



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/22/1667

Re: Property at 482 Main Street, Camelon, Falkirk, FK1 4QJ (“the Property”)

Parties:

Mr Martin Aitken, Mrs Juliana Aitken, 70 Mountbatten Avenue, Bright, 3741 8006, Australia (“the Applicant”)

Mr Martin Ian Baxter, 482 Main Street, Camelon, Falkirk, FK1 4QJ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of One thousand seven hundred and ten pounds and ten pence (£1710) against the Respondent with interest at the rate of three per cent per annum from the date of decision until payment

Background

- 1 By application to the Tribunal dated 30 May 2022 the Applicant sought an order against the Respondent in the sum of £3420 in outstanding rent arrears. In support of the application the Applicant provided a copy of the private residential tenancy agreement between the parties and a rent statement dated 17 May 2022.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President determined that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 26 August 2022.

- 3 A copy of the application paperwork was served on the Respondent by Sheriff Officers together with notification of the date and time of the Case Management Discussion and instructions for joining the teleconference.

The Case Management Discussion

- 4 The Case Management Discussion took place on 26 August 2022. The Applicant was represented by Miss Alexandra Wooley, Solicitor. The Respondent was present and accompanied by his mother as a supporter.
- 5 The Legal Member explained the purpose of the Case Management Discussion and asked parties to address the Tribunal on the application.
- 6 Miss Wooley explained that the Applicant sought an order in the sum of £3420, together with interest at the rate of three per cent per annum until payment. The Respondent fell into arrears at the end of 2021. The rent was £380 per month. Miss Wooley explained that the Respondent had not provided any explanation for his failure to pay rent. There was no indication that the Respondent intended on making payments.
- 7 Mr Baxter explained that he had notified his landlord of a leak in the roof of the property in August 2018 and since then it had been an ongoing issue. He accepted that he would be liable to pay an element of rent for the property, but not the full amount due to the issues he had experienced as a result of the Applicant's failure to address the leak. Mr Baxter explained that he had incurred additional expense in trying to dry out the damp areas by paying for additional heating. It cost more to heat a damp property. He had been in regular contact with the Applicant regarding repairs that were required to the roof. The last contact from the Applicant was in September 2020 advising that he was chasing the roofer daily. However Mr Baxter had heard nothing since. In November 2021 he got fed up as he hadn't heard from the Applicant in over a year and decided to stop paying rent. Mr Baxter confirmed that he had not notified the Applicant that he was withholding his rent. His mental health had deteriorated, in part as a result of the condition of the property, and he was struggling to deal with matters. He advised that some rent had been put aside but he couldn't say how much.
- 8 Mr Baxter confirmed that the roof was still leaking in the living room, kitchen and hallway. In the living room it leaked next to the window and in the kitchen it leaked down the back wall where the cooker is plugged in. Mr Baxter advised that he was unable to use the cooker as a result because it was plugged into the back wall. The fridge had also been moved into the living room so that it could still be used.
- 9 Miss Wooley confirmed that the Applicant was aware of the leaks and the issue with the roof and shared Mr Baxter's frustration. The roof had been hard to repair and the Applicant was still getting quotes from various contractors. He had been let down by a contractor he had employed to examine and repair the roof.

Findings in Fact and Law

- 10 The parties' Tenancy Agreement commenced on 2 June 2018.
- 11 In August 2018, the Respondent reported leaks from the roof to the Applicant.
- 12 The leaks persisted throughout 2018, 2019 and 2020.
- 13 In September 2020 the Applicant advised the Respondent that he was continuing to chase contractors to address the leaks.
- 14 The leaks have continued since September 2020. The property leaks from the roof in the kitchen, living room and hallway.
- 15 In terms of the Clause 18 of the said tenancy agreement, the Respondent's duty was to ensure that the Property met the Repairing Standard throughout the duration of the agreement. In particular the Respondent's duty was to ensure that the Property was wind and watertight and in all other respects reasonably fit for people to live in.
- 16 The Property was not fully habitable during the term of the parties' tenancy agreement. As a result of the leaks in the kitchen the Respondent has been unable to use the cooker and the fridge has been moved to the living room. The Respondent has also had to live in damp conditions due to the water ingress from the roof which has impacted upon his mental health.
- 17 The Respondent stopped paying rent in November 2021. The Respondent did not intimate to the Applicant that he was withholding rent.
- 18 As a result of the said breach of the tenancy agreement the Respondent suffered losses. He did not have full enjoyment of the property for a period of approximately 48 months. It is reasonable that the rent that fell due, of £380 per month for the period from November 2021 to August 2022 be abated by the sum of £190.00 per month, being £1710.
- 19 The Respondent is therefore due to pay the sum of £1710 to the Applicant based on the terms of the tenancy agreement between the parties.

Reasons for Decision

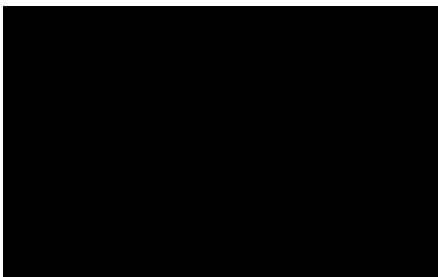
- 20 The Tribunal took into account the application paperwork together with the written representations and verbal submissions from the parties. The Tribunal noted that the substantive facts of the matter appeared to be agreed and therefore it did not consider there were any issues to be resolved that required a hearing to be fixed. The Tribunal was content that it had sufficient information upon which to reach a determination of the application.
- 21 The Tribunal accepted that the property had suffered from leaks for a prolonged period. This was not disputed by Miss Woolley. Despite the leaks having been

reported in 2018 the roof had not been repaired and whilst the Tribunal did accept that the Applicant would have been in contact with contractors, it considered a delay of a period of around four years to be unacceptable. On that basis the Tribunal found the Respondent to be in breach of the terms of the tenancy agreement in that the property was not wind and watertight. The issue therefore was whether the sums sought by the Applicant were lawfully due or whether a level of abatement was justified.

- 22 The Tribunal therefore carefully considered the issue of abatement of rent and determined that it was fair and proportionate to allow an abatement of £190 per month during the period the arrears fell due, being 50% of the contractual rent. The Tribunal took the view that the sum would reasonably compensate the Respondent for living with the water ingress, and the corresponding impact on his mental health and his ability to make proper use of the property. In reaching that figure, the Tribunal took into account the fact that the property was a one bedroom flat, in which the kitchen could not be used for its intended purpose due to the water ingress and subsequent impact on the cooker, which was unusable, and the fridge, which had to be moved to the lounge. The Tribunal also considered that the relocation of the fridge to the lounge would also restrict the Respondent's ability to use that room for its intended purpose. The impact and extent of the water ingress on a property of that size was therefore significant.
- 23 The Tribunal accordingly concluded that the Respondent was due to pay the sum of £1170 to the Applicant under the terms of the tenancy agreement between the parties.
- 24 The decision of the Tribunal was unanimous.

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.



13 September 2022

Legal Member/Chair

Date

