



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/22/2207

Re: Property at Flat 1/2, 59 Raeberry Street, Kelvinside, Glasgow, G20 6EQ (“the Property”)

Parties:

Miss Mary Foster-Grellis, Miss Ruby Kathleen Dunkley, Carinya, St James Road, Netherbury, Dorset, DT6 5LL; 5 Boath Road, Auldearn, Nairn, IV12 5TB (“the Applicant”)

Mr Khalid Javid, 23 Springkell Avenue, Glasgow, G41 4AB (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined an order for £860 should be granted in favour of the Applicant from the Respondent.

- **Background**

1. The Applicant lodged an application on the 30th June 2022 under Rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) the return of a deposit of £860.
2. Lodged with the application were:
 3. 1. Tenancy Agreement showing a commencement date of 1st September 2021 with a rent of £860 per month.
 4. 2. Confirmation from the three deposit schemes that no deposit was lodged
 5. 3. WhatsApp Chat messages.
 6. 4. Confirmation the tenancy ended on 3rd May 2022.

7. The Respondent's representative responded to this application and the conjoined application under FTS/HPC/ PR/22/2209 by e-mail dated 11th August, when his representatives enclosed a mandate from the Respondent authorising Apex Services to act for him in these proceedings. Apex Services also advised that "their client does not take a deposit and takes two months advance rent. For the final month when the tenant informs the landlord that they are leaving this advance rent equivalent to one month is allocated to this period. The Tenancy agreement clearly stipulates that the deposit is nil."
8. A hearing was heard on 29th November 2022 to consider the conjoined application for a penalty for failure to place a tenancy deposit in a tenancy deposit scheme. At the hearing it was determined a deposit had been paid. The following facts were also found at that hearing which apply to this application:-
9.
 - *Mr Adam Stobo paid the sum of £860 on 1st September 2022 to secure the Property for the Applicants, and a further £860 on 5th September for the first month's rent.*
 - *The Applicants sent money to Mr Stobo and asked him to pay the rental as he had paid the initial payment and it was easier for him to carry on doing so.*
 - *The tenancy was signed and entered into between the Applicants as tenants and the Respondent as landlord on 3rd September 2021.*
 - *The rent due in the tenancy agreement is £860 per month. Only one month is asked for from 1st September in the lease.*
 - *The Respondent asked for 2 months' rent to be paid up front. The Respondent took one month as payment for rent and kept one month for payment at the end of the tenancy.*
 - *The Respondent does this as part of his business practice.*
 - *The payment was made to secure the property and also to protect against the failure of the tenants to meet their obligations.*
 - *One of the payments of rent was a deposit as defined in the Regulations.*
 - *The deposit has not been lodged in a tenancy deposit scheme.*
 - *The deposit has not been repaid to the Applicants.*
 - *2 months' rent have not been paid in January 2022 and April 2022 respectively.*
 - *The Tenancy ended on 3rd May 2022 after the Applicants gave notice and returned the keys.*
 - *The reason for the non-payment of rent is in dispute.*
10. The hearing for this application was set down to be heard today 21st March at 10am by teleconference. Further submissions and evidence were provided by both parties in January 2023 and are referred to. The Applicants submitted that they were also relying on previous evidence and photographs submitted in October 2022 in relation to the state of the Property and a rat infestation. They alleged the Respondent had not met the repairing standard for the Property due to the alleged the problem with rodents being apparent from 16th February and the lack of smoke alarms which they alleged were apparent at the start of the tenancy and were never attended to.
11. The Respondents lodged on 16th January 2023 a copy of the Tribunal's decision under FTS/HPC/PR/22/2209, various bank statements showing rent

payments, a rent statement showing rent not paid in January 2022 and April 2022 and an invoice for door repairs.

12. The Applicants responded to these submissions claiming any damage to doors had been there at the beginning of the tenancy and was not due to anything done by them.

