



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/22/3921

Re: Property at 470 Allison Street, Glasgow, G42 8TA (“the Property”)

Parties:

Mr Faheem Ahmad, 0/2, 360 Aikenhead Road, Glasgow, G42 0QG (“the Applicant”)

Mr Suhail Ahmad, 470 Allison Street, Glasgow, G42 8TA, Mrs Neelum Bilquees 115 Glenavon Road, Maryhill, Glasgow, G20 0HS (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member) and Mike Scott (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondents in favour of the Applicant in the sum of £5,393.55.

Background

1. The Applicant submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order for payment in respect of rent arrears said to have been incurred by the Respondents.
2. A case management discussion (“CMD”) took place on 26 January 2023 and reference is made to the Note and Notice of Direction issued following that CMD. A Hearing was fixed for 4 April 2023.
3. On 3 March 2023, the Tribunal received an email from the Applicant’s representative, seeking to increase the sum sued for to £5,600. That email was accompanied by an updated rent statement.

4. On 13 March 2023, the Tribunal received a number of emails from the Respondents, attaching a letter from the Second Respondent's doctor dated 24 February 2023, 10 undated images, 3 dated images and a screenshot of messages in Urdu (which the Tribunal later arranged to have translated into English).
5. On 20 March 2023, the Tribunal received 3 further undated images from the Respondents.
6. On 27 March 2023, the Tribunal received an email from the Applicant's representative advising that the Applicant would represent himself at the Hearing.
7. On 29 March 2023, the Tribunal received an email from the Applicant attaching a screenshot of messages between him and the Second Respondent.

The Hearing – 4 April 2023

8. The Hearing took place by conference call. The parties all participated personally in the proceedings. The Tribunal arranged for the attendance of an interpreter, Ms Sofia Rehman, to translate the proceedings on behalf of the Respondents. The Tribunal noted that the Second Respondent had made reference to video evidence she wished the Tribunal members to see. The Tribunal adjourned briefly so that the video evidence could be uploaded to Objective Connect, to enable all parties to view it. The Hearing reconvened and the Tribunal noted that all parties intended to give evidence. The evidence given by the parties is summarised below. The summary is not a verbatim account of what was said at the Hearing but rather an outline of the matters relevant to the Tribunal's consideration of the application. At the conclusion of the evidence, the Tribunal adjourned the Hearing to enable the members to consider the evidence given and submissions made. The parties were advised that a written decision with a statement of reasons would be issued to parties.

Summary of evidence

The Applicant – Mr Faheem Ahmad

9. The Applicant resides at the address in the instance. He agreed to let the property to the Respondents in February 2022. He was in Pakistan from March to May 2022. In April 2022, he contacted the First Respondent because payment the rent payment was late. The First Respondent told him that he no longer lived in the property. His wife contacted the Second Respondent who advised that rent would be paid and that some repairs were required. The Second Respondent was given details of a tradesman who would attend to carry out repairs. A tradesman attended at the property and effected repairs in April 2022.

10. The Second Respondent contacted his wife by telephone to advise that the garden was untidy. His wife told the Second Respondent that it was her responsibility to maintain the garden. The Second Respondent also reported that a drawer in the kitchen was stiff.
11. Upon his return to Glasgow in May 2022, he contacted the Second Respondent asking for details of repairs required and asking to arrange access to the property. He did not receive a reply. He contacted the Second Respondent in September 2022 asking for payment of rent. The Second Respondent replied stating "...we will pay the rent and are not worried of you going to the Tribunal. We also are going to the Tribunal for the repairs that still needs to be done. Please send someone for the repairs in the kitchen and bathroom..."
12. In June 2022, after he served Notice to Leave, he received correspondence from a representative acting for the Second Respondent which referred to repairs. He contacted the representative and advised that he was not permitted access to have repairs assessed.
13. The Second Respondent paid rent for June, July and August 2022 and then stopped paying rent. There had been no contact from the Respondents to indicate that rent would not be paid.
14. Following a text exchange with the Second Respondent, he was afforded access to the property on 17 October 2022. That was the first time he attended the property since March 2022. The Respondents reported that the central heating was not working. He gave the First Respondent a note of the contact number of the gas engineer who had installed the boiler the year before. The other repairs reported as being necessary were the stiff kitchen drawer, the panel of the bathtub had become detached, and the bathroom door was not closing. His workman refitted the panel of the bathtub, reported that the kitchen drawer was only stiff and not broken and the bathroom door was closing without difficulty. The gas engineer attended on 20 October 2022 and reported to him that the central heating had been switched off at the controller. He reported that the heating system was in working order.
15. The Second Respondent instructed a different representative in December 2022. He received a letter from that representative in December 2022 advising that repairs should be carried out within 7 days, failing which rent would be withheld from January 2023.
16. On 29 December 2022, he contacted the Second Respondent to advise that a workman would be in contact with her to arrange a time to attend the property. The Second Respondent delayed in allowing access for repairs to be carried out. The Second Respondent allowed access on 17 January 2023 and repairs were carried out. The repairs reported at that time were water ingress to the vestibule light, radiators not emitting sufficient heat, the oven was not working,

there was mould in the kitchen and bathroom, a broken lock and the side panel of the bathtub was loose. His workman repaired all of these issues.

