



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: FTS/HPC/CV/22/0347

Re: Property at Room 1 94 Cartvale Road, Glasgow, G42 9SW (“the Property”)

Parties:

Mrs Elinor Johnstone Trading as Johnstone Properties, 63 Old Edinburgh Road, Inverness, IV2 3PG (“the Applicant”)

Mr Terry Stoate, Room1 94 Cartvale Road, Glasgow, G42 9SW (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. The Parties entered into a lease in relation to the Property at Room 1, 94 Cartvale Road, Glasgow. (“the Property”). The lease was undated but the initial rental period was from 21 January 2011 until 21 July 2011;
2. No form AT5 was provided to the Tribunal;
3. The Property was part of a larger home (“the house”) and was a house in multiple occupation (“HMO”). Other rooms within the house were let to other persons;

4. A Notice to Quit dated 7 May 2021 was served upon the Respondent;
5. A Notice in terms of s19 of the Housing (Scotland) Act 1988 (“the 1988 Act”) was served upon the Respondent. This sought recovery of possession on a number of different grounds including rent arrears, failing to allow reasonable access to the Property and failing to maintain/causing damage to the Property;
6. Following the expiry of the period of Notice, the Applicant presented two separate applications to the Tribunal, one being an application seeking an order for eviction (EV-22-0346) the other being an application seeking payment of rent arrears (CV-22-0347);
7. A Case Management Discussion was originally assigned for 20 June 2022. On that date it was obvious a Hearing would be required due to a dispute between the Parties in relation to virtually all matters before the Tribunal. A Hearing was assigned for 9 September 2022. That Hearing required to be postponed due to the passing of her Majesty the Queen. A Hearing was thereafter assigned in each case for 24 October 2022;
8. Between the applications being lodged and the hearings a significant amount of written submissions and productions were lodged with the Tribunal by both Parties;

THE HEARING

9. Both Parties participated in the Hearing. The Applicant was represented by Mrs James Johnstone. The Respondent was unrepresented;
10. At the outset of the Hearings the Chair of the Tribunal explained the purpose of the Hearings and the procedure to be followed. It was clarified that neither Party intended to call witnesses;
11. The Tribunal ensured that the Parties participating were able to hear clearly. No issues arose in that regard. The Tribunal advised that it would intend to have a mid-morning break, pointing out to the Parties that such a break to allow for tea or coffee to be taken, for example, or simply to allow the Parties to gather any thoughts, would assist in the management of the Hearing and the concentration of the Parties. Parties were advised a lunch break would occur between approximately 1pm and 2pm also;
12. At the outset, Mr Johnstone advised there had been further damage to the Property. He advised that Mr Stoate had been picking at the wall in the bathroom. He had been picking at the plaster and there is a band approximately 6 inches wide by 12 foot long where plaster has been damaged. The toilet is, in fact, a shared toilet but another resident who uses it after Mr Stoate has advised that it is Mr Stoate who has been causing the damage. An insurance claim had been submitted in connection with water damage previously so there was photographic evidence of how the toilet was before and how it was now and there was therefore evidence of the damage. The other resident was a Mr Douglas Stewart;

13. Mr Stoate accepted partially what was said. The landlord was advised to paint the toilet as the paint on the walls was flaking. While it was painted it had not been properly prepared and it seemed the flaking paint was just painted over. That just caused further flaking or defects on the toilet walls. Mr Stoate accepted that he had picked at this and considered that he was “doing him a favour”. Mr Johnstone thereafter advised that he would deal with that matter separately;
14. Mr Johnstone thereafter advised that as at the date of the Hearings – 24 October 2022 – rent arrears had increased to £3,293. He suggested that there was interest which had now accrued to the extent of £677.80, that arising due to an interest clause within the lease;
15. His Application also made a claim for violent profits. Upon the Legal Member of the Tribunal discussing violent profits with Mr Johnstone, he accepted that this claim was without foundation and withdrew the claim he was making for violent profits;
16. In relation to the arrears of rent, when Mr Stoate was asked if he accepted the figure of £3,293.00 as being outstanding, he advised that he was not aware that figure was correct. That said he did not expect to be asked such a question. He advised, however, that he did not consider that he was in arrears of rent. He has been withholding rent. He had been receiving payment of housing benefit from the local authority but had not been making payment to the landlord. He considered that he was entitled to withhold rent;
17. Mr Stoate went on to state that he had been asking the landlord to provide a copy of a HMO inspection report prepared by the Local Authority in relation to the Property. The Property was a house in multiple occupation and the Local Authority carried out an inspection and provided a report to the landlords thereafter. Mr Johnstone was wishing to see that report. It had not been provided to him and he considered that he was entitled to withhold rent as a result. It was clear from the papers lodged with the Tribunal, however, that Mr Stoate had subsequently managed to secure a copy of the HMO report. Even after he had received that, however, he did not make payment of any withheld rent, nor did he make payment of any further rent due on an ongoing basis. Mr Stoate advised that he considered that there was work required to the Property following upon the Report which had not been undertaken by the landlord so he was still withholding rent;
18. Mr Stoate advised the Tribunal that there were various other issues he considered to be relevant, these being as follows:-
- He has poor mental health
 - A worktop within his room was damaged on 10 October 2021
 - An electrical socket has been pulled out of the wall
 - There is dampness within the Property
 - There is no decoration undertaken at the Property
 - His room has draughty windows
 - He considered the landlord had withdrawn services
 - The landlord has taken away the heating allowance previously provided (the landlord previous paid part of the electricity bill from rental payments)

