



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/EV/20/1566

Re: Property at 99 Queens Crescent, Livingston, EH54 8EG (“the Property”)

Parties:

Mr George McIntosh, 4/6 Caledonian Crescent, Edinburgh, EH11 2DE (“the Applicant”)

Mr Ross Cunningham, 99 Queens Crescent, Livingston, EH54 8EG (“the Respondent”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Ahsan Khan (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £12621.95 should be granted in favour of the Applicant against the Respondent.

Background

1. By application dated 22 July 2020 the Applicant seeks a payment order in relation to arrears of rent. Documents lodged in support of the application included a copy short assured tenancy agreement, AT5 Notice and rent statement. The rent statement indicates that the sum due on 22 July 2020 was £7790.79. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 23 October 2020. Both parties were notified that a case management discussion (“CMD”) would take place by telephone case conference on 25 November 2020 at 10am and that they were required to participate.
2. The case called for a CMD on 25 November 2020 at 10am The Applicant participated and was represented by Ms Roman, solicitor. The Respondent

participated in person. A related application under Chamber reference EV/20/1553 also called. The Applicant sought to amend the application to reflect the current sum owed by the Respondent of being £11,007.09. Mr Cunningham confirmed that this was the sum which was unpaid. The Legal Member granted the Applicant's request to amend the application. Mr Cunningham stated that he stopped paying his rent due to the condition of the property. He said that he has reported repairs issues to the Applicant but has been told that the Applicant does not have the funds to carry out repairs. At the date of the CMD, the washing machine, cooker and fridge were all defective. He said that the whole house was falling apart and that he had withheld rent and does not believe the rent arrears claimed are due because of the condition of the property. The Applicant denied this and stated that any issues raised by the Respondent regarding the property had been resolved.

3. The Legal Member determined that the application should proceed to a hearing. The Respondent was directed to submit written representations which addressed the condition of the property, any complaints he had made, any repairs carried out and the consequences for him of repairs not being carried out. The Applicant was directed to submit a response to this. Both parties were also directed to lodge any documents they wished to rely on and the names of any witnesses.
4. The parties were notified that a hearing would take place by telephone conference call on 13 January 2021 at 10am. Prior to the hearing the Applicant lodged written submissions, copies of emails and text messages between the parties and any updated rent statement showing a balance due on 13 January 2021 of £13692.95. The Applicant advised that he wished to amend the application to reflect the sum currently owed in unpaid rent. The Respondent did not lodge any written submissions or documents.
5. The application called for a hearing on 13 January 2021 at 10am. The Applicant and the Respondent both participated.

Preliminary Issues

6. The Tribunal asked the Respondent to explain his failure to lodge written submissions and documents. He said that he had not understood that a written submission was required. He said that he had been unable to submit any documents because he does not have access to a computer or printer and suffers from Dyslexia.
7. The Applicant confirmed that he wished to amend the sum claimed in the application to £13,692.95, being the sum currently outstanding and shown on the updated rent statement. The Respondent initially indicated that he was unsure whether this was the figure which is unpaid. However, having considered the statement and confirmed that he has made no payments since the CMD, he accepted that this is the sum which is currently unpaid. The Tribunal granted the Applicant's request to amend the application.

The Hearing

The Respondents evidence

8. Mr Cunningham advised the Tribunal that Mr McIntosh had failed to carry out repairs at the property and has failed in his duties as a landlord. He advised the Tribunal that the following repairs matters have arisen; -
- (i) Hall carpet saturated from leak from downstairs toilet. Reported on 21 December 2020. No action taken by Mr McIntosh in relation to the leak or the carpet.
 - (ii) Central heating not working. Reported just before Christmas. No action taken by Mr McIntosh.
 - (iii) Washing Machine. This was reported. Mr McIntosh said he could not afford to replace it. Mr Cunningham said that he could maybe get a second hand replacement from a friend. However, this didn't happen. He had to purchase a new machine himself. He did not notify Mr McIntosh as he felt – “there was no point”.
 - (iv) The cooker. This was reported. He thought he could get a new element for it fitted, but this wasn't possible. He thinks he notified Mr McIntosh that he had not been able to get the cooker fixed although he wouldn't do anything about it anyway.
 - (v) The fridge. The condenser broke. He did not bother to report it as “there was no point”.
 - (vi) The windows. None of the windows close properly, a window in the downstairs bedroom cannot be opened and the handle on one of the kitchen windows has snapped off. Reported in November 2019 by text. No action taken by Mr McIntosh.
 - (vii) Bathrooms/toilets. There is a downstairs toilet, a bathroom and an ensuite in the property. The toilet in the bathroom has not worked since November 2019 and was reported by text in November 2019. They have not been able to use that toilet since that date. The downstairs toilet is the one reported on 21 December 2020, which led to the saturated hall carpet. No action has been taken by Mr McIntosh regarding these matters.
 - (viii) The drains are all blocked. This has been the case since November 2020. He did not report it because he did not see the point.
 - (ix) The dishwasher recently broke. He reported it and was told just to get rid of it. The previous dishwasher problem was fixed by him.

