Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/20/2477

Re: Property at Flat 85, 15 Ibroxholm Oval, Glasgow G51 2TY ("the Property")

Parties:

Mr Daryn Foster, 79 Dundee Drive, Glasgow, G52 3HL ("the Applicant"), and Govan Law Centre, 18-20 Orkney Street, Govan, Glasgow G51 3HL ("the Applicant's Representative") and

Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL ("the Respondent)

Tribunal Members:

G McWilliams- Legal Member
E Currie- Ordinary Member

Decision

The Tribunal, having considered the parties evidence and submissions, makes an order of payment to the Applicant by the Respondent of the sum of £1750.00.

Background

1. This is an Application for a payment order contained in documents received by the Tribunal between 27th November 2020 and 21st January 2021. It has proceeded in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules on Procedure 2017 ("the 2017 Rules"). In the Application the Applicant sought payment from the Respondent of £6,918.05 in respect of rebated rent, communal heating system costs and damages for

stress and inconvenience, arising from a claimed breach by the Respondent of the parties' tenancy agreement by failure to ensure that the Property met the Repairing Standard.

Case Management Discussion

2. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call on 9th March 2021. Reference is made to the Notes on the CMD.

Hearing

3. An Evidential Hearing took place remotely by telephone conference call on 4th May 2021. The Applicant, Mr D. Foster, and his Representative's Ms H. Sloey attended. The Applicant's father, Mr W. Foster, also subsequently attended during the Hearing to give evidence. The Respondent's Ms M. Rush, Head of Business Improvement, and solicitor Mr D. Adams also attended.

4. The Applicant and Respondent, through their Representative and solicitor, had lodged written submissions and supporting documentation, in advance of the CMD and Hearing.

5. At the outset of the Hearing Ms Sloey, for the Applicant, sought to lodge additional documentation, sent by email on 30th April 2021 and concerning repairs to the communal heating system in the multi-story block of flats within which the Property is situated, although late. This was opposed by Mr Adams for the Respondent, on the grounds that the proposed lodging was late and as his colleague Ms Rush, and other colleagues, had not had sufficient time to consider it. Having considered matters the Tribunal allowed the documentation to be lodged late on the basis that the Tribunal would decide the weight to be given to this additional documentary evidence when making their determination in respect of the Application.

6. Ms Sloey also confirmed that the Applicant now agreed that the Respondent had carried out effective remedial works, in respect of the windows in the Property, and rendered the Property wind and watertight, in compliance with the Repairing Standard, in July 2016. Accordingly she sought to reduce the Applicant's claim for losses in respect of additional communal heating costs to £586.60, and to, in turn, reduce his overall claim for a payment order in the sum of £6454.10. These adjustments were not objected to by Mr Adams, and allowed by the Tribunal.

7. Ms Sloey and Mr Adams confirmed that the following facts were agreed by the parties:

    i) The parties tenancy agreement began in April 2014 and ended in January 2018;

ii) During the tenancy there were issues with windows in the Property which were draughty and had water ingress in windy conditions.

iii) The Applicant applied to the Private Rented Housing Panel ("the PRHP") in 2016. The Panel carried out an inspection of the Property on 31st May 2016, and made a Repairing Standard Enforcement Order ("RSEO") in respect of the windows' disrepair and the remedial works required, on 12th June 2016.

iv) The Respondent carried out necessary and effective remedial works on 6th July 2016. The Property met the Repairing Standard when these works were carried out.

v) The PRHP carried out a re-inspection of the Property in October 2016 and, as the necessary works had been carried out and the Property met the Repairing Standard, the RSEO was discharged in November 2016.

Evidence and Submissions

8. The Applicant and his father, and Ms Rush, gave oral evidence, with reference to documentation which had been lodged, regarding problems with the windows in the Property, and their effect on the Applicant, and answered questions from Mr Adams and the Tribunal.

9. The Applicant stated that after he moved into the property, in April 2014, he first became aware of the outside noise and draughts from the windows at the end of the summer of 2014. He said that in winter the Property would not heat to a comfortable level. He said that he contacted the Respondent regarding the problems, initially through the Respondent's online repair portal and then by telephone calls and e-mail. He stated that after several site visits, and a determination by the PRHP, works were eventually agreed and carried out to remedy the problems with the windows, in July 2016.

10. The Applicant is a site based civil engineer. He confirmed that he was able to travel from his workplaces, in Glasgow and the Central belt of Scotland, to be at the Property when inspections and works were taking place. He said that his employer was understanding and allowed him to "nip away".