19. Mr Stoate considered the landlord had been making false accusations about him. The Tribunal noted that the rent statement available suggested rent payments had fallen in to arrears as far back as September 2020. Mr Stoate advised that is when the false allegations commenced. The withholding of rent was his “only leverage against his (the landlord’s) machinations.” He went on to say that he considered that he was being bullied. His father was anti-war. He was brought up to stand up for himself. He considered that it was right to stand up to bullies. As a result of all of the foregoing he believed he was perfectly entitled to withhold rent;

20. The Tribunal enquired again of Mr Stoate as to whether he accepted the accuracy of the figure provided in relation to rent arrears. He was asked directly how much rent he had withheld. Mr Stoate advised that he did not know. He did not think that he would need to answer such a question. Given that this was a Hearing and given the extensive submissions which had been lodged by both Parties in relation to all matters before the Tribunal, it was somewhat surprising that Mr Stoate claimed ignorance of this matter and suggested that he did not think he would require to address this matter;

21. The Tribunal enquired as to when Mr Stoate first advised the landlord that he was withholding rent. He was unable to say specifically when that was, simply advising that he had told Mr Johnstone verbally that he was withholding rent. The Tribunal pointed out that Mr Stoate had written to the landlord’s solicitors on 11th January 2021 advising he was withholding rent. When asked again if he accepted the accuracy of the figure of £3,293.00 as rent arrears he replied he did not. That was on the basis, however, that he was withholding rent rather than simply not paying it. When asked if he had put the withheld rent into a separate account it became clear that he had not done so but made it clear that he would make payment of it if required;

22. *The Tribunal, at his point, had a mid-morning break, resuming the Hearing at approximately 11.55am;*

23. When the Hearings resumed, Mr Stoate advised that he could not hear properly. He advised he could hear if the telephone was at his ear but it was faint. The Legal Member asked him to hang up and call back in. There appeared to be a problem with him terminating his involvement in the conference call. The Legal Member requested the Clerk to terminate Mr Stoate’s call to enable him to dial in again. She advised that if she terminated the call it would remove everyone from the teleconference. The Legal Member suggested if that required to be done then so be it. At that point, however, Mr Stoate appears to have managed to terminate his call, he thereafter dialled back in and confirmed that he was able to hear and content to proceed;

24. Upon discussing the matter of interest on arrears, this arose from clause 12 of the lease which provided for interest on outstanding sums “at the rate of interest being charged by the Bank of Scotland unsecured overdraft accounts from time to time.” Two matters arose from that. Firstly, there was no evidence before the Tribunal as to what the rate of interest being charged by the Bank of Scotland from time to time was. Secondly, Mr Johnstone

advised that he understood it to be 39.9%. The Tribunal stated that such a rate of interest was likely to be considered as punitive and Mr Johnstone would require to persuade the Tribunal that interest at such a rate should properly be applied to any late payment. Mr Johnstone did not pursue that matter further, only stating that he would be content to accept any lesser rate of interest the Tribunal was willing to apply;

25. The various grounds advanced for eviction other than rent arrears were then discussed;

26. Ground 13: an obligation of the tenancy other than payment of rent has been broken or not performed by the tenant.

In support of this Mr Johnstone referred to submissions that the Respondent restricts access to the Property for inspection and also for repair.