- (x) Water is dripping down the wall on the first floor. This started in the middle of last year. He did not report it.
 - (xi) There is a leak in the upstairs bedrooms. This started recently and has not been reported.
 - (xii) The pipes at the gas box outside are corroded.
 - (xiii) The lock in the back door broke and he had to replace it himself. This was reported.
 - (xiv) The front door doesn't lock properly. This occurred recently and was not reported.
 - (xv) The bathroom light broke in November 2020. Not reported
9. In response to questions from the Tribunal Mr Cunningham confirmed that a gas safety inspection takes place every year. The cooker has a gas hob and electric oven. It is the oven that doesn't work. He is not aware of an EICR ever having been carried out at the property.

The Respondents evidence

10. Mr McIntosh stated the following: -

- (i) He did not receive an email in relation to the hall carpet, downstairs toilet, and central heating. The last email he received from Mr Cunningham was on 20 December 2020 and related to the eviction order. The central heating was serviced in November 2020 as there is a maintenance contract. It was working at that time. He is also unaware of any issue with the gas meter box at the property.
- (ii) Mr McIntosh accepts that he did not repair or replace the washing machine. Mr Cunningham told him that he would get a replacement from a friend. He referred to the text messages lodged by him in relation to this. The last communication he received regarding this was a request from Mr Cunningham to see if he could take the broken machine to the dump.
- (iii) As shown on the text messages which were lodged, Mr McIntosh said that he would get a replacement cooker. Mr Cunningham replied that it was only the element and he would get a new one for £50. He was to keep the receipt, and this would be deducted from his rent. As far as Mr McIntosh was concerned the cooker had been fixed.
- (iv) Mr McIntosh advised the Tribunal that he did not take any action in relation to the windows. However, in the text message of November 2019, Mr Cunningham had said that he would attend to the repairs, because he owed rent. He was happy with that and said that Mr Cunningham should keep the receipts and any costs would be deducted from what he owed. In response to questions from the Tribunal he confirmed that he does not carry out

routine inspections of the property and that he has not arranged for any repairs to be carried out to the property during Mr Cunningham's occupation. He has not visited the property and cannot comment on its condition.

- (v) Mr McIntosh assumed that the toilet referred to in the November 2019 text had been fixed by Mr Cunningham.
- (vi) Mr McIntosh said that he has not received a recent report in relation to the dishwasher. He gave Mr Cunningham the name of a contractor at the time of the previous fault. However, the contractor said that he was not prepared to do the work as Mr Cunningham was obstructive about access.

11. Mr McIntosh said that, as the emails and text messages show, he has generally responded to complaints from Mr Cunningham about repairs. He has not always dealt with the repairs but that was sometimes because Mr Cunningham offered to get them done. He explained that he had financial problems, because of the non-payment of rent. However, the house is not uninhabitable. In response to questions from the Tribunal he said that he may have forgotten about the EICR for the property. He advised that the property had been let unfurnished but that white goods had been provided.

The Respondent's submissions

12. Mr Cunningham advised the Tribunal that he notified Mr McIntosh that he was withholding rent due to the condition of the property. He said he would pay, when the repairs were carried out. He initially thought that this had been in 2018 but may have been later. However, he accepted that he has had financial problems and that this has also affected the payment of rent. He has not set the rent money aside. He owes money to other individuals. He advised that he was in receipt of housing benefit from time to time.

The Applicant's submissions

13. Mr McIntosh referred the Tribunal to the rent statement which shows that Mr Cunningham was paying his rent, together with additional sums toward the arrears, up until August 2019. This was not consistent with the statement that rent was being withheld. He stated that all the relevant text messages and emails with Mr Cunningham had been lodged, and at no time had he stated that he was withholding rent. The messages all indicate that he was unable to pay.

Findings in Fact

14. The Applicant is the owner and landlord of the property.

15. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
16. In terms of the tenancy agreement rent is due at the rate of £695 per month. This was increased on 6 March 2017 to £725 per month, on 8 May 2018 to £745 per month and in August 2019 to £765 per month.
17. The Respondent has failed to pay the sum of £13692.95 in rent.
18. On 9 November 2019, the Respondent reported a broken toilet, broken oven, and defective windows to the Applicant. The Applicant did not arrange for these to be repaired.

