



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/22/2749

Re: Property at 64 Nelson Street, Largs, KA30 9AF (“the Property”)

Parties:

Mr Duncan Lowrie, Dunellan, East Road, Campbeltown, PA28 6QW (“the Applicant”)

Ms Alessandra Mezzoni, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By Lease dated 15th July 2017 the Applicant let the Property to the Respondent;
2. The rent payable was £375.00 per calendar month;
3. The Respondent stopped making payment of the rent during December 2021. The Respondent vacated the Property during November 2022. As at the date of the case management discussion held on 16th January 2023, and as at the date of the hearing held on 27th March 2023, the Applicant was seeking an order for payment of 11 months rent amounting to £4,125.00;

4. The Respondent did not dispute the fact that rent had not been paid for an 11 month period and that, accordingly, the amount outstanding amounted to £4,125.00. The Respondent's position, however, was that due to various issues with the Property, the amount due ought to be abated and the Tribunal should make no payment order against her;

THE HEARING

5. Both parties participated by teleconference at the Hearing. When the Tribunal enquired as to whether either party had witnesses, both advised they did not. Both advised that they were unaware that they were entitled to have witnesses at the Hearing. The Applicant intimated that he had already submitted all relevant information in his written submissions in any event. The Respondent advised that she would have liked a person from the local authority to be available as a witness to speak to their inspection of the Property. The Tribunal pointed out that an inspection report from the local authority had previously been submitted and was before the Tribunal. On the basis the Tribunal had the information relating to the inspection, therefor, the Respondent was content to proceed with the Hearing;
6. The Applicant confirmed he was seeking an order for payment in the sum of £4,125.00;

The Respondent

7. The Respondent accepted that rent had been unpaid for a period of 11 months, intimating that she had withheld the rent because of "lots of faults" at the property. She advised the Tribunal that the rent was "in the bank" and available be paid if the issues at the Property had been addressed. She made it clear that she liked living in the Property and, ideally, would have preferred not to have required to leave the Property, she again confirmed that the rent which had been withheld had not been spent by her;
8. When clarifying the issues arising at the Property she advised that she had "lost all my clothes, furniture, the lot was destroyed." She referred to a leak in the kitchen sink which was fixed by her. She advised that she was without heating over Christmas although she accepted that a new boiler was installed. She stated that it was like a swimming pool under the floorboards although the relevance of that was not expanded upon thereafter. She again confirmed that the rent was withheld and it was "still in the bank";
9. The Tribunal enquired as to whether she advised the Applicant that she was withholding rent because of issues relating to the condition of the Property. She stated that she did not as she was unable to

contact him. She advised that she had texted the wife of the Applicant but no longer had the text she had apparently sent;

10. In an attempt to focus the issues to be determined by the Tribunal, and on the basis of the written submissions which had been lodged by the Respondent previously, the Tribunal enquired in relation to a number of specific matters;
11. The Respondent advised that the property did not meet the tolerable standard. A report from the local authority had been lodged with the Tribunal confirming that. The report contained an address of 63 Nelson Street, Largs. It was accepted, however, that it did, in fact, relate to the Property. There were three main issues arising as follows:-
 - a. There was no electrical certificate relating to the Property. The Respondent made reference to the fact that there had been power surges within the Property. The report from the local authority, however, raised an issue about the tolerable standard purely on the basis that the inspector had not seen an electrical certificate. The Respondent acknowledged, however, that an electrical certificate had been provided to the Tribunal by the Applicant and it may be that, had the inspector seen this, this would not have featured within this report;
 - b. No gas inspection certificate was seen by the inspector. The Respondent, however, advised that there was never an issue in connection with the gas and that there was, in fact, an inspection on a yearly basis;
 - c. There was rising and penetrating damp within the Property. This was an ongoing issue and this became the main focus of the discussion before the Tribunal;
 - d. There were loose tiles in certain parts of the property. While this was referred to, it did not appear to be a significant issue relating to the ability of the Respondent to enjoy her occupation of the property;
12. Expanding upon the issues in the Property, the Respondent advised the Tribunal that the Applicant had attended on one occasion with a sledgehammer and made a big hole in the chimney breast. This resulted in all the soot coming into the property. This was never repaired. It was after that she stopped paying rent;
13. The Applicant interjected at this point to explain that he did, indeed, put a hole in the chimney. That was done to investigate the issue of dampness. He explained that he is experienced in building maintenance and that when dampness issues arise it is common