27. Reference was made to Mr Stoate refusing to allow a fire service inspector access to the Property, this being required as part of the HMO inspection. It became apparent, however, that what occurred is Mr Stoate had placed a notice on his door expressing concern about the increased level of COVID in his local area and indicating that as a result he did not wish to allow others entry. It seems the fire service inspector read the notice and did not seek entry as a result. The Tribunal did not consider Mr Stoate to be at fault for this.

28. Reference was made to an occasion when the landlord arranged for a tradesman, Richard O'Donnell, to attend at the house to undertake work. He was denied access by the Respondent. It is noted that the Property which is the subject of the let is a room within a larger dwelling. The tradesman was in attendance to undertake work in another room. The Respondent, however, appears to have fallen out with the tradesman previously – he was someone known to the Respondent – and had advised that he did not wish him to undertake any work in the Property – i.e. the Respondent's room. Mr O'Donnell had been requested to do work within the Property to prevent rats entering. The Respondent had told Mr O'Donnell he did not wish him to do that and he would arrange another contractor to do that work. The Applicant, however, still wished Mr O'Donnell to do work in another room within the house. He attended to measure the room to enable the correct amount of materials to be ordered prior to work commencing. The Respondent maintained that the tradesman was not there to undertake work at all. He was there to “vent his anger at me sacking him”. The Respondent listened to the tradesman for ½ a minute and then shut the door on him. The Respondent accepted that he denied the tradesman access but maintained that he was entitled to do so and did not believe that he was there to do work at all;

29. The Applicant was quite clear that the tradesman was in attendance to undertake work within the home. He was to plaster and refurbish one of the other rooms in the house. He required to measure it first. As a result of the actions of the Respondent the tradesman refused to do any further work within the house at all. That thereafter led to a delay of many weeks before another tradesman was able to attend to undertake work. This led to increased costs also;

30. The Tribunal made an enquiry of the Respondent asking whether, in hindsight, he regretted not allowing the tradesman entry. The Respondent advised the Tribunal that he did not regret this and commented that people commended him on his restraint in the manner in which he dealt with Mr O'Donnell;

31. Mr Johnstone, for the Applicant, advised that the tradesman was there to measure up another room (the room of Douglas Stewart). He was prevented from doing so. The Respondent did arrange another person to attend to block up a hole / crevice through which rats were gaining entry to the Property. The Applicant made payment of the invoice for that;

32. The Tribunal enquired specifically as to the effect the refusal to allow Mr O'Donnell entry to the Property had. Mr Johnstone advised that, because of his refusal thereafter to do any work at any room within the house it took three months before another contractor was able to be identified and able to attend;

33. *The Tribunal at this point, 1pm, broke for lunch. The Hearing resumed again at 2pm;*

34. Mr Johnstone advised that the Respondent refused to allow him, or his wife (the landlord) access to his room to empty an electricity meter within it. The Property was serviced by electricity using a coin meter. This required to be emptied from time to time. The funds recovered from it are used as payment towards the electricity bill for the Property. The Respondent accepted that he refused to allow Mr Johnstone or his wife access to the Property;

35. The Respondent's position in relation to this was that he did, indeed, refuse access to the Property and had still been doing so. He maintained that Mr Johnstone was thief and he had stolen his rowing machine and camping equipment previously. That is the reason he was not allowing access – he was not willing to allow a thief to enter his room;

36. Mr Johnstone explained that the rowing machine and camping equipment were not, in fact, within the Respondent's room within the house. There was another room which was vacant. On an occasion when Mr Johnstone was at the house he noted that a rowing machine was within this other room. He was unable to identify to whom the rowing machine belonged. In the circumstances, he removed it from the room, put it into his van. His intention, however, was to return it to his rightful owner in due course but for various safety and insurance reasons he was not willing to allow it to remain within the vacant room. Separately, there were wardrobes within a hallway at the house. There was bedding within it and what appeared to some camping equipment. Mr Johnstone advised the bedding looked to be soiled and dirty and the camping equipment looked to be old. He assumed that it was property which was being disposed of. The wardrobes, themselves, ought not to have been in the communal areas of the house. Mr Johnstone accepted that he had removed these items. This was on a separate day from the removal of the rowing machine;

