. As a preliminary matter the Tribunal established that the Applicant's representative had no objection to the late lodging of productions by the Respondent's representative and that the Respondent had no objection to the late lodging of productions by the Applicant's representative and thereafter determined that the productions should be allowed to be received.
7. The parties agreed that there was a Short Assured Tenancy agreement in place and that the rent was £475.00 per calendar month. It was also agreed that the Respondent has not paid rent for the month of July 2019 and had deducted £50.00 in March 2020 and £125.00 in April 2020. It was also agreed that the Respondent had paid no rent thereafter. It was confirmed that there had been an agreement in place between the parties in March 2020 that the rent would be reduced by £50.00 per month because of water ingress at the property. It was further agreed that on 11 April 2020 the ceiling in the living room of the property collapsed and still had not been repaired as the Applicant's representative was in dispute with other owners in the building and did not wish to repair the ceiling until satisfied that repairs to the roof of the building had been completed.
8. Mr Cacioppo explained that there were ongoing court procedures involving the property manager and other owners in the building which was subject to a Statutory Notice imposed by the local authority. He explained that in August 2019 after it had been discovered that there was water ingress at the property the Respondent had been offered another flat in Gourrock about two miles from the property but had refused to move. Instead, he had obtained a survey report and a medical report and he suggested that this was suspicious.
9. Mr Cacioppo went on to say that he was prepared to accept a reduction of rent of £50.00 per month as there had been a legally binding agreement in place to that effect and the repair to the ceiling had not yet been done.
10. Mr Cacioppo complained that the Respondent had failed to permit his tradesmen entry to the property to inspect the damage and provide quotes. He said that the Respondent was no longer living in the property.
11. The Respondent confirmed he had stopped living at the property at Christmas 2020 but had not yet terminated the tenancy. Ms McHugh confirmed it was the

Respondent's intention to give two months' notice and that the tenancy would end on 25 June 2021.

12. Ms McHugh went on to say that it was the Respondent's position that a reduction in rent of £50.00 per month was insufficient as it was not possible for the Respondent to use the living room and there was water ingress in the hall and other rooms of the property.
13. Mr Cacioppo went on to say that he had not agreed to a further reduction in rent. He had previously offered the Respondent another flat which he had refused so there was not much more that he could do. Mr Cacioppo also said that he had made a Right of Entry application to the Housing and Property Chamber but it had been refused and he had written to his local council asking them to visit the property but they were unable to do so due to Covid restrictions.
14. Ms McHugh led evidence from the Respondent who spoke to the Architect's report by Professor Tim Sharpe dated 17 August 2019. The Respondent said that the report explained that there were leaks in every room of the property with cracks in the ceiling and that the living room was really bad. He said that Mr Cacioppo had said he was going to get them repaired but never did. The Respondent went on to say that the report had confirmed repairs were required but whilst there had been talk there had been no action. He said the property was not watertight and that Mr Cacioppo had attended on several occasions with tradesmen and people from his insurers but no repairs had been carried out. He said that there had been water leaks at the property prior to the agreed rent reduction but he had not noticed any further leaks since although he was not staying in the flat any more.
15. In response to a question from Ms McHugh as to how the water ingress had impacted on his enjoyment of the property the Respondent said that following the ceiling collapse, he had stayed in his bed all day worrying if the other ceilings would also collapse.
16. The Respondent went on to say that following the ceiling collapse in April 2020 Mr Cacioppo had agreed that the rent for that month should be reduced by £125.00.
17. The Respondent was referred to the medical report dated 27 August 2019 prepared by Dr Z Hussain and confirmed that he suffered from asthma and agreed that living in damp conditions could exacerbate his condition. He said he had experienced some further symptoms since the date of the report.
18. The Respondent confirmed that Mr Cacioppo had visited the flat several times since the ceiling collapsed including once on his own, once with a tradesman and once with people from his insurers. The Respondent disputed that Mr Cacioppo or his tradesmen were unable to gain access and said that Mr Cacioppo had not contacted him directly since before the summer of 2020. He said he would have let him in if he had.

