



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/0146

Re: Property at 34 Tay Avenue, Comrie, Crieff, PH6 2PF (“the Property”)

Parties:

Mrs Sheila Summers, 34 Tay Avenue, Comrie, Crieff, PH6 2PF (“the Applicant”)

Ms Zandra Black, 9F Orchard Place, Aberdeen, AB24 3DH (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of £100 against the Respondent in favour of the Applicant

Background

- 1 By application dated 13th January 2021 the Applicant sought an order for payment against the Respondent as compensation for inconvenience due to a broken boiler and subsequent delay in replacing same. Following a request from the Tribunal the Applicant confirmed that she was seeking the sum of £340, being a reduction in rent of £100 per month for three months and £40 in respect of increased heating costs.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President confirmed that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 26 May 2021. A copy of the application paperwork, together with notification of the date, time and instructions for joining the teleconference, was served upon the Respondent by Sheriff Officers.

- 3 On 6 May 2021 the Tribunal received written representations from the Respondent via email. In summary the Respondent explained that the Applicant had contacted her contractor directly on 5 August to report the faulty boiler. She had not notified the Respondent until 18th August. It was the Respondent's position that the Applicant was in breach of the terms of the tenancy agreement which required repairs to be reported in a timely manner. The Respondent conceded that the boiler required repair but explained that she had offered the Applicant heaters which she had declined as the weather was mild. The Respondent had left the Applicant with an electric fire however she had subsequently arranged for heaters to be dropped off at the property. There had been delays in the replacement of the boiler due to the ongoing pandemic and it had taken time to obtain quotes. Her chosen contractor had then lost her number and that had resulted in further delays. The Respondent explained that she had asked the Applicant to send her the additional energy bills and she would settle them but the Applicant had failed to do so. The Respondent concluded by advising that she had commenced repossession proceedings due to a change in circumstances however the Applicant had, as yet, failed to vacate the property. A copy of the written representations were sent to the Applicant.

The Case Management Discussion

- 4 The Case Management Discussion took place by teleconference on 26 May 2021. Both parties were present. The Legal Member explained the purpose of the Case Management Discussion and asked the parties to address her on their respective positions. What follows is a summary of what was discussed at the Case Management Discussion in terms of the issues the Tribunal required to determine. For the avoidance of doubt, this is not an exhaustive account of the submissions at the hearing, but a summary of those points relevant to the Tribunal's determination of the matter.
- 5 The Applicant explained that she was seeking £340 in respect of a rent reduction and excessive energy bills. The Respondent had promised the heating would be fixed but there had been significant delay. The Applicant had initially contacted the Respondent's contractor in August herself. She had then phoned the Respondent. The gas engineer had attended the property on 19th August 2020 and had advised the Applicant that he could fit the boiler on 9th September 2020 however that had not transpired. A new boiler was not fitted until 9 November 2020, which was prompted by a letter the Applicant had sent to the Respondent on 26th October 2020. The Respondent had provided three oil fired radiators but they did not really heat up. Further the Applicant had been forced to request them after a lack of action by the Respondent. The lack of heating had affected the Applicant's asthma and it was noted that a letter had been provided from her doctor to that effect which had been lodged with the application paperwork. The fireplace in the property could not be used as the heat produced was too dry and affected the Applicant's asthma.
- 6 The Respondent explained that she did not intend for the boiler to break down. The Applicant had contacted her at work to advise that the boiler was broken. The Respondent had phoned a gas engineer who had given a quote. The Respondent wanted to get a few quotes before proceeding with the works. The

matter was complicated by the fact that the country was emerging from lockdown. The Respondent had offered to purchase heaters for the Applicant however she had declined, explaining that the weather was warm at the time. However the Applicant had subsequently been in touch by email on 29 September 2020 to advise the weather was turning chilly, and the Respondent had provided her with three oil fired radiators. The electric fireplace was also in proper working order. The engineers had taken time to come back to her regarding the replacement of the boiler. She had been given a date for September to get the boiler replaced by one contractor, however she had wanted to get additional quotes. There was no deliberate attempt to delay in order to make the Applicant's life difficult. There was also a shortage of parts and that had resulted in a three to four month wait. The boiler had then been fitted in November. The Respondent reiterated that the country had been in a national lockdown. The Respondent advised that she had emailed the Applicant and offered to pay the additional energy bills however the Applicant had not provided her with these. The Respondent had not intended on being a landlord, this had been a result of a change in her personal circumstances.