11. The Applicant said that his former partner, who had previously resided in the Property, did not want their baby son staying overnight with the Applicant in the Property because of the problems with the windows. The Applicant stated that he and his partner's son was born in April 2016.

12. The Applicant said that he paid £20.00 to £25.00 per month in communal heating costs. He stated that the heating system often broke down and that, whilst there were problems with the windows, the Property was not warm. He acknowledged that in September 2015 his monthly direct debit amount, in respect of the communal heating costs, was around £3.00. He said that the same communal heating system operated throughout his tenancy of the Property.

13. The Applicant stated that he had continued to pay his rent in full throughout the period when he notified the Respondent of the problems with the windows and when they then carried out visits and repairs, and did so until he left the Property in 2018.

14. The Applicant, when asked by the Tribunal if he had ever asked for compensation from the Respondent, in respect of the issues he had given evidence about, said that his recollection was that it was discussed with the Respondent but that he would have to check his emails. The Applicant said that he had asked the Respondent for the final outcome of the complaint, which he had made in his email to them dated 2nd December 2015, in a further email dated 14th December 2015. He stated that he had not raised the issue of compensation when the tenancy ended in 2018. He said that he started to pursue compensation around two years after the tenancy ended because he realised that he was entitled to do so. The Applicant stated that he had been dealing with other legal matters until then.

15. When asked by the Tribunal if he had ever considered withholding rent the Applicant stated that he had not wanted his credit rating to be affected. He said that he was not aware of the possibility of the local authority imposing a rent penalty notice. The Applicant stated that his recourse, in respect of the problems with the windows, was to apply to the PRHP and that he did so.

16. Mr W Foster said that he was a qualified foreman fabricator. He said that he visited the Applicant on most weekends, for the day, during the latter's tenancy of the Property. He said that he did not stay overnight as the Property was too cold. He said that his son became aware of issues with the windows around one month after he had moved in, and that these were not resolved until the PRHP case. Mr Foster stated that, given his employment experience, he was aware of the nature of the repairs that required to be carried out, and described these to the Tribunal. He said that after the remedial works were carried out in early July 2016 he was not aware of his son suffering any further problems with the condition of the Property.

17. Ms Rush stated that she was not involved in matters during the parties' tenancy but was aware of the circumstances as she had information form the Respondent's systems. She said that the Respondent's caseworker had liaised with the Applicant and relevant third parties regarding the problems with the windows. She said that the original windows installers had gone out of business but other contractors attended at the Property on several occasions before the remedial works were carried out in July 2016. Ms Rush stated that there had been no significant issues with the communal heating system and that it was repaired whenever it had broken down. She stated that the Applicant and other proprietors made payment in respect of heating costs to a third party energy supplier. She said that the Applicant had never asked for his rent to be abated and had paid his rent in full with no issues throughout the tenancy. Ms Rush said that she had no record of the Applicant asking for compensation prior to the current Application.

18. Ms Sloey relied on her written representations when making her closing submission. She submitted that the Applicant should be awarded compensation for having to reside in a cold, draughty home, with excessive outside noise, from April 2014 to July 2016. She said that the Applicant should be compensated for his losses including the stress and inconvenience which he suffered waiting for the repairs to be carried out. Ms Hoey submitted that the Applicant had suffered inconvenience as he had not been able to fully engage with his son.

19. Mr Adams also relied on his written representations. He stated that the Respondent no longer insisted on there being any time bar applicable to the Applicant's claims. He said that it was clear from the PRHP findings that the Applicant had not raised issues with the windows until September 2014. He submitted that the documentation lodged showed that the Respondent had made various genuine attempts to remedy the window problems before they were rectified in July 2016. He said that there was no scientific evidence supporting the Applicant's claim for losses arising through stress and inconvenience. Mr Adams submitted that the Appellant's son was born in April 2016 and the windows were fixed on 6th July 2016 and that the claim for loss arising from limited engagement with his son was too remote. He said that the Respondent's failure to ensure that the Property met the Repairing Standard should be reflected in an award of compensation which was calculated by way of a small percentage reduction in rent for the months when the windows in the Property were being complained of by the Applicant, in line with previous case law. He said that there was an overlap between the Applicant's rent abatement and stress and inconvenience claims.