37. Mr Johnstone advised that Mr Stoate had no authority to store items in the vacant room nor to use it for any other purpose. The house was due for an HMO Inspection by the local authority and he was anxious to ensure that it was in good order. He did make attempts to identify the owner of the rowing machine but was unsuccessful in doing so and for that reason decided to remove it. Mr Stoate was not at home at the time otherwise he would have been able to make an enquiry of him;
38. It was accepted by Mr Johnstone that Mr Stoate made a telephone call to Mrs Johnstone (the landlord) enquiring as to whether they had removed the rowing machine and asking that they return immediately with it. At that point, however, Mr and Mrs Johnstone were returning home to Inverness. They were already past the House of Bruar – approximately 74 miles from Inverness. They advised that they were not in a position to return the rowing machine immediately but it was returned a couple of days later. Mr Stoate maintains that it was not returned for a number of weeks;
39. In relation to the camping equipment, Mr Johnstone advised this was removed on 4 the same day as the HMO inspection. It was within a wardrobe which was within the hallway in the house. It ought not to have been there. It was removed to ensure there were no issues arising from it in the course of the HMO Inspection. Mr Johnstone believed that the items were being disposed of given their condition. Mr Johnstone was quite clear that he had not stolen any items but accepted that, for the reasons stated, he had removed certain items from the house;
40. Mr Stoate pointed out that two of the other tenants had bikes within the hallway and they had never been told not to put stuff there. He pointed out that his room is 4.3 metres by 3 metres and he does not have sufficient space within his room for everything he has gathered over the many years of his life. When asked why, if that was an issue for him, he did not move to a larger property, he simply advised that he did not see the need for that and did not consider it to be a problem that he was using other space within the house, despite the fact that he was not paying rent for any other part of the house. (Indeed, it was accepted by him that he had not been paying rent at all, or had been withholding rent, for a significant period of time);
41. Mr Stoate denied that there was any linen within the wardrobes. He maintained that the only items within it were camping equipment, in particular a rucksack, a tent and a sleeping bag. Mr Johnstone pointed out that these items were returned the very same day, once it became known that they were not, in fact, to be disposed of;
42. Reference was made to various photographs of the vacant room and items which had been stored within it. It was maintained by Mr Johnstone that Mr Stoate had been using a fridge within that room and had also been keeping clothes within a dresser within it. Mr Stoate was not present when Mr Johnstone was in attendance in the vacant room. Mr Stoate was within Property with the HMO Inspector. Mr Johnstone was not in attendance with him as Mr Stoate was still refusing him entry. Following the inspection Mr Stoate noted the items had been removed from the wardrobes, raised the matter with Mr Johnstone and, as stated, they were returned immediately;

43. The Tribunal enquired as to whether Mr Stoate had a key for the vacant room. He advised that he did. When asked why he had a key he advised that he had it to tidy up before the inspection. Mr Johnstone advised that Mr Stoate was given a key on one occasion to remove a baby belling cooker from the room. He was never given authority to use the room. He was never given authority to store clothing or any other item within it. He was never given permission to store a rowing machine within it or to use a rowing machine within it;

44. A comfort break was allowed for the Parties at 2.50pm. The Hearing resumed shortly thereafter;

45. Ground 14 the tenant has allowed or caused damage to the house or common parts.

There was a repair required to another room within the house. A room occupied by Mr Douglas Stewart had a water leak. When this was investigated it became apparent that there was a need to remove plaster board on a wall and it became apparent that there was a leak in a pipe behind the wall. This required a significant amount of work to repair the water leak and reinstate the room. Mr Stewart had to be decanted from that room and when Mr O'Donnell attended, as referred to above, it was to undertake work in connection with this. The refusal by Mr Stoate to allow Mr O'Donnell access ultimately resulted in a three month delay in the work being undertaken and an additional cost of £800 having regard to the quote previously given by Mr O'Donnell and the amount subsequently paid to an alternative contractor. Mr Johnstone made a call to Mr Stoate about possible additional costs with Mr Stoate advising that this was of no concern to him;

46. The Tribunal enquired specifically as to whether there was a direct causal link between the refusal to allow Mr O'Donnell access and the additional cost of the work undertaken. Mr Johnstone advised that there was a direct causal link. The water leak continued. It caused additional damage. There was more work required as a result. Part of the delay was caused by COVID but, had Mr Stoate allowed Mr O'Donnell access, the work would have been undertaken when first intended;

