



**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/21/0144

Flat 2/2, 1 Ashburn Gate, Gourock, PA19 1NR (“the Property”)

Parties:

**Mr John Robertson, Mrs Debbie Robertson, 36 Dunvegan Avenue, Gourock,
PA19 1AE (“the Applicants”)**

**Ms Lynsay Robertson, Flat 2/2, 1 Ashburn Gate, Gourock, PA19 1NR (“the
Respondent”)**

Tribunal Members:

**Josephine Bonnar (Legal Member)
Andrew McFarlane (Ordinary Member)**

Decision in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment in the sum of £5940 should be
granted against the Respondent in favour of the Applicants.**

Background

1. By application received on 20 January 2021 the Applicants seek a payment order in relation to unpaid rent. A copy tenancy agreement and rent statement were lodged in support of the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 16 February 2021. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 19 March 2021 by telephone conference call and that they were required to participate. They were provided with a telephone number and passcode. On 18 February

2021, the Applicant submitted an updated rent statement.

3. The CMD took place at 2pm on 19 March 2021. A related application under Chamber reference EV/21/0116 also called. The First Applicant participated and was represented by Mr Caldwell, solicitor. The Respondent also participated. The Respondent advised the Tribunal that the application was opposed. She did not dispute that she has failed to pay the rent. However, she stated that there are outstanding repairs issues at the property and that she has been withholding rent since January 2020, having received legal advice that she was entitled to do so. Shortly after she moved in, the cooker stopped working. She reported this and other repairs issues, but they have not been addressed. She notified the Applicants that she was withholding rent until the repairs were carried out. The electrical appliances at the property are defective and dangerous and there is dampness and water damage round plug sockets.
4. Mr Caldwell advised the Tribunal that he was aware of complaints made by the Respondent in early 2020. He said that the Applicants were aware of their obligations and contacted Ms Robertson for access to inspect and carry out repairs. They made repeated attempts to get access, without success. He was instructed to write to the Respondent regarding the matter. He did this, giving notice of the time and date when access was required. She did not make contact and did not provide access. A second attempt was made, again without success. The conclusion reached was that her complaints were not genuine.
5. Following discussion with the parties, the Tribunal determined that the application should proceed to a hearing. The Tribunal issued a direction which required the Respondent to provide full details of her defence to the application, including information about the nature of the outstanding repairs, the reports made by her regarding same, the issue of access and the impact of the defects on her use of the property. She was also directed to provide evidence that she had paid the withheld rent into a separate account This information was to be provided by 5 April 2021. The Applicants were directed to provide a response to the Respondent's submission.
6. The parties were notified that a hearing would take place by telephone conference call on 29 April 2021 at 10am. The hearing took place on this date and time. The Applicants both participated and were represented by Mr Caldwell. The Respondent did not participate and was not represented. She did not contact the Tribunal in advance of the hearing and did not lodge the information or documents specified in the direction. Prior to the hearing the Applicants lodged submissions, an updated rent statement and copies of letters and emails to the Respondent.

The Hearing

7. Mr Caldwell advised the Tribunal that the Applicants have had no contact with the Respondent since the CMD. He referred to the updated rent statement and

confirmed that no further payments have been made. The total outstanding is now £7920. As a payment order has previously been granted by the Tribunal for £1980, the Applicants now seek an order for the remainder of the sums due of £5940, with interest at the rate of 8%, as specified in the application.