- **The Hearing**

13. The hearing commenced at 10am on 21st March 2023 and both applicants were present as was the Respondent and his representative Mr Sattar. The legal member explained the purpose of this hearing was to consider and hear evidence regarding the Applicants claim that they should have the deposit returned to them as they had to move out of the property as it was not habitable for over 2 months due to a rodent infestation and it did not meet the repairing standard since the start of the tenancy due to the fact there were no working smoke alarms.
14. The legal member noted that as per the facts found established at the conjoined case hearing, rent had not been paid for 2 months namely January 2022 and April 2022.
15. Ms Dunkley did most of the presentation for the Applicants and Mr Sattar spoke and made submissions for the Respondent.
16. Ms Dunkley provided evidence first and confirmed that on 15th February 2022 she saw a rat in their flat, the Property, when she came out of her bedroom and that it was crossing from the kitchen to the boiler room. She advised that they immediately contacted the landlord the Respondent who told them not to phone the Council but she advised due to previous experience with issues not being dealt with by the landlord, they phoned the Council anyway. She explained that an officer from the council pest control service attended on 16th February and saw rodent activity in the kitchen cupboards and noted internal holes there. The officer advised them how to fix it including using wire and foam to close the holes and they told their landlord this. She confirmed that as a result of being too scared to live there with rats both she and her flatmate, Ms Foster Grellis moved out and lived with friends for the rest of the tenancy as the issue was never resolved.
17. Ms Dunkley confirmed that the pest control officer from the council returned on 4th March 2022 and confirmed there was fresh damage and droppings to be seen and she asked for him to provide a note listing what should be done for the landlord. She referred to the note lodged in evidence in the photographs and submissions lodged in October 2022. Noted the note refers to mouse and rat activity and notes that holes in both areas need sealed with "rodent proof materials." Ms Dunkley then advised that Mr Javid asked for the flat keys to be dropped off at a shop he owned so that he could get a contractor "Albert" to fix this. She advised they were told a week later they could move back in. She confirmed however nothing was fixed and when the council returned on 28th March 2022 there was further evidence of new rodent activity and the officer from the council advised them to look for another flat and not to pay any more rent.
18. Ms Dunkley advised that Mr Javid asked again for the keys on 31st March to try and sort out the problem, but again the problem had not been fixed and

works needed had not been completed so they gave notice to end the tenancy on 5th April. She confirmed that the photographs lodged showed holes in the internal walls behind the kitchen cupboard and confirmed that as a result of the presence of rats and mice both tenants did not return to live in the Property as they felt they could not live there and only visited the property to remove some possessions and to visit with the council pest control officers.

19. Mr Sattar questioned the validity of the written note by pest control officer as the note was handwritten and not on official notepaper, but Ms Dunkley insisted it was and it was written at her request to provide something to the landlord.
20. Ms Foster Grellis then gave evidence and confirmed what her fellow applicant had said, advising that it was Ms Dunkley who had seen a rat and sent Ms Foster Grellis a message letting her know. Ms Foster Grellis confirmed she was too scared to go into the flat herself so stayed away until the next day, 16th February when she went in with the officer from Pest Control. He lifted the skirting away from the kitchen cupboard, saw the droppings and put down bait and some traps. She confirmed that as a result of this she took her laptop and clothes and went to stay with her boyfriend, Mr Adam Stobo and his Mum, Ms Tracy Sutton. Ms Foster Grellis confirmed that she did not attend the other 3 visits by the council and explained that Ms Dunkley went on those occasions. She confirmed that Mr Javid never once came to the flat, and that she dropped off the keys to the flat at his request on 7th March and picked them up on 14th. She advised that she thought he was going to meet her at the flat to see the problem but in the end he just asked for the keys. Ms Foster Grellis advised that the matter had not been fixed at the end of March and referred to the copy messages lodged in productions where she asks the landlord if he is not going to come and see it and he asks her to phone him. She advised that he then explained he would sort the problem and get Albert out again. She explained that she found this very distressing and Mrs Sutton who she was staying with took over the call and spoke to the landlord and it was agreed the keys to the flat would be dropped off again. She confirmed that Mr Javid advised bait had been put down and the rat would have died but Ms Foster Grellis did not agree that resolved the problem and confirmed she was not willing to stay in a flat which had rats.
21. With regard to the lack of smoke alarms in the flat Ms Foster Grellis advised that her boyfriend is an electrician, that he messaged the landlord on October 2021 advising the only smoke alarm in the property was in the hall and did not work. She advised that there were no working smoke alarms during the tenancy. She also advised that this was her final year as a student and she did not want forced out of her flat
22. Ms Phoebe Ashworth was then called as a witness by the applicants and advised that she was also a student and the Ms Dunkley's girlfriend. She confirmed that Ms Dunkley moved in with her after seeing the rat in the Property. She also advised she went with Ms Dunkley to attend the property with the pest control officer on 4th March because Ms Dunkley was too scared to go on her own. Ms Ashworth confirmed that the officer advised there was evidence of both mice and rats and he could tell the difference in their faeces. He said nothing had been done since he was last there (on 16th February) and that it needed to be fixed. She also confirmed that on 24th March when the council visited again it was very similar to 4th March, that there was fresh

evidence of rats and mice and pictures of holes in the cupboards. Ms Ashworth confirmed she had taken the pictures of the droppings under the cupboard and in the hallway on 4th March and sent them to Ms Foster Grellis. She also advised the pest control officer advised you could tell the difference in the way mice and rats eat the bait. Her understanding was that the poison was put down by the council.

