



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/0681**

**Re: Property at 4 Dean Park Brae, Kirkcaldy, KY2 6GA (“the Property”)**

**Parties:**

**Ms Susan Grant, 4 Dean Park Brae, Kirkcaldy, KY2 6GA (“the Applicant”)**

**Mr Tristan McMillan, 5 Woodbury Park, Holt Heath, Worcester, WR6 6NT (“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 to the Applicant in the sum of £1125.00.**

**Background**

1. By application dated 2 March 2023 the Applicant applied to the Tribunal for an order for payment in respect of alleged damages arising out of a Private Residential Tenancy of the property in that the property had inadequate heating during the period from October 2022 until February 2023. The Applicant sought payment for the cost of three electric heaters amounting to £217.00. A contribution towards additional heating costs of £300.00 and a rebate of rent for the period from 29/09/2022 to 25/01/2023 amounting to 50% of the rent namely £3000.00. The Applicant submitted receipts, a calculation of additional electricity used and a letter from Fife Council to the Respondent in support of the application. The Applicant submitted in subsequent correspondence a copy of the tenancy agreement and copies of correspondence with the Respondent.

2. By Notice of Acceptance dated 13 April 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. The Respondent submitted written representations by emails dated 18, 23, 24 and 30 May 2023.
4. The Applicant submitted further written representations by emails dated 24 and 28 May 2023.
5. A CMD was held by teleconference on 6 June 2023. At that time the Respondent agreed to reimburse the Applicant with the cost of the heaters (£217.00) but did not agree to meet any additional claims. The Tribunal continued the application to a hearing and noted the disputed issues as being:
  - (i) Is the Applicant entitled to payment for additional electricity used and if so, how much?
  - (ii) Is the Applicant entitled to a refund of rent for the period between October 2022 and January 2023 and if so, how much?
6. By email dated 21 August 2023 the Respondent sought a postponement of the hearing due to work commitments. Following correspondence with the Tribunal administration the Respondent agreed to the hearing proceeding.
7. By email dated 23 August the Respondent submitted further written representations to the Tribunal. This included withdrawing the offer to reimburse the cost of the heaters.

### **The Hearing**

8. A Hearing was held by teleconference on 5 September 2023. Both parties attended in person.
9. At the commencement of the Hearing the Applicant explained that the tenancy had ended and that she no longer had access to the electricity suppliers and had been unable to provide further information as regards the additional electricity used. She also confirmed that she had removed the three electric heaters from the property when she left. As a result, the Applicant said she was no longer insisting on parts one and two of her claim and was now only claiming £3000.00 in respect of a refund of rent for October to December 2022.
10. The Applicant went on to say that there had been a huge problem with the heating and she had initially had purchased one electric heater in October 2022 after reporting the problem to the Respondent and after 12 days it had not been repaired. She said that a single 1KW heater was insufficient to heat the property and it was freezing particularly for a family of six including two disabled children. She said by December she had found it necessary to purchase two more heaters on 12 and 16 December 2022.

11. The Applicant said that she thought a 50% refund of rent was reasonable in the circumstances given the property had been freezing cold and it had been massively inconvenient. She submitted that after reporting the problem to the Respondent it should have been a simple matter to have it fixed. It should not have taken 17 weeks.
12. The Respondent submitted that it could be seen from his written submissions and the timeline of events that attempts had been made to engage with contractors to have the repairs to the heating carried out. He said that the property had been his family home and prior to renting it out he had installed a new boiler so as to avoid any issues with the heating. He went on to say that from the moment he received intimation of the problem he contacted contractors as soon as possible thereafter. He said that he had been in touch with professional tradesmen but that it had been a challenge and he fully empathised with the Applicant. He explained that the tradesmen had let him down many times and that he had used the biggest company in the area. He said that the owner had contacted him to apologise and had explained that there had been a backlog due to Covid. The Respondent went on to say that each time he had been let down he had tried to contact another tradesman. He said that some work had been done and that it was all logged in his written submissions.
13. The Applicant said that at some points they had up to eight electric heaters being used to try to heat the property having borrowed some from family and friends. In December there were four radiators not working at all and others only partially working.
14. The Respondent confirmed that there were three or four troublesome radiators but that the others were working throughout the period in question. He said that some pipework had to be replaced and at no point was nothing being done but that it had taken longer than it should to complete but the property was liveable in with between one and eight additional heaters.
15. The Applicant said that after MPH had attended at the property only four radiators were working. She said she would not have been making a claim if it had only been two radiators that had not been working. She said that following the tradesmen attending on 18 November 2022 the situation had been made worse and she had contacted Mr McMillan who had said he would contact MPH. The Applicant said that only two companies had attended at the property. The Respondent confirmed this was the case. He said they had used the information provided by the Applicant to try to remedy the problem and that this had involved trying to balance the system. He also advised the Tribunal that he had been told by the contractor that some switches on the boiler had been touched that should not have been touched. The Applicant was adamant that no-one in her family had touched the boiler and that the engineer had explained it was a fault with a switch to do with the hot water not the heating.