8. Mr Caldwell stated that the Respondent's complaints about the condition of the property were first made when the Applicants intimated that they intended to end the tenancy due to non-payment of rent. The Applicants made a number of attempts to get access to the property in early 2020. When they were unsuccessful, they consulted him, and he wrote to the Respondent on their behalf. The Respondent telephoned him in response to the letter and made allegations regarding the property. However, she did not provide him with a date and time for access, as had been discussed. Mr Caldwell referred the Tribunal to three emails from Mrs Robertson to the Respondent in relation to access, sent since the CMD. These were also hand delivered to the property. There has been no response.
9. Mr and Mrs Robertson advised the Tribunal that they have made many attempts to get access to the property. On one occasion they had sent a message to say that they were coming. When they attended, the key was in the lock inside the property. The Respondent did not open the door but sent them text messages from inside, telling them to go away or she would call the police. The last time either of them got into the property was October 2019, when Mr Robertson fixed a leaky tap. Although there were complaints about the boiler and water ingress in January/February 2020, they have not been able to investigate or arrange repairs, as access has been repeatedly refused. The gas safety check has not been carried out for the same reason. However, they are certain that she is still living at the property, as they pass it every day and can see it is occupied.
10. In response to questions regarding the Respondent's personal circumstances, Mr Caldwell said that she had previously indicated that she recently lost her job and that she has a child with a disability. Mr and Mrs Robertson confirmed that the Respondent resides at the property with her son who is aged 8 or 9. He attends a local school. They do not think that she is working but when they contacted the Council about 6 months ago, were told that she was not in receipt of benefits. When the rent was being paid, it came from her bank account and no direct payments from the DWP were ever received. Mrs Robertson advised that the Respondent had provided a fake employment reference from the Prison Service in connection with her application for the property. Beyond this, the Applicants advised the Tribunal that they have no information about her personal circumstances. With regards their own circumstances, they stated that the rent arrears have caused them financial difficulties as they are having to pay two mortgages, with no rental income. The lack of rental income and the access issues have also caused them a great deal of stress.
11. Mr Caldwell confirmed that the Applicants seek a payment order together with interest at the rate of 8%, although he acknowledged that the Tribunal tended to award interest at a lower rate.

Findings in Fact

12. The Applicants are the owners and landlords of the property.
13. The Respondent is the tenant of the property in terms of a tenancy agreement dated 12 July 2019.
14. The Respondent is due to pay rent at the rate of £495 per month.
15. The Respondent has been in arrears of rent since 12 January 2020.
16. The Respondent owes the sum of £7920 in unpaid rent to the Applicants.
17. The Respondent has refused to provide the Applicants with access to the property for inspection and repair since January 2020.

Reasons for Decision

18. The application was submitted with a copy of the tenancy agreement, showing rent due at the rate of £495, and a rent statement showing rent due, rent paid and the total arrears due at the date the application was lodged. Since then, the Applicants have provided the Tribunal with two updated rent statements, the last submitted prior to the hearing.
19. The Tribunal is satisfied that the Respondent currently owes the sum of £7920 in unpaid rent and that no payments have been made to the rent account since December 2020. A payment order has already been granted for £1980 following a previous application to the Tribunal. This leaves a balance on the rent account of £5940.
20. At the CMD the Respondent advised the Tribunal that she had been withholding rent since January 2020, because of outstanding repairs, and that she considered that she was entitled to a full abatement of rent for the whole period of the arrears. She therefore disputed that any part of the unpaid rent was due. Prior to the hearing, the Respondent was directed to provide full details of the alleged repairs issues and the impact on her use of the property. She failed to do so. The Respondent also failed to participate in the hearing. No evidence has therefore been presented to the Tribunal to support the Respondent's claim. The Applicants both gave evidence to the Tribunal. They stated that they have not been inside the property since October 2019, because the Respondent has refused all attempts by them to get access. They referred the Tribunal to copies of emails and letters to the Respondent requesting access. As all access requests have been refused or ignored, they are unable to comment on the current condition of the property. They confirmed that they did receive complaints, but these were in early 2020.
21. The Tribunal is satisfied that the Applicants have made extensive efforts to access the property in order to investigate the complaints made by the

Respondent and carry out any repairs which may be required. They have been unable to do this as a direct result of the Respondents refusal to allow access. The Tribunal is satisfied that the Respondent has failed to establish that she is entitled to an abatement of rent for the period of the arrears. Furthermore, even if she had established that there are outstanding repairs, she has failed to establish that this is due to a failure or refusal by the Applicants to fulfil their obligations as landlords to carry out repairs. The Applicants clearly established that they have endeavoured to do this and that it is the Respondent who has prevented any repairs being carried out. The Tribunal therefore concludes that the Applicants have established that the sum of £5940 is due and that they are entitled to a payment order for same.

22. The Tribunal proceeded to consider the request for interest and noted that there are no provisions in legislation or regulations which require the Tribunal to apply interest at the judicial rate of 8%. Rule 41A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal may include interest when making an order for payment. This can either be at the rate stated in the tenancy agreement or the rate “ordered by the First tier Tribunal.”. The Tribunal is satisfied that it would be appropriate to include interest in the payment order but that this should be at the rate of 4% per annum.

Decision

23. The Tribunal determines that a payment order should be granted against the Respondent for the sum of £5940 with interest at the rate of 4% from the date of the decision of the Tribunal.

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

29 April 2021