



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing Scotland
Act 2014**

Chamber Ref: FTS/HPC/CV/21/0687

Re: Property at 40 Upper Craigour, Edinburgh, EH17 7SF (“the Property”)

Parties:

Miss Judith Toth, 7/14 Western Harbour Midway, Edinburgh, EH6 6LE (“the Applicant”)

Mrs Julie Dixon, 40 Upper Craigour, Edinburgh, EH17 7SF (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the respondent in the sum of £500.00.

Background

1. By application dated 18 March 2021 the Applicant sought repayment of rent together with damages for loss of income as a result of allegations that the property failed to meet either the repairing or tolerable standard. The Applicant submitted a summary of her claim together with additional documents and photographs in support of her claim.
2. By email dated 26 March 2021 the Applicant submitted further written representations to the Tribunal including a witness statement from Jane Hislop, Support and Development worker, Health in Mind, Edinburgh.
3. By Notice of Acceptance dated 29 March 2021 a legal member of the Tribunal with delegated powers accepted the application and directed it should be conjoined with the three other cases involving the same parties under case

references PR/20/1719, CV/20/1832 and CV/20/2644 to which a hearing had already been assigned.

4. Intimation of the case papers was sent to the Respondent by email following an unsuccessful attempt at service by Sheriff Officers.

The Hearing

5. A hearing was held by teleconference on 3 June 2021 in respect of all four conjoined cases. The Applicant attended personally supported by Miss Michelle Cooper. The Respondent attended personally and was represented by her husband Mr Neil Dixon.
6. Although it was suggested by the Applicant that throughout the duration of the tenancy there had been many occasions on which the Respondent had breached her obligations as a landlord her principal complaint was that the property failed to meet either the tolerable or repairing standard during the period from March 2020 until she vacated the property in August 2020 as other than from an electric shower in the bathroom the property had no running hot water. The Applicant submitted this rendered the property unfit for human habitation.
7. The Applicant went on to suggest that as a result of not having running hot water and having to rely on boiling a kettle during this period of some five and a half months it had an adverse effect on her health and contributed to substantially heightened stress, anxiety and agoraphobia that required the support of a mental health professional.
8. It was agreed that the Applicant had contacted the Respondent by email on 2 March 2020 to advise that although the shower was working the bath and sinks only had a cold-water supply. At that time the Applicant had also reported that there was a problem with mould around the plastic rim of the fridge door. There then followed a series of text messages between the parties on 8 and 9 March that culminated on arrangements being made for Mr Dixon to visit the property to examine the water heater on 9 March.
9. Mr Dixon attempted to repair the water heater by stripping back corroded wires at the socket as he thought this was the cause of the problem. As the water was due to heat overnight, he asked the Applicant to confirm the next day if the problem had been solved. The following day Miss Cooper texted Mr Dixon to advise there was still no hot water. It was then agreed that Miss Cooper would send a photograph of the controller with a view to the Respondent then ordering a replacement part.
10. On 18 March the Applicant sent photographs to the Applicant. Along with a message: "Sorry I don't think these sent with the previous email."