16. The Applicant reiterated that the problem with the heating was reported to the Respondent on 29 September and it was not dealt with quickly enough with four visits from contractors in four months.
17. In response to a query from the Tribunal the Respondent advised that he had been unable to contact the contractor who had installed the boiler who appeared to have disappeared. The Respondent had considered him to be unreliable.
18. In response to a further query from the Tribunal the Respondent confirmed that he had not offered to supply the Applicant with additional heaters but now with the benefit of hindsight if he had to go through the same situation, he would do that.
19. When asked why he did not accept the quote provided by MPH the Respondent said that he had wanted clarification before proceeding not because it had been too expensive but because of concern about the effect the treatment might have on the new boiler.
20. The Respondent advised the Tribunal that he had obtained information from the neighbouring property which was identical to the property and that showed that the cost of electricity rose to £260.00 per month for the last quarter of 2022 thus indicating that the Applicant's electricity costs were not unusual.
21. The Tribunal asked the Respondent if he accepted that using electric heaters to heat the property would be more expensive than using gas central heating. The Respondent acknowledged that this might be the case.
22. The Respondent confirmed that he had one other rental property that had been rented out since 2015.
23. When asked if he thought the Applicant was entitled to a refund of rent the Respondent said he was unable to put any monetary value on that. He went on to say he would definitely with the benefit of hindsight have supplied the Applicant with heaters.
24. The Applicant submitted that following their inspection on 12 October MPH would have attended at the property the following week to carry out the necessary repairs but when she queried this with them, they had advised her that they were still waiting on acceptance of the quotation from the Respondent. She said that he had wanted to take stuff of the quote. She said the same had happened in February when he had refused to pay £200.00 for four valves. She submitted that everything had come down to cost and that was why the repairs had dragged on for four months.
25. The Respondent disputed that this was the case. He said there had been a miscommunication around the cost of the replacement valves and once this had been cleared up, they went ahead. He said he had asked for clarification on the work to be done as he had not wanted to be "ripped off".

26. In response to a query from the Tribunal the Respondent said he could not remember exactly how much the quote from MPH was for but thought it was about £700.00 and that it included flushing out the system and a few other things. He said he had just paid thousands of pounds for a new boiler and had wished clarification on what was involved but there had been no response.
27. The Applicant said that the Respondent had tried to negotiate a reduced call out fee which should have been £80.00 and had instead only paid £50.00 but had not been given a full diagnosis only a five-minute visit.
28. The Respondent said that MPH had tried to sell an annual boiler inspection service but that he had thought he had paid for and received a full diagnosis not a five-minute visit. He confirmed that the system did get a flush in January as recommended by MPH in October but there had also been a further attempt to flush the system in November by the other contractor but this had not been successful. There had been two troublesome radiators and blocked pipes under the floorboards.
29. In response to a query from the Tribunal the Respondent accepted that the Applicant had been entitled to have a central heating system that was in proper working order and that in principle he accepted that because it was not in proper working order for a number of months the Applicant was entitled to some reduction in rent. However, the Respondent submitted that the amount of any reduction should be determined by the Tribunal.

### **Findings in Fact**

30. The parties entered into a Private Residential Tenancy in which the Applicant was a joint tenant along with Jerry Newbigging.
31. The tenancy commenced on 25 June 2022 at a rent of £1500.00 per calendar month.
32. The Respondent had installed a new gas boiler at the property shortly before the commencement of the tenancy.
33. On 29 September 2022 the Applicant emailed the Respondent to advise that four radiators were not working at all and four were only partially working.
34. The Respondent arranged for contractors MPH Boilers (Kirkcaldy) ("MPH") to attend at the property to inspect, report and quote for repairs and an inspection took place on 12 October 2022.
35. Following receipt of a quote for repairs the Respondent sought clarification in respect of the work proposed.
36. The Respondent did not receive a call back from MPH and contacted another contractor Gareth (Plumbing Guru) at the end of October 2022.