19. The Respondent was asked if any repairs had been carried out to the property and referred the Tribunal to the recent photographs submitted.
20. The Respondent went on to say that during lockdown in 2020 he was unable to go out and could not use the living room and this had a big impact on his mental health. He had been worried about other ceilings collapsing. He had at first agreed to a reduction of rent of £125.00 per month and then requested a reduction of 50% in order to try to negotiate a new agreement and after taking legal advice stopped paying rent.
21. Ms McHugh submitted that the Respondent was entitled to a fair abatement of rent because of the repairs that were required and that a reduction of at least 50% was appropriate if not more.
22. In response to further questioning from Ms McHugh the Respondent said he knew nothing about the tradesman seeking access and did not know what Mr Cacioppo was talking about. He went on to say that when Mr Cacioppo attended at the property following the ceiling collapse, he cleared up the rubble and had asked for a dustpan and brush. He had returned on a further two occasions but had then never contacted him directly. The Respondent went on to confirm that he intended to terminate the tenancy and believed that Mr Cacioppo had taken access to the property when it was empty without consent. The property remained in the same condition with no further steps having been taken to repair the property. The Respondent referred the Tribunal to an exchange of emails between the council and Mr Cacioppo in September 2019 that indicated that the ceiling was unstable and liable to fall down but no action had been taken and Mr Cacioppo had put him in danger and it was his responsibility to keep him safe. In response to a question from Ms McHugh the Respondent confirmed that he did not think the property met the repairing standard.
23. Mr Cacioppo queried how the Respondent had obtained the emails from the Council as they were confidential and was advised by the Respondent that they had been provided to him by another owner in the building, a Ms Kennedy. Mr Cacioppo explained that the ceiling in the adjoining property had collapsed three or four years ago and that as the property was over 100 years old and given its lathe and plaster construction it would be prone to collapse if there was water ingress.
24. Mr Cacioppo queried why the Respondent had refused a move to another flat a week after going to see his doctor in July 2019. The Respondent replied that at that time he did not think he needed to move. He said it was the summer and that he had continued to pay full rent other than missing one month. When questioned if he had declined to take his doctor's advice the Respondent agreed that he had refused to take the flat in Gourrock.
25. In response to a question as to why he had instructed an architect's report the Respondent confirmed that there were no ongoing leaks at that time and if there had been he would have advised Mr Cacioppo. The Respondent confirmed that

on a number of occasions between August and December 2019 he had advised Mr Cacioppo that there had been no leaks at the property. He denied ever saying to Mr McAndrew of Flat 1/2 that there were no leaks at the property.

26. The Respondent confirmed that he had contacted the council to advise them that he was no longer residing in the property. He went on to say that his possessions were still there and that Mr Cacioppo did not have the right to enter without consent. Mr Cacioppo again pointed out that the Respondent had advised the council that he had left the property to which the Respondent replied that there was a difference between not living in the property and terminating the tenancy.
27. Mr Cacioppo referred the Respondent to productions in Bundle A at pages 25 – 66. The Respondent denied refusing entry. He said he might not have been in or could have been unwell but had never deliberately refused entry.
28. Ms McHugh queried with Mr Cacioppo why he accepted it was reasonable to reduce the rent by £50.00 per month. Mr Cacioppo said that in effect he was accepting a reduction of £100.00 per month not £50.00. She went on to ask if it was then accepted that the property was not watertight. Mr Cacioppo explained that the dispute with the other owners had not assisted. Ms McHugh asked if Mr Cacioppo accepted that if the property was not watertight it did not meet the repairing standard. Mr Cacioppo replied that the roof was communal and that was why Ms McHugh's firm had taken him to court. He said the repairing standard was not just up to him. He said he accepted the property did not meet the repairing standard but had been hindered by the other owners who had stopped him carrying out his obligations and that the contractor chosen by the other owners had not done a good job. There then followed questions regarding whether or not in 2018 and 2019 the property met the repairing standard and Mr Cacioppo explained that a new roof had been installed in 2019 at a cost of £60000.00 but it had not been done well.
29. In response to questions regarding the emails from the council regarding the risk of the ceiling falling down Mr Cacioppo suggested there would always be a risk because of the age of the property and the way it had been built. He said work had not been instructed because of the issues over the roof and the dispute with the other owners.
30. Mr Cacioppo went on to say that he had tried contacting the property manager of the building but had not received a reply and had tried also to involve the council without success. He said that following the ceiling collapse he had attended at the property as soon as possible after lockdown had ended in June and had cleared up the rubble.
31. In response to a question from Ms McHugh Mr Cacioppo insisted that a visit by a tradesman had been arranged with the Respondent but that he had not been given entry. Mr Cacioppo denied there had been miscommunication.