practice to check within the chimney area as dampness will often arise there. Putting a hole in the chimney breast also creates ventilation which assists. His intention was to return to cover the hole with a vent cover but that did not occur because the Respondent thereafter indicated that she intended removing herself from the Property;

14. The Applicant indicated that there had been a few communications between the Parties in relation to work required at the Property. There were various “odds and sods needing done” but generally work required was attended to. He indicated, however, that the main issue was “more or less the dampness”;
15. The Respondent thereafter continued advising that all of her bedroom furniture was ruined. In support of her claim that an amount due for rent should be abated she had provided the Tribunal with a screenshot of a four piece bedroom set valued at £445.99. She advised that she had required to purchase this for her new property due to the damage done to the furniture at the Property. When asked about the furniture she did have within the bedroom at the Property she advised that she had a chest of drawers and a bedside cabinet. The chest of drawers was maybe two years old. The bedside cabinet was maybe 3 years old. They had been purchased from Oak Furniture. The Tribunal pointed out that if it accepted that furniture had been damaged any financial allowance made would be in relation to the furniture actually damaged. The Tribunal would not be in a position to attribute a greater value which resulted in what would be described as betterment and result in a financial benefit to the Respondent. The Tribunal also pointed out that, from what she had said, the Respondent was claiming payment for a four piece bedroom set, consisting of a wardrobe, a chest of drawers and two bedside cabinets when the items which appear to have been damaged were a chest of drawers and one bedside cabinet;
16. The Respondent advised that there was also a dressing table which had been damaged. In relation to this she advised that it was an old piece of furniture but it had sentimental value. The Tribunal pointed out that it could not attribute a monetary value to the sentimental value of an item. Other than again referring to the sentimental value of this item of furniture the Respondent did not refer to it further;
17. The Respondent had provided screenshots of an aluminium ladder and a fibre optic Christmas tree. These were provided on the basis that, according to the Respondent, she required to replace these items also. When further enquiry was made about these items, the Respondent advised that they had not been damaged as a result of the condition of the Property. They had simply been left in an outhouse at the Property when she vacated it. They had not been collected by her

thereafter. The Tribunal specifically enquired as to why the ladders and tree were left behind. The Respondent answered that she had “forgot about them”;

18. The Respondent provided screenshots of various items of clothing and footwear. These were to show items she required to replace. The screenshots indicated two quilted jackets valued at £62.00 each, five karate outfits valued at £153.80 each, a pair of Ugg boots valued at £227.99 and a pair of “sketchers” walking shoes valued at £100.00. The total value of these items was £1,120.99. Again, the Respondent advised that these items had all been damaged due to dampness within the Property;
19. In relation to the karate suits in particular, the Respondent advised that she had previously participated in karate on a regular basis. She had not done so for some time but was hoping to get back to it. She had not, therefor, purchased the five suits she claims were damaged by dampness;
20. The Respondent advised that there was a problem with the electricity supply at the Property. There were frequent power surges and, on occasions, her television would cut out. Ultimately, her television would not restart and she believed this was due to the problem with the electricity supply. She required to purchase a replacement television. When enquiry was made by the Tribunal, the Respondent was not in a position to provide any supporting evidence, other than her own opinion, that any issue with the television was caused by a fault in the electricity supply at the Property;
21. In relation to the dampness at the Property, she advised that the Property was a small house. It had an open plan living room and kitchen area and it had one bedroom on the upper floor. She advised the whole property was affected by dampness. She first noticed dampness shortly after she moved in but, because she liked the place and because she was working and out of the Property most of the time, she did not raise any issue with it. She purchased “mould stuff” and painted it on to the damp areas;
22. When enquiry was made as to when she made the Landlord aware of the problem she advised “right away” but the response she received was simply “duly noted, you are on the list”;
23. The Respondent said she had left a car key at the Property which had not been returned. From what she advised this had been left by her accidentally. It was left within the Property when she vacated it, locked the door and put the house keys back through the letterbox;