11. An arrangement was made for the Respondent to visit the property on 22 March 2020 however this visit was cancelled as the Applicant was exhibiting Covid symptoms.
12. It was the Applicant's position that initially she had accepted that it may take the Respondent a little time to obtain a replacement part particularly given the pandemic. As time went on, she decided she should just move as she thought it was obvious that the Respondent did not care about there being no hot water. In response to a question from the Tribunal the applicant confirmed she had not attempted to make further contact with the Respondent to complain about the water heater not being repaired and said that she was not that type of person and that her mental health had been severely affected. She said she had no energy to go chasing her landlord. She explained she had been referred for counselling by a mental health nurse at her GP practice.
13. The Applicant explained that although she had been paid some salary when she had been signed off work she had run out of sick leave later in the year and as a result she had to go to work ill as she had been unable to afford to stay off work on half pay.
14. For the Respondent, Mr Dixon said that under normal circumstances he would have followed up to ascertain if the water heater was still not working but with Covid the world had gone crazy. He and his wife had been caring for a 90-year-old relative and when the Applicant had not been in touch the matter had been allowed to drift. Mr Dixon accepted that there was an element of fault on his part and that of the Respondent but suggested that at no point did the Applicant get back in touch to say that it was ok to enter the property to carry out the repair. He also submitted that Miss Cooper was supposed to send him the photograph of the controller when in fact the photograph had been sent to his wife by the Applicant some days later. Mr Dixon suggested that "the ball had been in their court" but that Miss Cooper had stopped communicating with him.
15. Mr Dixon confirmed the property was heated by an electric storage heater system and that the hot water was also heated overnight on a cheaper tariff. There was also a wall heater to provide additional heating.
16. Mr Dixon confirmed that although the property had been rented out on a number of occasions since 2010 the Respondent had never instructed a qualified electrician to provide an Electrical Installation Condition Report. In response to a query from the Tribunal that he ought to have instructed an electrician to carry out a repair to the water heater and that he had not done so in order to save money Mr Dixon agreed he wanted to save money but that he wanted to have the repair carried out correctly and he was competent enough to carry out what was effectively the equivalent of changing a plug. He went on to say he had subsequently replaced the thermostat on the water heater after the Applicant had vacated the property and it was now working properly. In response to a query from the Tribunal Mr Dixon confirmed that although the property had a hard-wired smoke detector in the hallway it did not have hard-wired smoke detectors in the living room or bedroom nor a heat detector in the kitchen.

17. The Applicant sought as a minimum the return of all rent paid from 1 April 2020 until the end of the tenancy in the sum of £2097.28. She also sought further additional damages and suggested that these could include rent from 4-31 March in the sum of £506.24 together with damages for work time lost due to hygiene related stress, anxiety and avoidance of public places from 14 April to 9 July 2020 amounting to £3847.44.

Findings in Fact

18. The property had no running hot water other than from the electric shower from 1 March 2020 until after the Applicant vacated the property on 10 August 2020.

19. The Respondent was aware of the issue and her husband Mr Neil Dixon attempted to carry out a repair of the water heater on 9 March 2020.

20. Following the attempted repair being unsuccessful the Applicant sent the Respondent a photograph of the water heater controller/thermostat on 18 March 2020.

21. An arranged visit by the Respondent to the property on 22 March 2020 was cancelled due to the Applicant exhibiting Covid symptoms.

22. No further attempts were made by the Respondent to ascertain if the water heater was working or had been repaired on the instruction of the Applicant.

23. The Applicant did not contact the Respondent after 18 March 2020 to complain about the water heater not being repaired.

24. The property did not meet the tolerable standard.

25. The property did not meet the repairing standard.

Reasons for Decision

26. The Tribunal took the view that to some extent it could be said there were faults on both sides in this case. In the first place the Tribunal was concerned to note that the Respondent was apparently unaware of the statutory requirement to have the property inspected by a qualified electrician prior to it being tenanted to prepare an Electrical Installation Condition Report ("EICR") or that the EICR must be renewed every five years. The Tribunal was also concerned that the Applicant's husband who is not a qualified electrician took it upon himself to attempt to carry out repairs to the water heater himself. It is the Tribunal's view that unless a landlord is properly qualified, he should instruct all electrical work in rented properties to be undertaken by qualified engineers. It was clearly unacceptable that the Applicant be left with no running hot water at the sinks for a period of five and a half months. There was an onus on the Respondent to carry out a repair as soon as reasonably practicable. However, the Tribunal did form a view that even if the Applicant's health was such that she did not

feel able to follow up her complaint to the Respondent her friend Miss Cooper could have assisted and this might have prompted the Respondent to take action well before the end of the tenancy.