Findings in Fact and Law

20. The parties tenancy agreement began in April 2014 and ended in January 2018;

21. During the tenancy there were problems with windows in the Property which were draughty and had water ingress in windy conditions. They also caused the Property to be noisy. The Applicant became aware of the problems and complained to the Respondent in September 2014. The original window installation company had ceased trading by then. The Respondent arranged for the Property to be inspected on several occasions before the Applicant applied to the PRHP in 2016.

22. The PRHP carried out an inspection of the Property on 31st May 2016, and made an RSEO in respect of the windows' disrepair and the remedial works required, on 12th June 2016.

23. The Respondent carried out necessary and effective remedial works on 6th July 2016. The Property met the Repairing Standard when these works were carried out. The Applicant did not suffer any other problems from then until the tenancy ended.

24. The PRHP carried out a re-inspection of the Property in October 2016 and, as the necessary works had been carried out and the Property met the Repairing Standard, the RSEO was discharged in November 2016.

25. The Respondent was in breach of the parties' tenancy agreement, as a result of their failure to ensure that the Property met the Repairing Standard and, specifically, was wind and watertight until July 2016.

26. The Applicant suffered losses as a result of the Respondent's breach. He paid full rent for the Property whilst the windows were defective, when his rent payments should have been abated as he did not have full enjoyment of his home as it was not wind and watertight. He had to be in regular contact with the Respondent to progress his complaint regarding the defective windows and suffered stress and inconvenience in having to do so.

27. The Applicant is entitled to be compensated for his losses arising from the Respondent's breach of the parties' tenancy agreement.

28. A reasonable payment by the Respondent to the Applicant, in compensation for his losses, is £1750.00.

Reasons for Decision

29. The Tribunal considered and weighed all of the oral and documentary evidence, and the written representations. Having done so, the Tribunal found, on a balance of probabilities, that the Respondent was in breach of the parties' tenancy agreement, by failing to ensure that the Property was wind and watertight, over a period of 22 months between September 2014 and July 2016.

30. The Tribunal further found that the Applicant suffered losses as a result of the Respondent's breach of the parties' agreement. He paid became aware of, and complained about, the problems with the windows in the Property in September 2014. The problems were rectified in July 2016. Having considered all of the evidence the Tribunal found, on a balance of probabilities, that the Applicant did not have full enjoyment of his home, as it was not wind and watertight, until the problems with the windows were remedied. The Tribunal accordingly determined that compensation, in the form of retrospective abatement of rent paid by the Applicant between September 2014 and July 2016 should be awarded. The Tribunal determined that a reasonable abatement to the rent for that period would be in the sum of £63.00 per month, representing 15% of the tenancy agreement monthly rental amount of £420.00, being a total sum of £1386.00.

31. Having considered all of the evidence the Tribunal also found, on a balance of probabilities, that the Applicant suffered stress and inconvenience during the said period in having to regularly communicate with the Respondent to progress his complaint regarding the state of repair of the Property. The

Applicant, however, did not suffer loss of wages whilst dealing with his complaint, as his employer allowed him to attend inspections etc. without difficulty. In the circumstances of this case, he Tribunal found that it was reasonable to further compensate the Applicant in the sum of £364.00 for the stress and inconvenience which he suffered over the said period of 22 months, and make a global, total payment order in the sum of £1750.00, to incorporate the Applicant's additional loss for stress and inconvenience in having to regularly communicate with the Respondent in relation to the issue.

32. The Tribunal considered but disregarded the Applicant's evidence in respect of losses arising from reduced engagement with his son. The Tribunal found that the Applicant's son, having been born in April 2016, was so young in the minimum number of months before the remedial works were carried out, on 6th July 2016,that his contact with him would reasonably be for limited periods in any event. The Tribunal found that it would not be fair or reasonable for the Respondent to be found liable to make payment to the Applicant as compensation for a lack of overnight contact with a newly born baby over such a short period of time.

33. The Tribunal also found that the Applicant's claim of increased communal heating costs was inconsistent with the oral and documentary evidence. The Applicant had given and submitted evidence regarding reduced, rather than increased, monthly energy costs. The Tribunal had not heard or had sight of evidence supporting the Applicant's claim of having to pay increased heating costs. Accordingly the Tribunal also found that it would not be fair or reasonable for the Respondent to be found liable to make payment to the Applicant in compensation for increased heating bills paid to a third party supplier.

34. Therefore the Tribunal determined to make an order for payment to the Applicant by the Respondent of the sum of £1,750.00.

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.

G McWilliams

23rd June 2021

Legal Member **Date**