17. He does not accept that what had been reported to him necessitated urgent repairs in the property. The oven was not working at the outset of the tenancy and had to be removed. The Respondents told him that they had an oven of their own which they would use. The bathroom panel had become detached on a couple of occasions and that was refitted on 17 October 2022 and 17 January 2023. His workman reported that the extractor fan had been intentionally removed and he arranged for it to be refitted. The mould which was complained of was due to a lack of ventilation, heating and cleaning. He arranged for his workman to clean the mould and repaint the walls. His workman reported to him that all radiators had been bled and that all were operational.

The Second Respondent – Mrs Neelum Bilquees

18. Mrs Bilquees vacated the property in or around 23 March 2023. When she and her husband viewed the property the Applicant agreed that a few small repairs would be carried out. She referred to video footage and photographs of the property that she submitted.

19. In February and March 2022, the Applicant attended the property unannounced and accessed the shed. The shed contained a lot of old items belonging to the Applicant. When he attended, she told the Applicant that repairs were required at the property. She told him that the extractor fan was not working, the panel of the bathtub was detached, the radiators were not working and the garden was in poor condition. The Applicant told her that he would not have any work carried out at the property.

20. She exchanged what's app messages with the Applicant's wife in April and May 2022. Prior to this exchange of messages, she was in telephone contact with the Applicant's wife and explained that repairs were required at the property.

21. One of the kitchen drawers was a big problem for her. The drawer was very stiff and difficult to open. The Applicant told her that he wanted her out of the property and would not undertake any repairs.

22. She received the first Notice to Leave the property in April 2022. She received the housing element of her universal credit claim and passed all of those payments onto the Applicant.

23. She did not advise the Applicant that rent would not be paid from September 2022 onwards. She was reluctant to allow the Applicant access to the property because he was aggressive when he attended. She felt that she was being harassed by him. She has messages on her telephone from the Applicant, which she has not lodged.

24. The workman who the Applicant arranged to attend the property was unqualified. He applied silicone to parts of the property on 2 occasions. The heating engineer who attended did not check all of the radiators in the property. The repairs required had still not been carried out by the time she left the property.
25. She does not accept the accuracy of the rent statement produced. When she moved into the property, she paid an advance of £1,500. She paid this on 26 or 28 January 2022. This represented one month's rent in advance and one "running rent". She got a handwritten receipt from the Applicant and her representative lodged this with the Tribunal.
26. Under cross examination, she explained that she gave her representative a statement which confirmed that she paid rent in February 2022. She was asked what dates and times were offered to the Applicant to attend the property but she was not prepared to answer that question. She relied on the evidence already given by her.

The First Respondent – Mr Suhail Ahmad

27. When the Applicant attended at the property, he threatened the Respondents and did not undertake any repairs. The Applicant put silicone on a couple of areas in the property and removed dampness. All of the radiators had dirt and rust on them and did not work properly. Doors were hanging off the hinges. The Respondents looked after the garden and asked the Applicant to cut down the weeds over the shed. The shed was full of junk and rubbish belonging to the Applicant.
28. The handyman employed by the Applicant was not qualified and did not undertake repairs. The Respondents asked the Applicant to replace the oven and he failed to do so. The kitchen was full of grease when he and his wife moved into the property and the extractor fan did not work. The property was not habitable.
29. He wanted the Applicant to have access to the property to arrange repairs. However, when the Applicant attended at the property, he was rude and did not have repairs carried out.

Submissions

30. The Applicant submitted that the Respondents were not entitled to withhold rent; they had not given him notice that rent would not be paid from September 2022 onwards. Although he received a formal letter from the Second Respondent's representative in December 2022, by that time the Respondents had already failed to pay rent since August 2022. The letter in December 2022 required him to have repairs effected within an unreasonable period of time, given the time of year. Despite that, he attempted to arrange repairs but access

was delayed by the Respondents. It was submitted that there was no justification for the Respondents withholding rent. The Applicant asked the Tribunal to make an order for payment in the sum of £5,393.55.

31. The Second Respondent made submissions on behalf of both Respondents. She had suffered a lot, physically and mentally, as a result of the condition of the property. A sick note has been lodged from the Second Respondent's general practitioner. The Second Respondent cannot work because of back pain. The Respondents position was that the repairs had to be done.

Findings in Fact

32. The parties entered into a private residential tenancy which commenced 1 February 2022.
33. The Respondents were obliged to pay rent at the rate of £800 per month, in advance.
34. The rent arrears due by the Respondents as at 23 March 2023 amounted to £5,393.55.