47. There had been rats within the house and Mr Johnstone believed this was caused as a result of the poor state of cleanliness of Mr Stoate's room. Upon further enquiry by the Tribunal it became clear that the exact cause of a rat infestation could not be attributed to Mr Stoate and any suggestion to that effect was nothing more than speculation;

48. There was general discussion in relation to the condition of Mr Stoate's room. The Tribunal enquired as to whether or not there were any such issues prior to the COVID pandemic. Mr Johnstone advised that, prior to that, he was of the view that Mr Stoate's room was perhaps untidy but he considered that a line had been crossed when third parties made comments about the condition of the room. Third party in question was Mr O'Donnell who forwarded a text message to Mr Johnstone commenting upon the condition of the room;

49. The HMO Report, which had been lodged as a production, indicated that Mr Stoate's room was cluttered. Mr Stoate advised that it was difficult to live in a place the size of his for 11 years without it being cluttered;

50. Mr Johnstone suggested that Mr Stoate had forced entry to the spare room and had damaged the door and a lock in the course of doing so. Mr Stoate denied this. Photographs of the door had been produced. In relation to this matter, the Tribunal considered that any suggestion that Mr Stoate had forced entry to the room and damaged a door was nothing more than speculation;

51. At this point it was 4pm. The Chair of the Tribunal enquired as to whether Parties wished to continue with a view to concluding the Hearing. They indicated that they would wish that. The Clerk of the Tribunal and the Housing Member also confirmed they were content to continue with a view to the Hearing being concluded. At this stage, therefore, a further comfort break was allowed and the Tribunal resumed shortly thereafter;

52. Ground 16 the condition of any furniture has deteriorated due to ill treatment by the tenant or any other person residing with him.

Mr Johnstone advised that Mr Stoate purchased a new mattress. Mr Stoate purchased this direct but the cost was reimbursed by the landlord by way of it being agreed that rent would not be paid for three weeks, that being £180. Mr Stoate wanted this mattress replaced after 2 years. The landlord was of the view that a mattress should last more than 2 years. Despite that, the landlord agreed to purchase a new mattress if Mr Stoate paid his rent up to date. By this time he was in arrears of rent. Mr Stoate never brought his rent up to date and, accordingly, no new mattress had been provided to him. Mr Johnstone maintained, however, that there ought not to have been a need for a mattress after such a short period of time;

53. Mr Stoate advised that a mattress had been purchased 3 years after he moved in. It cost £120. He advises that he paid one half of the cost of that. He advised that he would be in a position to provide bank statements showing that there had been no interruption of this rent for a period of 3 weeks as Mr Johnstone had suggested. The reason Mr Stoate wished a new mattress was because there had, at that point, been rats within the room, as referred to above, and he did not wish to sleep on a mattress which had possibly had rats upon it. Mr Johnstone enquired as to why Mr Stoate had not communicated this specific matter with him – i.e. the issue with the rats. When the Tribunal enquired as to what the normal replacement cycle for a mattress would be Mr Johnstone advised that what is normally done is that the mattresses are replaced when a tenant leaves. At this point Mr Stoate began laughing loudly and heartily. The Chair of the Tribunal admonished him to conduct himself appropriately. Mr Stoate apologised to the Tribunal but advised that he found it difficult not to laugh given the comments being made by Mr Johnstone. Mr Johnstone continued advising that, at the house, the situation was perhaps different because there were so many tenants who were long term tenants and, therefore, there was not the usual system of replacing a mattress once the tenant vacated the premises;

