



**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**

**Chamber Ref: FTS/HPC/CV/19/3803**

**Re: Property at Flat 51, 5 Shrubhill Walk, Edinburgh, EH7 4FG (“the Property”)**

**Parties:**

**Shrubhill NHT LLP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Miss Michelle Dawson, Address Unknown (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**David Maclver (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the sum of £11,913.67 should be granted against the Respondent in favour of the Applicant.**

**Background**

1. By application dated 25 November 2019 the Applicant seeks an order for payment in relation to unpaid rent. Documents lodged in support of the application included a copy private residential tenancy agreement and rent statement.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 16 January 2020. Both parties were notified that a case management discussion (“CMD”) would take place on 20 February 2020 at 10am and that they were required to attend. On 2 February 2020, the Respondent submitted a letter to the Tribunal. She stated that the letter was not to be crossed over to the Applicant, as it contained confidential medical and financial information. In the letter the Respondent stated that rent is not due because of the condition of the property and outstanding repairs, and that she

was not living at the property due to the repairs issues.

3. A CMD took place on 20 February 2020. The Applicant was represented. The Respondent did not participate and was not represented. The Legal Member determined that the application should proceed to a hearing. This was delayed due to the COVID 19 pandemic. On 16 July 2020 parties were notified that the hearing would take place by telephone case conference on 14 August 2020. At the request of the Applicant, the hearing was postponed. On 14 August 2020, the parties were notified that the hearing would now take place by telephone conference call on 11 September 2020 at 10am and that they were required to participate. The Applicant was notified by email sent to their representative. The Respondent was notified by recorded delivery letter which was successfully delivered by Royal Mail on 17 August 2020.
4. The application called for a hearing on 11 September 2020. The Respondent did not participate. The Applicant's representative, Ms Caldwell, joined the conference call late. She advised that there had been an administrative oversight at her office and the date and time of the hearing had not been diarised. She asked the Tribunal to adjourn the hearing to another date to allow the representative to take full instructions and prepare for the hearing. She advised that the Respondent is still understood to be in occupation of the property, but confirmed that she would take instructions on this, and notify the Tribunal if this is not the case. The Tribunal agreed to grant the request to adjourn the hearing.
5. The parties were notified that a hearing would take place on 10 November 2020. Prior to the hearing the Applicant notified the Tribunal that the Respondent had vacated the property. They sought a postponement of the hearing. In December 2020, the Applicant withdrew the related eviction application, submitted an updated rent statement, and provided the Tribunal with a new address for the Respondent. They later provided the Tribunal with a Sheriff Officer trace report which confirmed this address. A hearing was arranged for 5 February 2021 and parties were notified. The letter notifying the Respondent of the date of the hearing was sent to the new address. The Tribunal received an email from the resident of that address stating that the Respondent did not reside there. As the Tribunal could not establish if the Respondent had received the letter, the hearing assigned for 5 February 2021 was cancelled and the Tribunal determined that notification of the new hearing date should be made by advertisement on the Tribunal website. The Respondent then contacted the Tribunal by email. She stated that she did not reside at the address which had been used and no further correspondence was to be sent there. The Respondent also submitted written representations and a large bundle of documents. However, she stipulated that these were not to be crossed over the Applicant. The Respondent was notified that the Tribunal could not consider the documents unless they were crossed over. She was invited to re-submit the documents and either remove or redact any which contained personal or sensitive personal information. She declined to do so.