24. The Respondent stated that a washing machine and freezer had been left at the Property. She suggested that these had been left because tiling had been put on the floor in front of them which meant she was unable to remove them when she left the premises;
25. The Respondent thereafter stated that she had suffered a deterioration in her mental and physical health while living at the property. She suggested that she had suffered respiratory problems due to the condition of the Property. She advised, however, that her mental health problems arose when she was physically attacked at her work in 2019. She had not provided any medical information to suggest that there had been any deterioration in her mental health due to the condition of the Property. She had not provided any medical information or any other evidence in support of her suggestion that her physical health had deteriorated due to the condition of the Property;

The Applicant

26. The Applicant advised there was an issue with dampness at the Property. When he initially purchased the Property, however, there was no issue with it. He had provided a copy of the home report which had been prepared at the time of his purchase of the Property. He thereafter resided within it himself for two years with no issues. Prior to the Respondent renting the Property another tenant occupied it;
27. The Applicant thereafter stated that he had seen discolouration on the walls of the Property. He knew this was a sign of dampness. He was clear, however, that there were no black spores evident but, from his own experience in property maintenance, he was aware the discolouration was a sign of dampness. He first noticed this, however, after the Respondent had rented the Property. His best recollection was that this was “probably March 2021”. He noticed it in a small cupboard off the bedroom;
28. The dampness appeared to be developing in 2021. As a result, he attended at the Property and did, indeed, make a hole in the chimney breast. He advised this was standard practice in such circumstances. The interior of the chimney breast can then be checked to assess the extent/level of dampness. The making of a hole in the chimney also creates ventilation in the chimney breast to assist with any dampness issue which exists. He advised that, once the hole had been made, he checked within the chimney breast and there was no dampness within it. His intention was to return at a later stage to replace a vent over the hole but that did not happen as the Respondent suggested she intended vacating the Property;

29. The Respondent thereafter asked the local authority to attend at the Property to inspect it. The inspection report was provided to the Tribunal. The Applicant accepted that, while the report which had been provided referred to an address at 63 Nelson Street, Largs, it did relate to the Property at 64 Nelson Street. Given the terms of the inspection report, the Applicant thereafter instructed a firm of timber and damp treatment specialists to inspect the Property. The report confirmed that work was required but indicated that the house would require to be vacated for a period of time to enable the work to be undertaken. The work was not instructed at that stage because, shortly thereafter, the Applicant advised that she intended vacating the premises and the intention was to carry out the work thereafter. The Applicant, however, thereafter ceased making payment of rent but continued in residence of the property until November 2022.
30. The Applicant made it clear that a message was received from the Respondent by text – he had provided a screenshot to the Tribunal – that she intended moving out of the Property at Christmas time 2021. Thereafter, he heard nothing from her. He wrote to her in March 2022 pointing out that rent was now outstanding. A reply text was received referring to all sorts of problems. He served Notices to terminate the tenancy but due to COVID rules was thereafter not in a position to force an eviction. The Respondent, however, vacated the Property during November 2022;
31. In relation to the various items for which the Respondent was claiming payment/abatement of rent, the Applicant advised that the Respondent had left lots of items at the Property;
32. In relation to the sofa the Respondent was stating was damaged and for which she was seeking an abatement of rent, he was of the view that the photograph which had been produced was an entirely different type of sofa from the one which was at the Property. When the Respondent initially rented the Property he assisted in moving the sofa she had into the Property. It was an inexpensive two-seater sofa. He believed it would be worth no more than £200.00 at that time. The sofa the Respondent was now advising she had purchased to replace it was a large corner unit valued at £650.00. He could not comment upon any alleged damage to the sofa which was in the Property initially but considered that the one which had been purchased by the Respondent was a more significant and more valuable piece of furniture;
33. In relation to the various items of clothing for which payment was sought, he could not make any comment in relation to those other than saying that he had not seen them and, while the Respondent had left lots of items when she vacated the premises, he did not go through these to check each individual item so he was