54. Mr Johnstone made reference to damage to a baby belling cooker within the Property. Mr Stoate advised that the landlord had taken this away. There had been damage caused to it but it was not his fault. He advised that he was now using a cooker within the premises which had been supplied to him by a friend;
55. There was a damaged worktop within the Property. This, in fact, is a matter which had been raised by Mr Stoate himself within his own submissions. He complained that a worktop within the Property had been damaged and had not been replaced by the landlord. However, he accepted that the damage was caused when he stood on the worktop and that he did so intentionally while trying to clear cobwebs. He maintained that the worktop was not fit for purpose as it broke when he stood on it causing damage to the worktop and to the wall;
56. Mr Johnstone pointed out that this damage had never been reported to the landlord. Mr Stoate accepted that. Mr Johnstone pointed out also that the worktop was clearly not intended for a fully grown adult male to stand on it. Mr Stoate did not consider that there was any issue with him standing on the worktop. The Tribunal enquired as to how long the worktop had been in place. Mr Stoate agreed that it had been there since the commencement of his tenancy at least. It had obviously been fit for purpose throughout that period of time and the difficulty only arose because he stood on it. He maintained that this was an issue for the landlord but accepted also that he had never reported the damage;
57. There was a suggestion that Mr Stoate had been overloading an electrical socket by running an extension lead from it and using it for multiple appliances. This had apparently caused browning to the socket. Mr Stoate accepted he had used an extension lead but denied he had overloaded the socket stating he knew not to do that. The Tribunal did not consider this to be a matter of any materiality;
58. The written submissions by the Parties contained two separate letters apparently written by one of the other residents, Mr Stephen Gray. One of these, lodged by the Applicant, effectively complained about the Respondent. In the other, lodged by the Respondent, Mr Gray said he had been pressured to write the first letter. The handwriting in each appeared to be different. The signature on each was different. The Tribunal made reference to them. Mr Stoate advised that he may be able to have Mr Gray address the Tribunal on this matter. The Tribunal allowed him an opportunity to do so;
59. Mr Gray did that address the Tribunal as a witness. He advised he had indeed written both letters and signed both. When questioned about the differences referred to he became annoyed and indicated he did not really wish to say much more. In the circumstances, no weight was given to these letters nor the evidence of Mr Gray;
60. Mr Stoate, in both his written and oral submissions to the Tribunal, made comment about the fact that, as he seen it, the decision to evict him was being taken and for their own pecuniary interest, or their avarice. He understood the mortgage for the house had now been repaid and, the

tenants having provided rent money over a number of years to repay the mortgage, the landlords were now seeking to evict him so that they could reap the benefit of that. It was pointed out within written submissions by the Applicant, however, that if the intention was to make as much money as possible from this rental, the landlords had failed to increase the rent at any stage whatsoever during the 11 year duration of the lease. These proceedings were being raised due to the tenant, Mr Stoate, failing to pay rent and the issues relating to the condition of the Property;

61. The Tribunal indicated that it would require time to consider evidence heard but, prior to concluding, sought information from the Parties in relation to the matter of reasonableness of an eviction order being granted. In that regard Mr Stoate advised that he had not received any contact from the Local Authority, despite a Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 having been intimated to them. He did advise, however, that Glasgow City Housing had told him that he was number 10 on a list for accommodation. Despite mentioning his mental health at an earlier stage in the proceedings, he did not wish to make any submissions in relation to his health in the context of the reasonableness of an eviction order being granted;

62. Mr Johnstone advised that, having regard to the issue of reasonableness, there were now significant rent arrears. The landlord had given Mr Stoate every opportunity to correct the situation and to bring his arrears up to date. He had failed to do so. He had been “blinking us” and ignoring any potential solution suggested. He had had many opportunities to address the issue of rent arrears and to address the issues raised in this Application. He had failed to do so. In all the circumstances, Mr Johnstone considered that it would be reasonable for an Order for Eviction to be granted;

63. The Tribunal adjourned the Hearing at 4.52pm to enable the Tribunal Members to consider the evidence and their decision;

FINDINGS IN FACT

64. Having considered the evidence, the Tribunal found the following facts to be established:-

- a) The Parties entered into a lease in relation to the Property at Room 1, 94 Cartvale Road, Glasgow. The lease was undated but the initial rental period was from 21 January 2011 until 21 July 2011;
- b) The Property was part of a larger home and was a house in multiple occupation. Other rooms within the house were let to other persons;
- c) A Notice to Quit dated 7 May 2021 was served upon the Respondent;
- d) A Notice in terms of s19 of the 1988 Act was served upon the Respondent. This sought recovery of possession on a number of different grounds including rent arrears, failing to allow reasonable access to the Property and failing to maintain/causing damage to the Property;
- e) As at the date of the Case Management Discussion rent arrears amounted to not less than £3,293.00. That amounts to in excess of one full years rent;

