



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

Chamber Ref: FTS/HPC/CV/20/1887

Re: Property at B2/16 Marionville Road, Edinburgh, EH7 5TX (“the Property”)

Parties:

Miss Eilidh Veitch, 3/11 Piersfield Grove, Edinburgh, EH8 7BT (“the Applicant”)

Gladys Lindsay, 36 Lady Nairn Avenue, Kirkcaldy, Fife, KY1 2AW (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £976 should be made in favour of the Applicants.

Background

1. By application dated 3 August 2020, the Applicant seeks a payment order against the Respondent. A copy tenancy agreement, photographs, correspondence and emails, a timeline and an email from SSE were lodged in support of the application. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 21 October 2020. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 19 November 2020 at 2pm by telephone conference call. Prior to the CMD, Mr Fraser of DJ Alexander (the Respondent’s letting agent), submitted written representations together with a timeline, copy correspondence and two reports from The Create Group.
2. The application called for a CMD at 2pm on 19 November 2020. The Applicant participated. Mr Fraser also participated, representing the Respondent and DJ

Alexander. The Legal Member noted that the Applicant is the former tenant of the property. She was seeking a payment order against her former landlord (the Respondent) and the letting agency who manage the property on behalf of the Respondent. The application relates to loss and inconvenience suffered by her because of repairs issues at the property. The sum claimed is £2263. This is made up of £97 for electricity charges at the property when she was unable to occupy it due to repairs being carried out, £126 for damage to her belongings and £2040 for inconvenience, the equivalent of three months' rent. Following discussion regarding the legal basis for the application proceeding against the letting agent, as well as the landlord, Ms Veitch confirmed that she wished to take advice on the matter and would notify the Tribunal if she wished to amend the application.

3. Mr Fraser advised the Legal Member that the Respondent is elderly and has health issues. He takes most of his instructions from her son, who had confirmed that Mr Fraser should represent Mrs Lindsay at the CMD. Mr Fraser was unable to advise the Legal Member whether Mr Lindsay's son holds a power of attorney or other appointment which would allow him to represent or instruct a representative for Mrs Lindsay. He confirmed that he would make enquiries and clarify the position.
4. The Legal Member determined that the application should proceed to a hearing and that prior to the hearing the Applicant should lodge written submissions regarding the basis of the claim, the date on which repairs were notified and carried out, and the consequences for her of the condition of the property. She was also to confirm if she wishes to amend the application to remove the DJ Alexander as a Respondent. The Respondents were directed to clarify the position regarding the Respondents health and representation and provide a response to the Applicant's submission, once received.
5. Parties were notified that the application would call for a hearing on 11 January 2021 at 10pm by telephone conference call. Prior to the hearing the Applicant lodged a written submission, an amended application form and confirmed that she wished to amend the application to remove DJ Alexander as Respondent. The Respondent lodged a letter authorising Mr Fraser of DJ Alexander to represent her at the hearing. The application called for a hearing by telephone conference call on 11 January 2021 at 10am. The Applicant participated. The Respondent was represented by Mr Fraser.

The Hearing

Preliminary Matters

6. The following preliminary matters were dealt with by the Tribunal:
 - (i) The Tribunal granted the Applicant's request to amend the application to remove DJ Alexander as a Respondent. The Tribunal noted that the application would proceed only against the landlord of the property, but that

Mr Fraser would represent the Respondent.

- (ii) Mr Fraser advised the Tribunal that the Respondent concedes that the Applicant is entitled to an order for the electricity charges of £97 as these were incurred at the property while she was decanted.
- (iii) Mr Fraser confirmed that the value of the Applicant's possessions which were damaged was agreed at £126, although it was not accepted that she was entitled to an order for same.

