



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing Tenancies (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/1782**

**Re: Property at 8 Easter Road, Kinloss, IV36 3XZ (“the Property”)**

**Parties:**

**Ms Janis Donaldson, 50B Clifton Road, Lossiemouth, IV31 6DP (“the Applicant”)**

**Miss Julie Hill, 8 Easter Road, Kinloss, IV36 3XZ (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms E Shand (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that no order for payment should be granted.**

**Background**

1. This is an application received in the period between 22<sup>nd</sup> July and 13<sup>th</sup> December 2021, made in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicant lodged a copy of the tenancy agreement between the parties, which tenancy commenced on 1<sup>st</sup> July 2019 and ended on 24<sup>th</sup> May 2021. The Applicant also lodged photographs, electricity bills, tenancy deposit documentation, social media communication between the parties, and a copy Notice to Leave. The Applicant was seeking an order for payment in the sum of £450 for stress and anxiety caused by the Respondent’s failure to carry out gas and electric safety checks during the tenancy.
2. On or around 1<sup>st</sup> February 2022, the Respondent lodged written representations and copy invoice for smoke detectors.
3. By email dated 13<sup>th</sup> February 2022, the Applicant lodged written representations.

4. A Case Management Discussion (“CMD”) took place by telephone conference on 15<sup>th</sup> February 2022. Both parties were in attendance. The following facts were agreed:
  - (i) The private residential tenancy commenced on 1<sup>st</sup> July 2019 and ended on or around 24<sup>th</sup> May 2021.
  - (ii) No gas safety checks were carried out before the commencement of the tenancy and no certification was in place at the start of the tenancy.
  - (iii) Gas safety checks were carried out in or around February 2020 and March 2021.
  - (iv) No electricity system checks were carried out before or during the tenancy.
  - (v) The Respondent was in breach of the terms of the tenancy agreement by failing to carry out gas and electrical safety checks.
5. The case was continued to a hearing on the matter of whether the Applicant had suffered personal injury as a result of the Respondent’s failures, and whether she was entitled to damages.
6. Parties were notified of a hearing set down for 6<sup>th</sup> May 2022 on 14<sup>th</sup> April 2022.
7. By email dated 25<sup>th</sup> April 2022, the Applicant lodged productions, including correspondence between the parties and with the local authority, copy tenancy agreement, photographic evidence and copy tenancy reference.
8. By email dated 28<sup>th</sup> April 2022, the Respondent lodged written representations and productions, comprising text messages between the parties.

### **The Hearing**

9. A hearing took place by telephone conference on 6<sup>th</sup> May 2022. The Applicant was in attendance. The Respondent was not in attendance.
10. The Tribunal considered the terms of Rule 29 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) and considered that the Respondent had been notified of the hearing. The Tribunal decided to proceed with the application upon the representations of the party present and all the material before it.
11. The Applicant responded to the representations made by the Respondent. She stated that she had to buy smoke alarms for the Property but had not kept the receipt. She was concerned that it appears from the Respondent’s representations that the Respondent has been checking up on her, including contacting her current landlord, who has confirmed the Applicant is a model tenant. She was concerned that the Respondent had been commenting

inappropriately on a family member's social media and was now attempting to introduce irrelevant issues. Although she sympathised with the bereavement and family illness suffered by the Respondent, they did not tie in with the dates of the tenancy and should not be used to justify the Respondent's failures. The Applicant mentioned issues with her electric bills and significant contact made with the energy provider, but said she had no evidence that an increase in her electricity bills was linked to issues within the Property. It was the Applicant's position that the Respondent appears to consider herself above the law.