- f) The Applicant has chosen not to pay rent for what he considered to be good reasons. He was not fully entitled to withhold rent and, as a result, he has been persistently late in paying rent;
- g) Rent was unpaid as at the date of commencement of service of Notice of proceedings and also as at the date of commencement of proceedings before the Tribunal;
- h) The Respondent has refused to allow the Applicant reasonable access to the property for the purposes of inspection and for repair. This has been a deliberate decision taken by the Respondent. The Respondent does not intend to change his stance on this;
- i) The Respondent prevented access to the property, and other parts of the house within which it is situated, to a tradesman to enable repairs to be effected;
- j) The Respondent caused damage to furniture and fittings within the property and, in particular, cause damage to a kitchen worktop. This was caused as a result of the Respondent intentionally standing upon the kitchen worktop;
- k) The Respondent failed to report the damage to the worktop to the Applicant;
- l) The Respondent did not effect any repair to the worktop himself.
- m) It is reasonable, in the circumstances, that an Order for Eviction is granted having regard to arrears of rent, the refusal of the Respondent to allow the Applicant access to the property, the refusal of the Respondent to allow tradesman instructed by the Applicant access to the property for the purpose of effecting repairs and the damage caused to furniture and fittings by the Respondent;

REASONS FOR DECISION

65. Having regard to the established facts, the Tribunal concluded the following Orders should be granted:-

- a. An Order for payment by the Respondent to the Applicant in the sum of £3,293.00;
- b. An Order for eviction;

66. The Tribunal heard extensive evidence on the day of the Hearing. As indicated above, the Hearing, with appropriate breaks was conducted between 10am and 4.52pm;

67. It was clear that rent had not been paid for a significant period of time. Mr Stoate did not dispute the figure of £3,293.00. While he did indicate that he was not willing to agree that figure, suggesting that he did not expect to be asked about that matter, the Tribunal accepted the information for Mr Johnstone to that effect. The Tribunal considered that it was somewhat surprising that Mr Stoate suggested that he did not expect to have to address such a matter given that this was a Hearing and he had lodged lengthy submissions, on a number of occasions, in advance of it. He clearly knew the various issues the Tribunal had to address and had addressed them comprehensively within his written submissions prior to the Hearing;

68. In relation to interest, the Tribunal had no hesitation in stating that it would not apply interest at a rate of 39.9% per annum. Such a rate of interest, although in the lease, is clearly a punitive rate and is not appropriate. The Tribunal considered that a rate of 4% per annum would be appropriate and the Applicant did not take issue with that;
69. The Tribunal asked the Respondent if he wished the Tribunal to make a time to pay direction. The Respondent did not seek such a direction, simply saying he wished to appeal. The Tribunal explained that he can seek permission to appeal after the decision of the Tribunal and its reasons are issued. The Tribunal again asked if the Respondent wished a time to pay direction to be made at this stage, explaining this could allow payment at a specified amount per week or per month or allow full payment within a specified period. The Respondent again said he wished to appeal. The Tribunal sought clarification that the Respondent understood the question he was being asked. He said he did understand but re-iterated that he wished to appeal. Having given the Respondent three separate opportunities to address the issue of a time to pay direction and no request for one having been made the Tribunal did not make such a direction;
70. Mr Stoate advised that he had been withholding rent and he believed he was entitled to do so. His main explanation for withholding rent was because he was wishing to be provided with a copy of the HMO Inspection Report and, having regard to what he considered to be false allegations made against him by the landlord, this was his “only leverage against his machinations”. Those are not legitimate reasons to withhold rent. If rent was being withheld for any legitimate reason, it is normally expected that the person withholding rent should set it aside in a separate account to be able it to be evidenced that it is being withheld for a good and proper reason and to ensure that it is available for payment when required. Mr Stoate had clearly not done that. The Tribunal concluded without any difficulty, that the alleged withholding of rent was, at best, unjustified but, more likely, the explanations provided were disingenuous. In the circumstances, an order for payment of the unpaid rent was appropriate;
71. Separately, having regard to the extend of unpaid rent, the Tribunal considered that it was appropriate to grant an order for eviction on the basis of the arrears of rent;
72. In relation to Ground 13, suggesting that a term of the tenancy other than payment of rent arrears had been broken, this arose from the decision of Mr Stoate to refuse entry to the house and the Property to the landlords and, separately, to refuse an authorised agent of the landlords entry to undertake essential repairs. Mr Stoate was quite clear in his position in relation to both. He agreed that he had refused entry to his room to Mr Johnstone and his wife, the landlords. He did so because he considered them to be thieves. He agreed that he had refused Mr O'Donnell entry to the house, and therefore also the Property, maintaining that he had “sacked him” and maintaining that he was not there to undertake work in any event. He considered that he was perfectly justified in refusing entry to the Property to Mr Johnstone and the landlord and refusing Mr O'Donnell entry to undertake work. The Tribunal, however, had little hesitation in concluding that, whatever his own thought processes were, he was not justified in