37. Between 6 and 18 November 2022 Gareth carried out work at the property which included flushing out the heating system.
38. In an email dated 3 December 2022 the Applicant advised the Respondent that two radiators were not working at all and two were not working properly.
39. On 7 December 2022 the Applicant advised the Respondent that only three of the sixteen radiators at the property were working properly.
40. On 20 December 2022 the property was inspected by Jaki Lamond of Fife Council who reported to the Respondent that thirteen radiators at the property were not working properly.
41. On 25 January 2023 MPH returned to the property and carried out a power flush of the heating system.
42. The final repairs to the heating system were completed on 24 March 2023.
43. The Applicant purchased an electric heater in October 2022 and two further electric heaters in December 2022.
44. The Applicant removed the heaters at the end of the tenancy.
45. The gas central heating system at the property was not in proper working order between 29 September 2022 and 25 January 2023.
46. The property was cold during late 2022 due to the central heating system not being in proper working order.
47. The Applicant has two young disabled children in her family to care for.
48. The Respondent has one other rental property and has been a landlord since about 2015.

### **Reasons for Decision**

49. The Tribunal found the Applicant to be a credible and persuasive witness. It was satisfied from the Applicant's written and oral submissions that throughout the period from the end of September 2022 until near the end of January 2023 the gas central heating at the property was not in proper working order. At some points particularly in December 2022 13 of the 16 radiators in the property either did not work or were only partially working. This was confirmed in the correspondence from Jaki Lamond of Fife Council as well as from the Applicant's own evidence. At other times more of the radiators were working but nonetheless it could not be said that the Applicant was enjoying the type of heating that she had expected given the type of property and the rent paid. The

fact that the Applicant felt compelled to purchase three electric heaters to try to heat the property adequately is in the Tribunal's view quite compelling.

50. The Tribunal acknowledged that having spent a substantial sum installing a new boiler prior to the commencement of the tenancy the Respondent may have had some concerns about carrying out a power flush of the system although perhaps it would have with the benefit of hindsight been wise to have done that at the time of installation of the boiler. Nevertheless, it was apparent that this had been recommended by MPH in October 2022 and apparently could have been carried out that month had it been authorised by the Respondent. Instead, the Applicant was left throughout November, December and much of January with a system that worked briefly then barely at all. The Respondent did little to help the Applicant during this period. He has with the benefit of hindsight accepted that he ought to have provided the Applicant with additional heaters and not left her to purchase these herself.
51. The Applicant was convinced that the reason for the delay in having repairs carried out was down to the Respondent wanting to save on cost. Although the Respondent admitted he did not want to be "ripped off" the Tribunal was unable to conclude that cost was the underlying factor that caused the delay. However, whether cost was a factor or not the undeniable fact was that the Applicant and her family which included two young disabled children were left living in accommodation that lacked adequate heating over a period of at least three months during the coldest part of the year.
52. During that time the Applicant continued to pay the full rent of £1500.00 per month for the property. The Respondent has quite fairly in the Tribunal's view acknowledged that as the central heating system was not in proper working order the Applicant was entitled to a refund of rent albeit that he felt unable to put a value on any such refund. The Applicant on the other hand considered that a reduction of rent by 50% for a period of 3 months would be an appropriate award to reflect the loss of enjoyment and stress and inconvenience experienced.
53. In reaching its decision the Tribunal thought to take account of what might be considered to be the notional rent of a property of similar size to the Applicant's property that did not have the benefit of gas central heating but such information was not readily available. The Tribunal did consider that as the Applicant had pointed out, even with the three additional electric heaters and the others borrowed from friends and family it was not the same trying to heat the property as it would have been had the central heating system been working properly. Nevertheless, the Tribunal was not satisfied that a refund of 50% of the rent for a period of three months was appropriate as despite requiring additional heaters no doubt at significant cost the property was still significantly habitable. However, the Tribunal was satisfied that the Applicant and her family had suffered considerable loss of enjoyment of the property and significant distress and inconvenience as a result of the heating not working properly over a prolonged period. Taking everything into consideration the Tribunal considers that a discount on the rent of 25% for a period of three months is an appropriate

award in the circumstances and finds the Applicant entitled to a payment of £1125.00 from the Respondent.

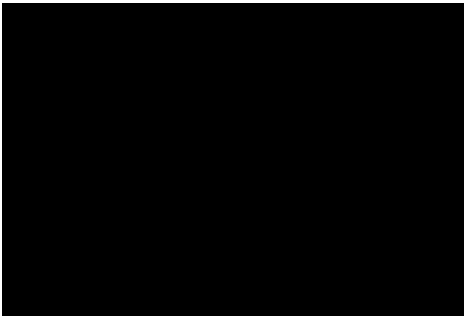
### **Decision**

54. The Tribunal having carefully considered the written representations and oral submissions finds the Applicant entitled to a payment by the Respondent in the sum of £1125.00.

55. The Tribunal's decision is unanimous.

### **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**

**5 September 2023**  
**Date**