Kitchen

7. Ms Veitch advised the Tribunal that she had been unable to use the kitchen properly between moving in on 25 January 2019 and repairs being completed on 13 December 2019. This was the date that she moved back to the property from the temporary accommodation, which had been provided while extensive repair works were carried out. She referred the Tribunal to a summary/timeline which she had lodged in advance of the hearing and confirmed that she had reported the damaged linoleum on the kitchen floor on 25 January 2019. She had also reported damage to two cupboards where the shelves had collapsed when she tried to put her kitchenware onto them. A contractor attended on 7 February 2019 and said he had previously provided a quote for a new kitchen as the condition of the kitchen was poor. Over the next few months, she chased the letting agents for information about the kitchen repairs being carried out. On 28 May 2019, a contractor attended and fixed the lower kitchen shelves and put doors on the cupboards. She then reported problems with the cupboard doors which did not open properly. Although she was asked to send photographs of the damaged linoleum in July 2019, this was not replaced. A repair to the cupboard doors was carried out on 4 August 2019. The linoleum was not replaced until 13 December 2019, as part of the extensive repair work. Repairs to the cupboards were also carried out.
8. In response to questions from the Tribunal Ms Veitch advised that she had been aware of the poor condition of the linoleum prior to moving into the flat but had not realised the full extent of the defects until she was living there. She then noticed it was peeling up and bubbling. It was difficult to clean and she was concerned that the floor underneath was getting damaged. With regard to storage in the kitchen, there was another cupboard in the kitchen which she could use but she did not have adequate storage for all of the kitchenware. She advised the Tribunal that her use of the kitchen had been restricted by the defects.
9. Mr Fraser advised the Tribunal that the Applicant's timeline/ summary appeared to be accurate. He stated that the Respondent had been unwell between 25 January and 15 May 2019 and the letting agents were unable to contact her for instructions. The letting agents were also told by contractors that repairs had been carried out when this was not always the case. He accepted that the time taken to deal with the kitchen repairs was not reasonable. However, he denied that the kitchen could not be used during this period and stated that the linoleum

issue was cosmetic, and that it had been in that state when the Applicant viewed the property. In response to questions from the Tribunal, Mr Fraser stated that properties are inspected prior to re-letting them to ensure that they are in a reasonable condition. He confirmed that a quote had previously been obtained for a new kitchen, but that the Respondent had not been in a position to instruct this at that time. He accepted that the kitchen was shabby, but said it was still useable.

Washing Machine

- 10.** In her submission, Ms Veitch stated that she had discovered that both washing machine and kettle had failed the PAT test. On the morning of the hearing, Mr Fraser submitted an invoice for electrical work and a PAT test certificate showing that the washing machine and kettle had subsequently been repaired and been passed. These were obtained shortly before Ms Veitch moved into the property. Having had a chance to consider the paperwork, Ms Veitch confirmed that she was now satisfied that these items had been satisfactorily PAT tested, although she felt that she should have been provided with copies of these documents.
- 11.** The Tribunal noted that Ms Veitch's submission indicates that there were two issues with the washing machine. She reported a defect on 24 April 2019, not acknowledged until 29 July 2019, and not repaired until 13 August 2019. The second defect was reported on 21 January 2020 and not repaired until 3 February 2020. During these periods of time Ms Veitch indicated that she had to hand wash items or use washing machines at the homes of family and friends.
- 12.** Mr Fraser advised the Tribunal that the first defect was not reported until 23 July 2019. He submitted a copy of an email from the Applicant which states "I have noticed yesterday the washing machine doesn't seem to be working. ...It keeps stopping after 5 minutes and showing various error messages." However, Ms Veitch directed the Tribunal to copies of emails lodged by her with the application. These include an email to the letting agent dated 24 April 2019 which asks for an update on the various outstanding repairs and states, "Just yesterday I've noticed that the washing machine has started breaking down mid-way through any washes. An error message appears and I end up having to turn the whole machine off just to get my clothes out". She then referred to the response which she received on 25 April 2019 which states "I have been trying to make contact with the landlord but have been unable to get through to them. I will now try sending a letter instead. I spoke with my manager yesterday and we will look to obtain a second quote. Paul from KLAS will be in touch shortly..." In response to questions from the Tribunal regarding the use of the word "yesterday" in both of her emails, Ms Veitch advised the Tribunal that she had been able to use the machine on occasion between April and July and thinks that the problem then escalated, hence the email of 23 July. However, she had reported it on 24 April and no action had been taken. She advised the Tribunal that she accepted that a delay of two or three weeks between a matter being reported and a repair being carried out was not excessive, but that 24 April until 13 August was not acceptable. On looking again at the emails, she

said that it appears that her report about the washing machine was not picked up by the letting agent in April, since their response does not mention it. She didn't appreciate that at the time and although she did send reminders, these did not specifically mention the washing machine.