- 7 In response to questions from the Tribunal the Respondent confirmed that the property was a two bedroom bungalow with a living room, kitchen and bathroom. The Tribunal clarified that the property had an immersion heater for hot water.

Findings in Fact and Law

- 8 The Applicant and Respondent entered into a Tenancy Agreement dated 22 February 2010 in respect of the property at 34 Tay Avenue, Comrie, Crieff.
- 9 On 5th August 2020 the Applicant contacted the Respondent's gas engineer to report a faulty boiler.
- 10 On 18th August 2020 the Applicant contacted the Respondent directly by telephone to report the faulty boiler.
- 11 The Respondent arranged for a gas engineer to attend the property on or around 26 August 2020. It was confirmed that the boiler was not capable of use and required to be replaced.
- 12 The Respondent's gas engineer offered to replace the boiler on 9 September 2020. This did not transpire as the Respondent wished to obtain additional quotes.
- 13 The Respondent provided the Applicant with three oil fired heaters on or around 29 September 2020.
- 14 The electric fire within the property was in proper working order.
- 15 The boiler was replaced on 9 November 2020.

- 16 Section 14 of the Housing (Scotland) Act 2006 imposes a duty on the Respondent to ensure that the property meets the repairing standard at all times during the tenancy. In terms of section 13 of the Housing (Scotland) Act 2006 a property meets the repairing standard if any fixtures, fittings and appliances provided under the tenancy are in a reasonable state of repair and in proper working order.
- 17 Between 5th August 2020 and 9 November 2020 the boiler was not in proper working order.

Reasons for Decision

- 18 The Tribunal was satisfied that it could make a determination of the application at the Case Management Discussion and that to do so would not be detrimental to the parties. The substantive facts of the case were agreed therefore there was no requirement for the Tribunal to fix a hearing in the matter.
- 19 The Tribunal noted that the Respondent had taken action to replace the boiler and to provide the Applicant with temporary heating in the interim period. However it ultimately concluded that a delay of three months, particular into the winter months, was excessive and therefore that the Applicant was due payment in the form of damages for the inconvenience suffered as a result.
- 20 The Tribunal noted the Applicant sought the sum of £340. In light of the Respondent's efforts to address the matter, and the fact that the property did have hot water and access to a form of heating throughout the tenancy, the Tribunal concluded that a rent reduction for the period of August to November would be unjustified, as would payment of the Applicant's additional energy bill of £40. Instead, the Tribunal considered that the sum of £100 would be reasonable, as damages for the detriment caused to the Applicant, being a reduction in rent for the month of October. In reaching its decision the Tribunal took account of the medical evidence outlining the impact on the Applicant's health. The Tribunal did have sympathy for the Respondent's position and the challenges she had faced as a result of the Covid-19 pandemic. That said, it did appear to the Tribunal that there had been opportunities to replace the boiler at an earlier stage in the process, having regard to the offer from the heating engineer to install a new boiler in September. This was not disputed by the Respondent. The Tribunal noted the difficulties the Respondent had outlined in terms of the gas engineer losing her number and the delay in obtaining parts, but notwithstanding took the view that the matter could have been addressed at an earlier stage.
- 21 For the avoidance of doubt, in reaching its decision the Tribunal did not take into account any information regarding the Respondent's attempts to recover possession of the property, on the basis that these issues were not relevant to the issue the Tribunal required to determine.

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.

R O'Hare

26 May 2021

Legal Member/Chair

Date