Reasons for decision

19. The Respondent advised the Tribunal that he notified the Applicant that he was withholding payment of rent because the Applicant had failed to carry out repairs. The Tribunal is not satisfied that this was the case for the following reasons – he has provided no evidence of this claim in the form of a copy of an email or text message, he has admitted that non-payment was partly due to financial problems, he paid his rent and additional sums toward the arrears incurred up to August 2019. Furthermore, all of the emails and text messages lodged by the Applicant indicate that the Respondent was trying to pay his rent but was unable to do so, including emails and text messages in June, August and November 2019. The message sent on 9 November 2019 establishes that he was unhappy with some outstanding repairs but that he intended to pay his rent and would carry out some repairs himself which could be offset. In any event, for a rent strike to be valid, the rent due is supposed to be set aside in a separate account. The Respondent admits that the rent was not set aside and that he was not in a financial position to do this. However, the Tribunal determined that it could consider whether an abatement of rent is due.
20. In terms of the tenancy agreement between the parties the Applicant undertakes to “maintain the accommodation in a wind and watertight condition and in all other respects reasonably fit for habitation” (Clause 21). The Respondent also undertakes to ensure that all installations, such as toilets, central heating systems and cookers, are kept in proper working order. (Clause 23). The Respondent seeks an abatement of rent on the grounds that the Applicant has failed to fulfil his contractual obligations in relation to repairs at the property. He asks the Tribunal to conclude that the rent currently claimed by the Applicant is not due, because of this breach of contract.
21. Clause 26 of the tenancy agreement states that the Respondent undertakes “to immediately notify the landlord (or any officer, agent or employee specified by the landlord for that purpose) of the need for any repair” and that the Applicant undertakes to carry out the necessary repairs within a reasonable

period “after having been notified of the need to do so”

22. The Tribunal notes that several of the alleged repairs issues were never notified to the Applicant. Although the washing machine was initially reported, the Respondent failed to notify the Applicant that he had not managed to secure a replacement and that he required the Applicant to provide this. The other repairs which were not reported were the fridge, the drains, water running down the wall on the first floor and leaks in the bedrooms, the front door lock, and the bathroom light. In terms of the tenancy agreement the Respondent was obliged to report these issues before the Applicant had to attend to same. In any event, it would be difficult for the Applicant to attend to defects which had not been brought to his attention. The Tribunal is satisfied that no abatement of rent is due for these alleged defects.
23. The Tribunal also notes that several of the alleged defects are recent. These include the leak from the downstairs toilet and damage to hall carpet, the central heating, the dishwasher, and the lock in the back door. While the Applicant is obliged to attend to these matters within a reasonable time, once they have been brought to his attention, these defects could not justify an abatement of rent for the period which predates the defect being reported. All these issues are alleged to have occurred in the last few weeks. Furthermore, the Applicant stated that he has no record of receiving these complaints and the Respondent has not submitted any evidence in the form of a text, email or letter, to show that he did report them. The Tribunal is satisfied that no abatement of rent is due for these alleged issues.
24. The Applicant lodged a text message from the Respondent from 9 November 2019. This states that he has “no oven, one toilet does not work....the windows don’t close properly, one downstairs bedroom just doesn’t open at all, kitchen window handle snapped other day”. It is accepted by the Applicant that, following receipt of this text, he did not inspect or arrange for repairs to be carried out. Instead, he relied on the Respondent’s remarks in the text that he would “fix everything that is wrong in the house”, presumably to be offset against the outstanding rent. However, the Tribunal is satisfied that the tenancy contract required the Applicant to act on these matters. He ought to have arranged for inspection and repair or at least checked that the Respondent had been able to do the repairs himself. The Tribunal is satisfied that the failure to carry out repairs to the oven, windows and toilet was a breach of contract and that the Respondent is entitled to an abatement of rent regarding same.
25. The Respondent did not submit any evidence in support of his defence. The Applicant has not been to the property and was unable to comment on its condition. From the evidence, the Tribunal is satisfied that the Respondent was deprived of the use of one of the three toilets and the oven and could not open a kitchen window and a bedroom window, from November 2019 until the date of the hearing, a period of 14 months. As far as the other windows are concerned the Tribunal is not satisfied that there was sufficient information or evidence provided of the alleged defects to justify an abatement of rent.

26. The Tribunal concludes that the Respondent is entitled to an abatement of 10 per cent of the rent due from 9 November 2019, a period of 14 months. Accordingly, the Tribunal determines that the sum of £1071 should be deducted from the arrears total and that the balance owed to the Applicant is £12,621.95.

Decision

27. The Tribunal therefore determines that an order for payment should be granted in favour of the Applicant against the Respondent in the sum of £12621.95.

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/Chair

13 January 2021