unaware as to whether these items were left within the Property or not and whether they were damaged or not;

34. Given the Applicant had made reference to his experience in property maintenance, the Tribunal made enquiry about that. He advised that he had been in this business for 30 years. He commenced working in his family business in 1992, that being a business involving property renovation and maintenance. At certain points he employed up to 15 tradesmen. At its peak the business had 70 properties let out. He was managing director of the company. The company had renovated a tenement block and a college hospital. It undertook all aspects of building work and he had been involved in all aspects of it. In the circumstances, he was well acquainted with issues arising with properties and the repairs which would be required;
35. The Tribunal made specific enquiry about the home report which had been provided by the Applicant. This referred to a guarantee by a timber and damp specialist firm. The Applicant advised that the home report had a date in January 2013 and also July 2013. His understanding was that issues had been raised in the initial home report and the then owner of the Property instructed work to be undertaken. That work was undertaken and, thereafter, in July 2013, the home report was updated and the Property was put on the market. When he purchased the Property, therefor, any issue with dampness had already been attended to;
36. The Applicant advised that he had already replaced the washing machine and were easily able to remove the previous one. He advised that the freezer was, in fact, in a cupboard under the stairs and he did not understand the reference to this not being able to be removed because of tiling in front of it;
37. The Applicant was not aware of a car key being left at the Property;

Adjournment to Consider Evidence

38. The Tribunal thereafter adjourned to enable the Tribunal members to consider the evidence which had been heard. Having done so, the Tribunal concluded that it would be appropriate to allow an abatement of £550.00 from the amount claimed, the result thereafter being that a payment order would be made ordering the Respondent to make payment to the Applicant in the sum of £3,575.00;

FINDINGS IN FACT

39. The Tribunal found the following facts to be established:-
- a) By lease dated 15th July 2017 the Applicant let the Property to the Respondent;
 - b) The rent payable was £375.00 per calendar month;
 - c) The Property had an issue with rising and penetrating damp. This became known to both the Respondent and the Applicant during 2021;
 - d) The Applicant instructed a firm of timber and damp specialists to inspect the Property. A report was received indicating that work was required. The work required would require the Property to be vacated for a period of time;
 - e) The Respondent sent a text message to the Applicant indicating that she intended vacating the Property by Christmas 2021;
 - f) The Respondent did not vacate the Property until November 2022;
 - g) The Respondent stopped making payment of rent from December 2021. As at the date she vacated the Property not less than £4,125.00 had arisen by way of rent arrears;
 - h) The work required to resolve the dampness was not done until after the Respondent vacated the Property;
 - i) Furniture and clothing belonging to the Respondent was damaged beyond repair as a result of dampness at the Property;
 - j) The Respondent is entitled to an abatement of rent in the sum of £550.00 as a result of the damage to her personal possessions resulting from the rising and penetrating damp at the Property;
 - k) Having regard to the abatement of rent, a sum of £3,575.00 is due by the Respondent to the Applicant;