12. The Applicant confirmed she was seeking compensation for stress and anxiety caused by the Respondent's breach of contract in failing to carry out gas safety checks at the start of the tenancy, and failing to carry out electric checks throughout the tenancy.
13. Responding to questions from the Tribunal, the Applicant said she was constantly texting the Respondent to report issues with the boiler and the electrics. There was water dripping into the electrics and she was unable to use the main light in one room for three months, and several sockets did not work. The Applicant was scared to use the gas hob because of the lack of certification, and only used the electric oven to cook. The light was eventually fixed and she said the electrician could have carried out a safety check at that time. The electrician had told her he had never seen wiring like that in the Property. It was the Applicant's position that the Respondent was carrying out electrical work herself on the Property. The Applicant said she has asthma which is aggravated by stress. As she was shielding during the pandemic, she did not chase matters up as she was concerned about people coming into the Property.
14. The Applicant said she had been forced into contacting the local authority about the lack of certification. It was her position that the Respondent was well aware that the tenancy was formal from day one.
15. The Applicant said she had not been aware of the role of the Tribunal during the tenancy, and only became aware when informed by the tenancy deposit scheme at the end of the tenancy. They had told her she could go to the Tribunal with these issues.
16. Responding to questions from the Tribunal, the Applicant said she raised the issues regarding certification with the Respondent immediately after the tenancy started, then she contacted the local authority. The Applicant agreed the parties appeared to be on good terms throughout the tenancy from the tone of the text messages submitted, and said she was keen to be amicable and to keep her tenancy, despite concerns about issues within the Property, including the poor state of the Property when she moved in. It was her position that the Respondent had taken advantage of her good nature.
17. Responding to questions from the Tribunal as to whether she had made the Respondent aware of her stress and anxiety, the Applicant said she would not have gone into that level of detail with the Respondent, but the situation had caused her stress and anxiety. Other factors had also impacted on her,

including the pandemic. It was her position that the Respondent had shown disregard throughout the tenancy.

### **Findings in Fact and Law**

18.

- (vi) The private residential tenancy commenced on 1<sup>st</sup> July 2019 and ended on or around 24<sup>th</sup> May 2021.
- (vii) No gas safety checks were carried out before the commencement of the tenancy and no certification was in place at the start of the tenancy.
- (viii) Gas safety checks were carried out in or around February 2020 and March 2021.
- (ix) No electricity system checks were carried out before or during the tenancy.
- (x) The Respondent was in breach of the terms of the tenancy agreement by failing to carry out gas and electrical safety checks.
- (xi) The boiler was condemned during the tenancy.
- (xii) There were issues with the electrics in the Property that caused the Applicant some anxiety.
- (xiii) The Respondent's breach of contract caused the Applicant some anxiety.
- (xiv) The Applicant did not suffer personal injury as a result of the Respondent's breach of contract.
- (xv) The Applicant is not entitled to an award of damages in respect of the anxiety experienced

### **Reasons for the decision**

19. The Applicant was seeking damages for stress and anxiety caused by the Respondent's breach of contract. The Tribunal did not doubt that the Applicant, at the very least, experienced a degree of anxiety caused by the Respondent's breach of contract. However, there was no evidence that would support a claim for damages for personal injury. The Applicant mentioned that stress could exacerbate her asthma, but no medical evidence was provided to indicate that her asthma was exacerbated as a result of the Respondent's breach of contract. It seemed, therefore, that the most the Applicant had experienced was some anxiety.

20. The Tribunal took into account the case of *Johnson v Gore Wood & Co* [2002] 2 A.C. 1, whereby the case of *Addis v Gramophone Co Ltd* [1909] AC 48, was

followed, and held “that damages for breach of contract could not include damages for mental distress...a contract-breaker is not in general liable for any distress, frustration, anxiety, displeasure, vexation, tension or aggravation which his breach of contract may cause to the innocent party.” The Tribunal, therefore, considered that the Respondent was not liable to pay damages to the Applicant for the anxiety experienced as a result of the Respondent’s breach of contract.

21. Although the Applicant made attempts through the local authority to have certification put in place, and contacted the Respondent about repair issues, there was no evidence of the Applicant making the Respondent aware of her alleged stress and anxiety throughout the tenancy, which tended to diminish her claim as to the extent of her suffering. In any event, the Tribunal considered that, even if she had notified the Respondent, there was no personal injury that would support a claim for damages. There appeared to be an element of hindsight, whereby the Applicant, at her own admission, only became aware of the possibility of reporting the Respondent to the Tribunal for her failures after the tenancy had ended.

22. It is unfortunate that the Applicant did not take advantage of the opportunity to take the Respondent to task for her significant and concerning breaches during the tenancy, by making an application in respect of whether or not the Property met the repairing standard, or any other remedy available to her as a tenant. The Tribunal considered it a serious matter that the Respondent claimed this was an informal tenancy, and chose not to observe her responsibilities as a landlord, which responsibilities were clearly set out in the formal tenancy agreement that was put in place by the Respondent. It is a requirement of the repairing standard that appropriate electrical and gas safety certification is in place at the start of, and throughout, the tenancy, and the Respondent, by her own admission failed entirely to comply with this.

### **Decision**

23. No order for payment is made.

### **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.**

# Helen Forbes

---

Legal Member/Chair

---

Date: 6<sup>th</sup> May 2022