taking the stance that he did. In the circumstances, he had refused access to the Property by the landlord upon reasonable notice being given to him. He was not justified in doing so. In relation to the refusal to allow entry to Mr O'Donnell, this caused a significant delay in work being effected to the house and the Property and caused additional expense to the landlord. Given the clear position of Mr Stoate to the effect that he was still not going to allow Mr or Mrs Johnstone to enter the Property the Tribunal considered that he is in breach of Ground 13 and eviction on that ground is justified;

73. In relation to Ground 14, allowing or causing damage to the Property or common parts, the Tribunal was not satisfied that Mr Stoate was in any way responsible for the infestation of rats nor that there was any fault on the part of Mr Stoate in relation to the requirement to replace a mattress or the baby belling oven. In the circumstances, the Tribunal is not willing to grant an order for eviction on this basis;

74. In relation to Ground 16, the Tribunal was satisfied that Mr Stoate was responsible for damage to furniture or fittings within the Property and, in this regard, the Tribunal was so satisfied having regard to Mr Stoate's own submissions and own evidence in relation to the damage caused to the worktop. This was clearly caused by him as a result of a deliberate act by him in standing on a worktop which is clearly not designed to bear the weight of a fully grown adult male. In addition, Mr Stoate had failed to intimate this damage to the landlord, the landlord only becoming aware of it as a result of the submissions lodged with the Tribunal by Mr Stoate. Failure to report it would appear to be deliberate and the damage was obviously not noted previously by the landlord due to Mr Stoate's refusal to allow access to the Property. In the circumstances, having regard to damage caused by a deliberate act of Mr Stoate, the Tribunal concluded that it was appropriate to grant an eviction order on this ground;

75. In relation to the matter of reasonableness, the Tribunal sought submissions from both Parties in relation to this. Mr Stoate did not make any specific submissions. He, in fact, made it clear that he was already seeking alternative accommodation and appeared to be fairly high up a list for alternative housing. Having regard to the position of Mr Stoate, and the submissions made by Mr Johnstone, referring to the long standing rent arrears, the refusal of Mr Stoate to engage with the landlord and the damage caused to the Property, the Tribunal considered that, in the event of there being any dispute in relation to the issue of reasonable ness, favour required to fall upon the side of the landlord;

76. In determining a date on which an order for eviction would be able to be enforced the Tribunal had regard to the necessity of allowing at least 30 days for the period for appeal to expire. The Tribunal was conscious of the fact that would result in an order for eviction becoming enforceable between Christmas and New Year 2022. The Tribunal did not wish to place the Respondent in a position of being ejected at that time of year. The Tribunal decided to allow enforcement of the order for eviction no earlier than 12 noon on 11th January 2023;

REQUEST FOR TRANSCRIPT OF PROCEEDINGS

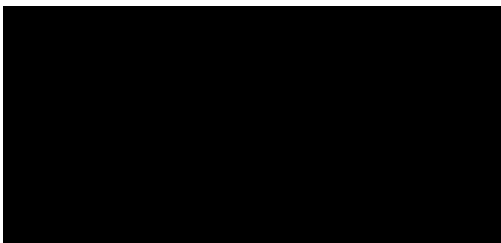
77. Mr Stoate, prior to the Case Management Discussions assigned for 28th November 2022, which were assigned to enable the Tribunal to issue its decisions, had forwarded further written submissions complaining about the conduct of the Hearings on 24th October 2022 and seeking transcripts of the proceedings. He requested transcripts during the Case Management Discussions on 28th November 2022. The Tribunal advised that transcripts cannot be provided as the Tribunal does not make transcripts of proceedings. The decisions of the Tribunal and its reasons will be issued and the parties can use those to inform any decision thereafter in relation to seeking a review or recall of the decisions or to seek permission to appeal;

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of **THREE THOUSAND TWO HUNDRED AND NINETY THREE POUNDS (£3,293.00) STERLING** to the Applicant with Interest thereon at the rate of **FOUR PER CENT PER ANNUM (4%)** running from 28th November 2022 until payment

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.



28 November 2022

Legal Member/Chair

Date