REASONS FOR DECISION

40. The Tribunal considered all of the evidence placed before it. It appeared clear that there was an issue with rising and penetrating damp at the Property. The Applicant accepted that there was an issue with dampness. The issue arose, and was in the knowledge of the Applicant, prior to any issue arising with the non payment of rent. The dampness was not addressed until after the Respondent had vacated the Property;
41. The Tribunal accepted that, having regard to the nature and extent of the issue with dampness, it is likely that various items of furniture and clothing will have been damaged as a result. While accepting that, however, the Tribunal required to be conscious of the fact that it should not allow for “new for old” replacement or

significant betterment for the Respondent. The Tribunal noted also that the various screenshots of items provided by the Respondent were exactly that – screenshots of items from various online retailers rather than receipts for payment. Indeed, the Respondent accepted that she had not, in fact, purchased some of these items at all;

42. In the circumstances, the Tribunal required to attribute a value to damaged items on the basis of the information it had in relation to each item having regard to its age etc. In doing so, the Tribunal allowed for the following:-

- Bedroom furniture - £100.00
- Clothing and footwear - £350.00
- Sofa £100.00
- TOTAL £550.00

43. The Tribunal considered that it could not make any award for the following items for the following reasons:-

Ladders and Christmas Tree

These items were simply left behind by the Respondent. There was no suggestion that they had been damaged and no suggestion that they had been improperly or illegally withheld from the Respondent by the Applicant;

Washing Machine and Freezer

The Tribunal did not accept that there was any issue in the Property which prevented the removal of these items by the Respondent;

Car Key

Again, the Respondent claimed that she had left a car key within the Property. The Applicant disputed that there was a car key left at all. The Tribunal was unable to conclude that the key had, indeed, been left and was not in a position to make any order in relation to abatement of rent as a result;

Television

There was no evidence before the Tribunal to support the assertion by the Respondent that her television had been damaged as a result of any issue with the electricity supply at the Property;

Mental and Physical Health

There was no information before the Tribunal to enable it to make any award in relation to this particular head of claim;

TIME TO PAY DIRECTION

44. After the Tribunal had resumed and the decision of the Tribunal was announced to the parties, the Tribunal intimated to the Respondent that, having regard to her earlier assertion that the rent had been withheld and was available for payment, the Tribunal was not minded to make a time to pay direction. The Respondent, however, invited the Tribunal to do so. The Tribunal enquired as to

why it should make such a direction given the Respondent had made it clear to the Tribunal that the rent which had been withheld was in a bank and available. She then advised the Tribunal that, in fact, she had spent some of this money. It became clear from her comments thereafter that the amount had never been set aside for payment. She advised that she required to use the money for rent for the property she was now occupying. She advised that she had approximately £1,000.00 available;

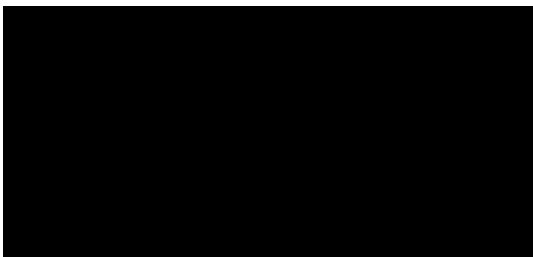
45. The Tribunal expressed its disappointment at the misleading information which had been provided by the Respondent at the commencement of the Hearing. At this stage, however, the Tribunal enquired as to how much the Respondent would be in a position to pay on a monthly basis. She suggested payment of £20.00 per month. After further discussion, the Tribunal advised that it would not be willing to make a time to pay direction in the sum of £20.00 per month. The payment order being made was in the sum of £3,575.00. An order for payment at the rate of £20 per month would result in payment for the full amount taking approximately 15 years. That could not, in any way, be considered a reasonable time for repayment. The Respondent was not in a position to make any significantly improved offer and, in the circumstances, the Tribunal concluded that it had no option but to make an order for payment with no time to pay direction.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of THREE THOUSAND FIVE HUNDRED AND SEVENTY FIVE POUNDS (£3,575.00) STERLING to the Applicant

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

27 March 2023

Date