32. Mr Cacioppo explained in response to a question from Ms McHugh that as long as the Statutory Notice remained in place, he could not carry out repairs to the ceiling. He said that although the ceiling had not been replaced once the rubble had been cleared in June 2020 the Respondent was able to live in the living room. He thought that if there was no longer any water ingress then there was less of a risk of any further ceilings falling down. He accepted there was some degree of inconvenience but any abatement should be restricted to the agreed £50.00. Mr Cacioppo thought that the Respondent's letter of 1 June 2019 had mainly been about the damage to his furniture and belongings and it had not been clear that he was seeking a reduction in rent of 50% also. He went on to say that he had thought there had been no point in arguing between themselves and had decided to let the Tribunal decide what was fair.
33. For his part the Respondent indicated that there continued to be a musty smell in the living room and that a large portion of the ceiling was missing. It was not ideal for use. He understood from the neighbouring proprietor Mr Jenkinson that the roof had now been fixed for some time. He said he had never used the living room after April 2020.
34. In response to a question from the Tribunal the Respondent said he could not recall the exact dates he had suffered a further chest infection but that it would have been in the winter of 2019/20.
35. In response to a further question from the Tribunal the Respondent agreed that he had confirmed to Mr Cacioppo when asked if there had been any water ingress and that there had been other messages that he had sent as well as a video that confirmed there had been water ingress.
36. In his concluding submissions Mr Cacioppo suggested that the Respondent could have pulled down the ceiling himself. He went on to say that because of lockdown he could not enter the property until June and had then done all he could. He and his tradesmen had been denied access. The Respondent had vacated the property and left windows open allowing rain to blow in. The Tribunal should look at the photographs submitted and find in favour of the Applicant under deduction of the agreed £50.00 per month. The amount sought in total including for May 2019 up to March 2021 was £5700.00. The amount for the period from October 2020 to March 2021 amounted to £2550. Ms McHugh did not object to the sum claimed being amended to take account of the rent due for March and the Tribunal allowed the sum claimed to be amended.
37. For the Respondent Ms McHugh submitted that the £50.00 reduction in rent had been agreed before the ceiling had collapsed. Thereafter the Respondent was worried that further ceilings might collapse and this impacted on his mental health as well as his enjoyment of the property. He had felt he could not use the living room and a reduction in rent of at least 50% was justified. There was authority for such an abatement and referred the Tribunal to the case of *Renfrew District Council v Gray* 1987 S.L.T. (Sh.Ct.) 70 (1985) and the decision of the First-tier Tribunal in Case Reference FTS/HPC/CV/18/0449. Ms McHugh

went on to say that the Respondent did not accept that he refused access and that the Applicant or her representative was aware of concerns about the ceiling in September 2019 and failed to take action. Ms McHugh suggested that the Respondent was entitled to at least a 50% abatement but if the Tribunal did not accept that this was the case then a further remedy open to the Respondent was to withhold rent until the repairs were carried out.

38. Mr Cacioppo also referred the Tribunal to the First-tier Tribunal Case Reference FTS/HPC/CV/18/0305 as authority that the Tribunal should not find the Respondent entitled to any greater an abatement of rent than that agreed between the parties.

Findings in Fact and Law

39. The parties entered into a Short Assured Tenancy agreement with a monthly rent of £475.00.
40. The property suffered water ingress in 2019 and again in March 2020.
41. The parties agreed a rent reduction of £50.00 per month in March 2020 as a result of the water ingress at the property.
42. On 11 April 2020 the living room ceiling at the property collapsed.
43. The Respondent has not paid any rent since April 2020.
44. The property did not meet the repairing standard as it was not watertight.
45. The Applicant has not repaired the living room ceiling.
46. The Applicant is in dispute with other owners in the building.
47. The Respondent ceased to live in the property around Christmas 2020.
48. The Respondent has not yet terminated the tenancy.

Reasons for Decision

49. The repair to the ceiling was not carried out due to the Applicant's ongoing concerns over the repair to the roof and the dispute with the other owners. The Tribunal concluded that the living room of the property could be used by the Respondent although his enjoyment of the property would still be impeded and it was conceded and apparent that the property did not meet the repairing standard and the building was still subject to a Statutory Notice. The Tribunal was therefore satisfied that for the months from October 2020 to March 2021 the rent should be abated by £125.00 per month. In so doing the Tribunal acknowledged that the Respondent had not been living in the property since

Christmas 2020 but has continued to have his possessions there and to have access to the property as well as liability for the rent.

50. The Tribunal carefully considered the submissions of the Applicant's representative with regards to the difficulties he had apparently had in gaining access to the property but did not consider that the Respondent was directly responsible or that failure to obtain access had resulted in the repairs not being carried out. The Tribunal was not persuaded that there was any evidence to support the Applicant's representative's suggestion that the Respondent may have engineered the collapse of the ceiling for some fraudulent purpose. The Tribunal found the Respondent to be credible in the evidence he gave.
51. The Tribunal considered that it was well established given the decision of the Sheriff Principal in Renfrew District Council v Gray that where a property is uninhabitable or partially uninhabitable a tenant is entitled to an abatement of rent. Furthermore, the Tribunal is not bound by a previous decision of another Tribunal such as the decision in Case Reference FTS/HPC/CV/18/0305 and in any event the facts and circumstances were somewhat different.
52. The Tribunal was therefore satisfied that the Applicant was entitled to an order for payment for £350.00 for each month from October 2020 to March 2021 making a total due of £2100.00 by the Respondent.
53. The Tribunal, given that it had found that the Respondent was entitled to an abatement of rent, did not consider that the Respondent was then entitled to withhold payment pending repairs being carried out.

Decision

54. The Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £2100.00.

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.

G. H.

**Graham Harding
Legal Member/Chair**

**23 April 2021
Date**