27. The Tribunal accepted that 2020 was a difficult year for everyone and that particularly in April there was confusion as to what could and could not be done by tradesmen at properties. However, the Scottish Government produced detailed guidance for landlords on its website in this regard and the Respondent ought to have followed the guidance and kept in communication with the Applicant and ensured that a tradesman was instructed at the earliest opportunity. The onus was on the Respondent to ensure the Applicant had running hot water. The fact the Applicant did not keep in touch with the Respondent or keep complaining whilst perhaps unfortunate does in no way exonerate the Respondent.

28. The Scottish Government guidance on whether a property meets the tolerable standard states:-

- The Tolerable Standard is a basic level of repair your property must meet to make it fit for a person to live in. The local council can force you to carry out work to bring your home up to the tolerable standard.
- A home may not be fit to live in if:
 - it has problems with rising or penetrating damp
 - it's not structurally stable (for example, it might be subsiding)
 - it does not have enough ventilation, natural and artificial light or heating
 - it's not insulated well enough
 - it does not have an acceptable fresh water supply, or a sink with hot and cold water
 - it does not have an indoor toilet, a fixed bath or shower, and a wash basin with hot and cold water
 - it does not have a good drainage and sewerage system
 - the electric supply does not meet safety regulations
 - it does not have a proper entrance
 - there are no cooking facilities – this does not mean the landlord has to provide a cooker, but there must be somewhere suitable for a tenant to install their own

A house meets the Repairing Standard if:-

- it's wind and watertight
- the structure and exterior (like the walls and roof) are in a reasonable condition
- the installations for water, gas, electricity, sanitation and heating are in a reasonable state of repair and working order
- any fixtures, fittings or appliances provided by the landlord (like carpets, light fittings and household equipment) are in a reasonable state of repair

- any furnishings provided by the landlord can be used safely for the purpose they were designed
- it's fitted with suitable fire detection devices – at least one smoke alarm in the living room, one in every hall or landing and a heat alarm in every kitchen
- it's fitted with a carbon monoxide detector in any room with a carbon fuelled appliance (such as a heater or boiler, but not a cooker) or there is a flue from such an appliance
- electrical safety inspections are carried out by a qualified electrician at least once every five years
- the property meets the statutory [Tolerable Standard](#)

The Tribunal was unable to determine if the electrical supply met safety regulations as there was no EICR. There was no hot water at the sinks. There were inadequate fire detection devices installed. The Tribunal was therefore satisfied that the property did not meet either the tolerable or the repairing standard. However, the Tribunal did not consider that the property was not fit for human habitation given that potentially a repair could have been carried out quite easily to remedy the hot water issue and that the other matters although of significant concern would not in themselves prevent the property being occupied. Nevertheless, the Tribunal was satisfied that the Applicant was entitled to a reasonable reimbursement of rent to compensate her for the inconvenience she suffered at having to boil water to wash dishes and to wash her hands over a prolonged period. The Tribunal took the view that a rebate of about 20% over the period from March to August 2020 was reasonable in all the circumstances given that hot water was available using the shower and that the washing machine operated using only cold water. The Tribunal therefore awarded the Applicant the sum of £500.00.


29. Although it is possible that the Applicant's mental health condition may have been exacerbated by her worries about the lack of running hot water, as indicated above she or Miss Cooper could have done more to press the Respondent for action in this regard. Furthermore, although the Applicant submitted a witness statement by Jane Hislop the Tribunal was given no information about this person's qualifications nor was it possible to ascertain the extent to which the hot water issue impacted on the Applicant's overall condition. The Tribunal quite simply did not have sufficient evidence before it to make a determination in favour of the applicant under this head of claim.

Decision

30. Having carefully considered the written and oral submissions the Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £500.00.

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.

A black rectangular redaction box covers the signature of Graham Harding. A small handwritten mark is visible above the box, and a larger handwritten mark is visible below it.

**Graham Harding
Legal Member/Chair**

**5 June 2021
Date**