13. Mr Fraser advised the Tribunal that the complaint regarding the washing machine in April appears to have been overlooked and he was under the impression that that it was not reported until 23 July 2019. He accepted that 24 April until 13 August was an unreasonable period to wait for this repair.

Leak from the shower

14. The submission lodged by Ms Veitch indicates the leak from the shower was first reported when she moved in on 25 January 2019. It was not repaired until 13 December 2019. A contractor attended to assess the issue on 7 February 2019. A repair was carried out on 28 May 2019, but the problem did not resolve. The letting agents were notified of this on 29 May 2019. After further emails to chase up the repair, a contractor attended on 17 July and said that he would provide a quote for a new shower door, as this was needed. A further seal strip was fitted on 15 August. Ms Veitch advised the Tribunal that the bathroom at the property is small. She was able to use the shower but had to mop up large quantities of water daily.

15. Mr Fraser confirmed that he had no issue with the timeline/summary submitted by Ms Veitch. He pointed out that contractors had been to the property to attempt to repair the shower but had been unsuccessful. The landlord's illness was a factor in the delay. Eventually, the letting agents proceeded to instruct work, although they did not have authority from the Respondent. He advised that it is not in dispute that Ms Veitch experienced considerable inconvenience. He explained that the letting agents are only authorised to instruct repairs up to a limit of £100, without authority from the Respondent, and the various repair matters combined were going to cost more than that. He also stated that once it had been established, in September 2019, that extensive work was needed, the replacement shower door was put on hold until the whole works were underway. In response to questions, he confirmed that the letting agents aim to turnaround repairs as quickly as possible and that they do have procedures for this. He accepted that the time taken to repair the shower was unacceptable. Mr Fraser also advised the Tribunal that from May 2019 onwards the Respondent's son became involved and there was better communication with the letting agents in relation to tenancy matters.

Mould/Water damage

16. In her submission Ms Veitch states that she reported mould at the property on 11 September 2019, when she found several of her possessions covered in mould. She also noticed mould covering the carpet under the sofa and covering the underside of the sofa. Prior to this she had been aware of a damp smell in the property but thought that it was because of the leak from the shower. She was not sure whether the shower leak was the cause of the mould and extensive water damage, which was then discovered, as she had received

conflicting accounts. Around the same time, she noticed a large number of earwigs inside the property, which was also reported. Cleaners attended on 24 September. The carpet was cleaned but the cleaner said he did not know how to clean the sofa and simply wiped it over with a Dettol wipe. On 27 September, the letting agents confirmed that the matter had now been referred to the insurance company for approval of repair work. They also rejected the claim that the sofa had not been cleaned. On 24 October she was advised that temporary accommodation had been arranged from 10 November. She had to leave most of her belongings in the property while the work was ongoing. She moved back to the property on 13 December. The work had been completed but the property had not been cleaned. Cleaners attended on 14 December.

17. Ms Veitch advised the Tribunal that there was a terrible damp smell throughout the property, most noticeable in the living room. As a result of this, and the mould on the sofa, she was unable to make much use of the living room during September, October, and November 2019. After she had returned to the property, and it had been cleaned, the damp smell gradually subsided. The sofa had also been thoroughly cleaned. Some floor coverings in the property had been replaced and the carpet in the living room had been cleaned.