Reasons for Decision

35. As a preliminary matter, the Tribunal allowed the Applicant to amend the sum sought to £5,393.55. The application to amend was supported by an updated rent statement and that had been intimated to the Respondents.
36. The Tribunal found the Applicant to be credible and reliable. His evidence was coherent and given in a straightforward manner. In contrast, there were inconsistencies in the Respondents' evidence. Where the evidence of the Applicant was at odds with that of the Respondents, the evidence of the Applicant was preferred.
37. The Tribunal considered that the onus was on the Applicant to establish that rent was due by the Respondents. Further, the onus was on the Respondents to establish that they were entitled to withhold the rent or entitled to a rent abatement.
38. The Second Respondent challenged the accuracy of the rent statement. She made reference to a handwritten receipt which she said her representative lodged with the Tribunal. The Tribunal cannot find any trace of a handwritten

receipt having been lodged on behalf of the Respondents. In her evidence, the Second Respondent stated that the Respondents paid an advance of £1,500 on 26 or 28 January 2022. However, during the CMD on 26 January 2022, the Tribunal noted the Second Respondent as saying that she paid £800 on 26 January 2022 and £800 on 1 February 2022. The two accounts given by the Second Respondent are inconsistent and the Tribunal found the Second Respondent to be unreliable on this issue. There was no dispute that rent had not been paid from September 2022 to the end of the tenancy. The Tribunal was therefore satisfied that the Applicant had established that, in principle, rent arrears were due by the Respondents to the extent of £5,393.55. That having been established, the Tribunal considered the evidence of the parties as it related to the repairs the Respondents contended were required but not undertaken.

39. The Respondents accepted that they did not notify the Applicant that rent would be withheld. The Second Respondent sent a text message to the Applicant on 16 September 2022 stating "...we will pay the rent...". The first notification the Applicant had that rent may be withheld was when he received correspondence from the Second Respondent's representative in December 2022, requiring repairs to be carried out within 7 days. The Applicant was notified that if the repairs were not carried out, rent would be withheld from January 2023. The retention of rent is an equitable remedy open to the Respondents. However, they must demonstrate that the remedy was exercised in good faith. In respect of the rent due for September to December 2022, the Tribunal was not satisfied that the Respondents were acting in good faith. They did not notify the Applicant that rent would be withheld, the Second Respondent sent a message indicating that rent would be paid and the Respondents advised the Tribunal that they had already spent the housing element of their universal credit claim on other outgoings. The Tribunal concluded that the only relevant period to consider whether the Respondents were entitled to withhold rent was after January 2023.
40. One of the issues raised by the Respondents was mould within the property. The Applicant's position about that was that it was caused by a lack of ventilation, heating and cleaning. The Tribunal observed that clause 16 of the tenancy agreement provided that the Respondents agreed to take reasonable care to keep the property adequately ventilated and heated. The Respondents did not lead any evidence to contradict the Applicant's position about the cause of the mould. In any event, the Applicant's evidence was that a tradesman instructed by him had cleaned the mould within the property and repainted the affected areas. That evidence was not contradicted by the Respondents, other than by the Respondents making a general statement that no repairs were carried out. The Tribunal was not satisfied that the presence of mould provided justification for the Respondents withholding payment of rent.

41. Another issue raised by the Respondents related to the central heating system within the property. The Applicant's evidence about this was that he had called a gas engineer to assess the system who reported that the central heating system was operation but had been switched off. The Applicant also arranged for a tradesman to bleed the radiators. Other than simply disagreeing with the Applicant, the Respondents did not lead any evidence to contradict the Applicant's evidence. The Tribunal was satisfied that the Applicant had discharged his duty to have repairs assessed and carried out. The Tribunal was not satisfied that the Respondents had discharged the burden on them to justify withholding rent in relation to any repairs required to the central heating system.
42. One of the repairs said by the Respondents to be required related to the condition of the garden. The Second Respondent gave evidence that she and her family maintained the garden and that it was beautiful. She also accepted that it was the Respondents' responsibility to maintain the garden. The Tribunal observed that clause 29 of the tenancy agreement provides that "the Tenant will maintain the garden in a reasonable manner." The Tribunal was not satisfied that the condition of the garden justified the Respondents in withholding payment of rent.
43. Other repairs which the Respondents notified the Applicant about can properly be characterised as minor repairs, such as the stiff drawer in the kitchen, the extractor fan not working and the panel of the bathtub which had become detached on 2 occasions. There was no evidence or submission by the Respondents to the effect that the property failed to meet the repairing standard, as required in terms of the Housing (Scotland) Act 2006.
44. The Applicant gave evidence that the Respondents delayed in allowing access to enable repairs to be assessed and carried out. The Tribunal observed that in terms of clause 19 of the tenancy agreement, "the Tenant must allow reasonable access to the Let Property for an authorised purpose" which includes carrying out work in the property and inspecting the property to see if any work is required. The excerpt of text messages lodged by the Applicant support his contention that he asked for access to be given and there was a long delay before the Respondents allowed access. Although the Second Respondent made reference to other messages which passed between the parties, she did not provide any detail of those messages and did not lodge screenshots of any messages between her and the Applicant. The Tribunal reminded her of the terms of the Notice of Direction issued on 26 January 2023. The Second Respondent responded by saying that she had understood that she had complied with the Direction. The Applicant's evidence was that access was allowed on 17 January 2023 to have repairs carried out. The Applicant

V. Bremner

them.

N. Irvine

Legal Member/Chair

11 April 2023
Date