23. Mrs Tracy Sutton then gave evidence and explained she is Mr Adam Stobo's mother and Ms Foster Grellis is her son's girlfriend. She confirmed that Ms Foster Grellis came to stay with her from 15th April until June due to the issue with rats in the Property. She also advised that as Ms Foster Grellis was getting very upset on a phone call with Mr Javid about the problem she took the phone from her and spoke to Mr Javid directly. She advised that Mr Javid did not want environmental health involved and that he had advised her that he had stuff and could sort it out. Ms Sutton thought the phone call was maybe just after Ms Foster Grellis came to stay with her around 16th February 2022. Ms Sutton confirmed that Ms Foster Grellis stayed with her until the end of the tenancy.
24. Mr Adam Stobo then gave evidence and confirmed that Ms Foster Grellis moved in with him and his mother after being told there was rats in the house. He confirmed that he went with his girlfriend to pick up clothes and said they were both scared of being there. He did not see any rodents but he also did not look in any cupboards and advised they had taken steps to make loud noises when entering the property to try to ensure the rodents would not appear.
25. With regard to the smoke alarms Mr Stobo confirmed that he did a test on the one alarm he saw on the property and there was no power to it. He confirmed he had sent a message to the landlord offering to supply alarms but did not hear anything back.
26. Mr Sattar then asked to make some submissions and advised he did not wish to lead any evidence from Mr Javid. He advised that he and Mr Javid were under the impression that the order from the conjoined case (for a penalty for not placing the deposit in a tenancy deposit scheme) covered the return of the deposit as well and advised that if it didn't he would submit that Mr Javid just wanted to draw a line under things and noted one rent payment was withheld in April 2022 but the other one wasn't paid in January and this was before any issue with rats. He suggested there should be no order made.
27. The Tribunal then asked Mr Javid the Respondent some questions about what he had done when told about the issue with rodents. He advised that he got in touch with his odd job man, Albert, who he used for these matters and asked him to sort it. He advised that he did not issue instructions but trusted Albert to fix it. He believed Albert had laid down poison but agreed that he got the keys from the tenants on 7th March so that Albert could go put poison down and check how it was. He advised that the keys were returned on 14th March. He also advised Albert was sent again on 31st March. Mr Javid was not very clear about timings but submitted that on 5th April he told the tenants it was all fixed and that Albert had sealed the outside of the property where he had found some holes. When asked if he was aware Pest Control had visited the property and advised that the internal holes should be filled he just advised that it was the outside that had been sealed as Albert had found holes there on his second visit with the keys.

28. With regard to the lack of smoke alarms Mr Javid was quite vague and indicated the property was fully alarmed. Under questions from the tribunal he admitted he did not actually attend to this until after the tenancy ended as he was concentrating on the rat infestation. He accepted the smoke alarms needed updated and confirmed that as soon as the tenants left he put in a full alarm system.

Findings in Fact and Law

1. *The tenancy was signed and entered into between the Applicants as tenants and the Respondent as landlord of the Property on 3rd September 2021.*
2. *A deposit of £860 was paid by the Applicants at the start of the tenancy and not lodged in a tenancy deposit scheme.*
3. *The deposit has not been repaid to the Applicants.*
4. *2 months' rent were not paid in January 2022 and April 2022 respectively by the Applicants.*
5. *The Tenancy ended on 3rd May 2022 after the Applicants gave notice and returned the keys.*
6. *The tenancy did not meet the repairing standard throughout the period of the tenancy in that the Property did not have working smoke alarms*
7. *The tenancy was uninhabitable from March 2022 due to the persistent presence of rodents in the Property.*
8. *The problem of rodent infestation was reported to the landlord but not resolved as his contractor failed to fix the problem by failing to seal the holes in the cupboard walls.*
9. *An abatement of rent of 2 months is fair and reasonable due to the breach of contract in failing to maintain the property to the repairing standard and failing to make it habitable for the tenants after a reasonable period after the problem was reported.*
10. *The rent due and owing being paid in full the deposit should therefore be returned to the Respondents.*