18. Mr Fraser advised the Tribunal that he accepted the accuracy of the timeline/summary. He also accepted that there would have been a strong smell of damp in the property. He further advised that the leak from the shower had not been the cause of the water damage and mould, although the source of the problem were the pipes under the bathroom floor. The damage was more extensive than first thought. He stated that he felt the time taken from first report of the mould until completion of the work was reasonable, especially since an insurance claim had to be made. As far as the sofa was concerned, he advised that the cleaning company had stated that it had been cleaned. If this was not the case, Ms Veitch should have brought it to the attention of the staff member who came to the property with the loss adjuster.

Damage to belongings

19. Ms Veitch advised the Tribunal that she had to throw away some canvasses, a suitcase and some linen as it had been covered in mould. Mr Fraser advised that he accepted that the sum of £126 was reasonable estimate of the value of these items. He also advised that he had offered the Applicant the sum of £509 as compensation to include £97 for the electricity and £126 for the damaged possessions. He felt that this was a reasonable offer, but it had been rejected. Ms Veitch advised that she did not feel that this figure was reasonable given the extent of the inconvenience and stress that she had been caused. She also felt that there had been extremely poor communication by the letting agents. Mr Fraser advised the Tribunal that he accepted that there had been some unreasonable delays and that he apologised for this. He confirmed that some of the letting agent's practices should be reviewed. However, the sum sought in the application was excessive.

Findings in Fact

20. The Applicant is the former tenant of the property in terms of a private residential tenancy agreement.
21. The tenancy started on 25 January 2019.
22. The Respondent is the owner and former landlord of the property.
23. The Applicant incurred charges for electricity at the property for a period of time when she was not able to occupy it of £97.
24. Canvasses, a suitcase and linen belonging to the Applicant to the value of £126 were damaged by mould at the property.
25. The Respondent failed to repair a leak from the shower at the property which was reported on 25 January 2019 until 13 December 2019
26. The Respondent failed to repair defects in kitchen cupboards at the property between 25 January 19 and 28 May 2019 and 28 May 2019 and 14 August 2019.
27. The property was adversely affected by water damage, mould, and dampness from 11 September 2019 until 13 December 2019.

Reasons for Decision

28. The application is a claim for damages for breach of contract by the Respondent. The Applicant seeks a payment order for £2040 for inconvenience, including loss of amenity and enjoyment of the tenancy subjects. The Applicant also seeks compensation for possessions which were damaged because of the dampness and mould in the property in the sum of £126 and seeks to recover the cost of electricity used at the property when she could not live there of £97. The Applicant's entitlement to an order for the electricity charges is not in dispute and the Respondent accepts that the value of the lost and damaged possessions is £126, the sum claimed for this loss. The Respondent disputes the claim for inconvenience, loss of amenity and the lost possessions, although concedes that a much smaller figure than that claimed may be due.
29. The tenancy agreement which is the subject of the application is a private residential tenancy which started on 25 January 2019. The document which has been used is the Scottish Government Model. This incorporates the repairing standard obligations imposed on the Respondent in terms of the Housing (Scotland) Act 2006. The Respondent is therefore not only obliged to ensure that the property meets the repairing standard, in terms of the legislation, but is contractually bound to do this. This includes an obligation to ensure that the property is wind and watertight and reasonably fit for human habitation, that fixtures and fittings and appliances must be in a reasonable

state of repair and that any furnishings must be capable of being used safely for the purpose for which they are designed. Clause 18 of the tenancy agreement also specifically provides that the Respondent has a duty to maintain the property from the start of the tenancy and to complete repairs within a reasonable time.

The Kitchen

30. The Tribunal notes that the Applicant reported the defective kitchen cupboards and damaged linoleum on the day that she moved in. The Respondent does not dispute that the cupboards were defective nor that this was not remedied until 28 May 2019, when a repair was carried out. At the same time, doors were fitted to the cupboards which were the subject of a second complaint since they could not be fully opened. This repair was not carried out until 14 August.
31. The Tribunal is satisfied that the kitchen cupboards were not in a reasonable state of repair between 25 January 2019 and 14 August 2019. The repair required to address the issues does not appear to have been complicated or expensive. The Tribunal is satisfied that the time taken to address this matter was excessive and that the Respondent did breach clause 18 of the tenancy contract with regard to same.
32. As far as the linoleum is concerned, the Tribunal is not satisfied from the evidence that a breach of contract has been established. It is not disputed that the linoleum was old, but the Applicant was aware of the position before she moved into the property and the evidence does not support a finding that it was not in a "reasonable" state of repair.

