



**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/22/0948

Re: Property at Kiln House, Moniaive, Thornhill, DG3 4EW (“the Property”)

Parties:

Auchencheyne Limited, Auchencheyne, Moniaive, Thornhill, DG3 4EW (“the Applicant”)

**Mr Grant Fergusson, Miss Jessica Fergusson, 10 Millbank Place, Penpont,
DG3 4BD; 10 Millbank Place, Penpont, DG3 4BD (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted.

Background

Reference is made to the Case Management Discussion Notes dated 15th August 2022 and 24th October 2022.

The Hearing

The Hearing took place in person at the Glasgow Tribunal Centre on 20th January 2023. The Applicant was represented by a director, Harrison Gourlay. He was supported by his wife, Jessica Gourlay.

On 19th January 2023 the First Named Respondent made two telephone calls to the Tribunal office advising that the Second Named Respondent had been in hospital overnight and they were unlikely to be able to attend the Hearing. He asked how to make a request for an adjournment, and also said that a doctor would email the Tribunal explaining the circumstances. By 10am on 20th January 2023 no formal request for an adjournment, and no email from a doctor had been received.

The Respondents did not attend. Mr Gourlay objected to an adjournment.

The Tribunal considered matters, in particular applying the overriding objective to act justly. Given that the Hearing had been convened in person in the Tribunal Centre to suit the Respondents and that they had not followed up their telephone calls with a formal request to adjourn, and no medical evidence had been received, the Tribunal decided to proceed.

The case was broken down in to two elements, rent arrears and repairs.

At the second CMD the Applicant had confirmed that the amount due by way of rent was £3767.02. They had submitted an up to date rent statement showing the amount.

In the Tenancy Agreement the rent was broken down in two parts: £700 per month with an additional £150 per month for a shed. The respondents had maintained that they vacated the shed when the Notice to leave was served. They said that they had been advised that covid regulations applied to the house but not to the shed.

The Tribunal asked Mr Gourlay some questions about the shed. He said that there were a few sheds within 50 yards of the house. The shed in question was quite big and had a divider. The Respondents had used it to keep equipment for their horses including tack and hay. The horses were kept largely outside in a field belonging to the Applicant, and used by the Respondents on a grace and favour basis. The Respondents had asked if they could rent the shed in addition to the house and it had therefore been included in the tenancy agreement.

Mr Gourlay said that the Respondents had not given any written confirmation that they had vacated the shed. For a large part of the time that they continued to occupy the house a horse box was parked in front of the shed, meaning Mr Gourlay could not see the inside of the shed. He referred to photograph 3 of his productions, showing that there was still hay in the shed after the Respondents had vacated the house.

The Respondents had previously mentioned that they did not think that they should pay full rent as they had been without a water supply for four months. The tribunal asked Mr Gourlay about this. He said that the respondents stopped paying rent in July 2021. The water supply did not cease until November 2021, as a result of a tree which had fallen during storm Arwen. He explained that the water supply is a private one, and serves five properties and a farmyard. It was repaired by 2nd December 2021.

On 17th January 2022 the Respondents again experienced problems with water supply. None of the other properties were affected. Mr Gourlay asked for access to try. The Gourlays contacted Adam Black, Landlord Registration Officer, who advised that he would provide a supply of water on an emergency basis. He also advised them to make weekly contact with the Respondents and to make an application to the Tribunal for Right of Entry. Mr Gourlay did so, and it was granted. The reference number was FTS/HPC/RE/21/3135.

On 8th April 2022 Mr Gourlay attended the property with a representative from the Tribunal and eventually the Respondents allowed entry. He identified that the issue

was with an airlock in the pipe, probably in relation to the previous incident. However, the Respondents would not let him back in to fix it and the water was not restored until they vacated. Mr Gourlay said that this left ongoing issues for them to repair.

The Tribunal asked Mr Gourlay to address it on the invoices for repairs.

Mr Gourlay dealt with the invoice from Anne Henderson Cleaning first. The invoice was dated 29th August 2022 and was in the amount of £426. He produced a statement from the cleaner dated 16th January 2023, in which she said that the property had been filthy. Amongst other things it had taken her 4.5 hours to clean the range cooker, and she had had to scrub the kitchen floor on her hands and knees three times with a scrubbing brush. He referred to photographs 8 and 9.

Mr Gourlay addressed the invoice from Andrew Bell, Painter and Decorator, in the amount of £1620. He produced a letter from Mr Bell and a copy of his invoice from June 2020 to confirm that the property had been freshly decorated before the tenancy began. Mrs Gourlay said that they accepted that there would be fair wear and tear in any tenancy, but a lot of the damage had been caused by dogs, which in terms of the tenancy agreement were only supposed to be in the back room. They had been kept in a cage which had been against a wall, and had caused damage. Mrs Gourlay said that between the decoration and the Respondents moving in a farm manager had occupied the property for two months, but he had left it in immaculate condition. She referred to photographs 5, 6,7,26, 27,10,11,12,15 and 16.

Mr Gourlay addressed the invoice from As Clean dated 23rd August 2022 in the amount of £170. He said carpet cleaning was necessary and referred to photographs 14 and 17.

Mr Gourlay referred to the invoice from Auchecheyne Ltd dated 31st July 2022 in the amount of £750. He said that a farm worker had been deployed to carry out the work. He said that the grass had needed cut three times to bring it back to being a nice lawn. He could not recall what had happened to the trees, or what plants had been purchased. He said that an independent landscape gardener would have cost at least £50 per hour.

Findings In Fact

1. The parties entered in to a Tenancy Agreement in relation to the property;
2. The rent was £850 per month, being £700 per month plus £150 for the shed;
3. The Respondents did not vacate the shed before they vacated the house;
4. The lack of water supply for an extended period was due to the Respondents refusing access to the Applicant to repair it;
5. The Applicant obtained a Tribunal order to enter the property;
6. Cleaning was necessary after the Respondents left and the invoice from Anne Henderson was reasonable;
7. Painting was necessary after the Respondents vacated and the invoice from Andrew Bell was reasonable;
8. Carpet cleaning was necessary after the Respondents left and the invoice from AS Cleaning was reasonable;

9. Garden work was required after the Respondents vacated but the invoice from Auchencheyne Ltd was not reasonable in its entirety.

Reasons For Decision

The Tribunal found both Mr and Mrs Gourlay to be wholly credible and reliable in their evidence. They spoke in a straightforward manner and gave clear explanation when asked questions.

The Tribunal was satisfied that the rent of the shed, although seemingly separate as the rent for it was specified separately in the Tenancy Agreement, arose from the Tenancy Agreement and therefore fell within the Tribunal's jurisdiction. The Tribunal was satisfied that the respondents had continued to occupy the shed until the end of the tenancy and were due to pay the rent for it.

The Tribunal was satisfied that any issue with prolonged lack of water supply was due to the Respondents refusing access for repair purposes and no abatement of rent should be made.

The Tribunal was satisfied that repairs were necessary as specified, with the exception of the Auchencheyne Ltd invoice. The Tribunal abated the invoice by allowing two grass cuts, half the time for weeding and strimming, and by deleting the replacement of trees and plants.

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. Kelly

20th January 2023

Legal Member/Chair

Date