Reasons for Decision

1. The matter of the deposit having been paid by the Applicants was determined in the hearing heard to consider the conjoined application FTS/HPC/22/PR/2209. During that hearing it was also accepted by the Applicant that they had withheld the rent due in April but had not realised they had not paid January's rent, although they accepted it was not paid. The question for the Tribunal in this application was whether or not rent was due and owing for the whole period of the tenancy of the Property and if there was any rent outstanding by the end of the Applicants tenancy and whether therefore the deposit should not be repaid to the Applicants due to failure to pay 2 months' rent.
2. The Applicant's position was that the property breached the repairing standard by not having working smoke alarms and that from the 16th February after finding a rat in the Property the Property was not habitable and rent should not therefore be due and owing. The Applicant has summarised that position in their written evidence submitted on 19th January 2023. They claim an abatement of £2150 as they claim they were forced out of the Property on

- 15th February and could not return safely due to the presence of rodents, that there was an ongoing breach of repairing standard due to the lack of any smoke alarm, and heat alarm in the Property for the duration of the tenancy.
3. The Applicants both provided clear and credible evidence that rats and mice were found in the Property from 15th February 2022 when Ms Dunkley first saw a rat. This evidence was supported by the 4 visits from pest control at Glasgow City Council who visited on 16th February, 4th, 24th and 28th March and who left a note on the 4th March saying the holes in the cupboards needed to be filled.
 4. Both applicants left the Property and did not return apart from to collect some belonging and check on the rodent issue with the Council pest control officer. This was confirmed by the Applicants and their witnesses. Mr Javid did not dispute that there was a rodent problem. He indeed confirmed he has tried to sort it by sending his handyman "Albert". He also confirmed that twice he had taken keys from the tenants for a week to try and sort the problem.
 5. The Tribunal accepted the overwhelming evidence from oral testimony, photographs and written evidence that there was an infestation of rodents in the Property that was discovered on 15th February 2022. The Tribunal accepts that this was reported to Mr Javid and that he asked his handy man to try and sort it. However from the clear evidence and pictures presented by the Applicants the Tribunal finds that the issue was not sorted by Albert. That he may have put sealant in an outside wall but this did not prevent the rodents entering through the gaps in the internal walls and the Tribunal accepts the applicants evidence that this was present to the end of the lease. The Tribunal notes the council pest control officer advised both verbally and then in writing that the internal holes needed sealed and this was never done during the tenancy. The Tribunal also notes Mr Javid admits he did not fix the smoke alarms or install interlinked alarms until the end of the tenancy confirming therefore that there was a breach of the repairing standard and breach of the tenancy agreement which obliges the landlord to make sure there is a functioning smoke alarm in the room frequented for general living daytime purposes and one heat alarm in the kitchen as well as all being interlinked.
 6. The Tribunal notes the Applicants did not pay 2 months' rent during 2022. Although one non-payment was apparently in error the Applicant is averring they should not have paid rent from 16th February. The Tribunal accepts the Applicants evidence and that of their witnesses as wholly credible. It finds that the property was not habitable from at least 4th March 2022, (giving a reasonable period for the landlord to try and fix the rodent issue), that the tenants did not even have possession of the property for 2 weeks in March when they handed over their keys to the landlord and the issue with the rodents was not sorted throughout the tenancy. It also finds that there was a failure to meet the repairing standard which had been the case for the duration of the lease in terms of the lack of working smoke alarms. Given this the Tribunal finds it is reasonable for rent to be abated. The Tribunal finds that £1,720 is a reasonable abatement, namely 2 months' rent as the Respondent was advised of the issue on or around 16th February, that the Applicants had to leave the flat and felt unable to live there and that despite being advised how to fix the issue the Respondent and his contractor failed to resolve the issue by repairing the internal holes and the issue of the lack of any working alarms was present throughout the tenancy.

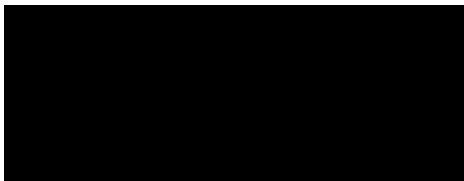
7. After deducting the 2 months' rent that is abated, the rent due and owing is fully paid for the tenancy, therefore the deposit of £860 paid initially by the Applicant's to the Respondent is due to be returned to the Applicants and the Tribunal finds that the Respondent is required to repay this sum to the Applicants.

- **Decision**

An order for £860 is granted in favour of the Applicants.

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.



Legal Member/Chair

21st March 2023

Date