The washing machine.

33. The Tribunal is satisfied that the second fault with the washing machine was repaired within a reasonable period of time and therefore no breach of contract has been established. However, the Tribunal is satisfied that the Respondent, through their agents, failed to attend to the first repair within a reasonable timescale. It appears that the report of this issue was overlooked by the employee who received the email. The Applicant could have sent a reminder which specifically mentioned the washing machine. Furthermore, her later email of 23 July 2019 does appear to suggest that the washing machine issue being reported was a new one. Nonetheless, the matter was reported on 24 April 2019 and should have been acted upon. The Tribunal is satisfied that the Respondent breached clause 18 of the tenancy agreement by failing to have the washing machine repaired within a reasonable timescale.

The shower leak.

34. The Tribunal is satisfied that the Respondent failed to comply with her obligations under the tenancy agreement with regard to the shower. For 11

months, and despite many complaints, the leak from the shower was not repaired until December 2019. Throughout this time the shower was not in a reasonable state of repair, although it could still be used. The Respondent provides no reasonable explanation for this delay. While a period of illness could not have been avoided, the Respondent ought to have made alternative provision for this period. This might have included increasing the threshold for repairs which could be carried out without the agents having to seek authority. Ultimately, all that was required was a new door for the shower cubicle. This was identified by a contractor in July 2019. Despite this, the Applicant had to wait a further 5 months. The Tribunal also notes that if the shower had been fixed sooner, the water damage and mould issues may have come to light at an earlier stage as the Applicant had assumed that the damp smell in the property was due to the leak from the shower.

Mould/Water damage

35. The effect of the water damage and mould on the property and the Applicant's use of same was significant. Although the letting agents did progress the necessary repairs more quickly than the other matters reported during the tenancy, the Applicant was left in highly unsatisfactory living condition for 2 months, then had to move out of the property for several weeks for the work to be done. During this time, the Applicant was unable to make much use of the living room due to the smell and the condition of the sofa. Both issues amount to a failure by the Respondent to ensure that the property meets the repairing standard. While the Respondent may have had to wait for the insurance company and loss adjuster to make their assessment, she ought to have considered providing the Applicant with alternative accommodation immediately or perhaps granting her a rent free period as compensation for the condition of the property. No such arrangement was made, and the Applicant remained in the property until the work was due to start.

Damage to belongings

36. The Respondent does not dispute that the Applicant lost possessions because of the water damage and mould in the property, or that these were worth £126. As the cause of the damage to the possessions was the Respondent's breach of clause 18 of the tenancy contract, the Tribunal is satisfied that the Applicant is entitled to an order for payment in relation to same.

The award.

37. The Tribunal proceeded to consider the compensation which should be awarded to the Applicant. The Tribunal concluded that the Applicant experienced considerable inconvenience and loss of enjoyment of the property because of the dampness and mould at the property. This deprived her of the use of the living room and led to her having to move out of the property for

several weeks while repairs were carried out. The Tribunal determines that the sum of £453, being the equivalent of one third of the rent paid by her for the two month period in question would be appropriate. The issues with the kitchen, the leak from the shower and the washing machine did not deprive her of the use of any part of the property, although the washing machine did not function properly for several months. However, considerable inconvenience was experienced. The Applicant had to mop up water from the shower daily, had to arrange for clothing to be laundered elsewhere, had inadequate storage space in the kitchen and had to devote a substantial amount of time corresponding with the letting agent in an effort to get repairs carried out. The Tribunal determines that an additional sum for inconvenience £300 should be awarded. The total award, when the electricity costs of £97 and damage to possessions of £126 is taken into account, is £976.

Decision

38. The Tribunal determines that an order for payment of the sum of £976 should be made in favour of 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.



Josephine Bonnar, Legal Member

11 January 2021