6. A hearing was arranged for 16 March 2021. The Respondent submitted a mandate which authorised her father, Mr Donnelly to represent her in relation to the application. On 9 February 2021 Mr Donnelly was issued with a letter which stated that the hearing would take place on 16 March 2021 at 10am by telephone conference call and that he was required to participate. He was provided with telephone number and passcode. He was also provided with a full copy of the application and all supporting documents submitted by the Applicant.
7. On 3 March 2021 Mr Donnelly requested a postponement of the hearing He said that he had not been provided with details of the Applicant's case and their evidence. He said that he could not provide written representations or participate in the hearing without this. The Tribunal considered the request and noted that the application was lodged in November 2019 and that that several hearings had been scheduled and postponed since the first CMD took place in February 2020. The Tribunal noted that the Respondent was served with a copy of the application and all supporting documents prior to the CMD. Furthermore, Mr Donnelly was provided with a full set of case papers on 9 February 2020. He had asked for further information and evidence but has been advised that all information and evidence submitted by the Applicant have already been provided. In the circumstances, the Tribunal determined that it would not be in the interests of justice to postpone the hearing but decided to convert the hearing to a CMD, to allow discussion of the application with both parties. On 9 March 2020, the Applicant's solicitor and Mr Donnelly were notified that the hearing had been converted to a CMD. Mr Donnelly was also notified that he was not required to lodge written submissions before the CMD but could do so if he wished. In his response, Mr Donnelly stated that he would not participate in the CMD.
8. The CMD took place by telephone conference call on 16 March 2021. It was scheduled to start at 10am. The CMD did not begin until 10.10am to allow time for all parties to join the call. Ms Donnelly, solicitor, participated on behalf of the Applicant. The Respondent did not participate and was not represented. Following discussions with Ms Donnelly the Tribunal determined that the CMD should be continued to a further CMD and issued a direction which required the Respondent to lodge submissions regarding the date on which the tenancy ended and the condition of the property between 1 May 2019 until the end of the tenancy, the nature of any defects, when these were reported and the impact of the defects on her use of the property.
9. The Parties were notified that a further CMD would take place on 11 May 2021 by telephone conference call. The Tribunal received a large number of emails from Mr Donnelly following the 16 March 2021. He stated that he had lodged submissions and evidence on 15 March 2021. He provided a copy of the email. As this had not been received, the Tribunal checked with their IT department who confirmed that the email attachments had exceeded the system limit and had therefore not been delivered. A message to this effect would have been received by the sender. The Respondent was notified and asked to resubmit the documents. She did so on 17 April 2021, together with a letter. In the letter the Respondent stated that she would not participate in the CMD or engage

any further with the Tribunal in relation to the application. She stated that no further correspondence was to be sent to her by email. She also advised that Mr Donnelly was no longer representing her, and no further correspondence was to be sent to him. On 30 April 2021, the Applicant's representative lodged further documents in response to those submitted by the Respondent.

10. The CMD took place by telephone conference call on 11 May 2021 at 10am. The Applicant was represented by Ms Donnelly, solicitor. The Respondent did not participate and was not represented.

### **The written submissions**

11. The documents lodged by the Respondent comprised; -

- (a) A letter to the Tribunal dated 17 April 2021 which states that the landlord failed to meet the repairing standard in relation to the property, that this had an adverse impact on her health, that she did not reside in the property during the period of the arrears, that the burden of proof is on the landlord, that the landlord had not provided evidence of the repairs which were carried out, that she had been entitled to withhold rent and that she was entitled to an abatement of rent.
- (b) A redacted PRT for the property. This shows the Respondent as the tenant but other information, including addresses, have been redacted.
- (c) A redacted letter headed "Exit inspection, Flat 51, 5 Shrubhill Walk, Edinburgh". The details of the sender and recipient (names and addresses) have been redacted, as has the date, and the word "Protected" is typed across the letter. The letter is unsigned but the words "RICS Membership – Chartered Surveyor" is typed at the bottom. The letter states that the writer attended the "exit inspection" at the property. The date of the inspection is not provided. The letter indicates that the tenancy ended on 12 March 2020, following an inspection which concluded that the property was not habitable. The letter states that "the ending of the tenancy was issued recorded deliver and signed for at the agents address, this was previously evidenced to the tribunal" The writer further states that "H2S" was "still present" in the property. The letter concludes by stating that the keys to the property had been returned to the agent and signed for by them. Photographs were attached to the letter.
- (d) A redacted sick note dated 20 August 2019.
- (e) A redacted letter (date, sender and recipient details missing and word "protected" typed across it) This has the words "Case Manager, Cost Assistance Department) at the bottom which provides a cost for replacement of furnishings and clothing of £25,049 and a separate table (also redacted) with itemised list of losses totalling £50,949.
- (f) A copy of a decision of the Tribunal under case reference RE/20/0862 which states that the Tribunal had determined that it would stop assisting the landlord on the grounds that the tenant had notified the Tribunal on 25 October 2020

that she had left the property.

- (g) Three redacted letters addressed to the Respondent (date, address of recipient, name and address of sender, all redacted, and word “Protected” typed across the letter). These letters are unsigned, but the word “solicitor” is typed at the bottom. These letters state that the property has been assessed as uninhabitable due to mould and plumbing issues, that the landlord is in breach of the repairing standard, and that the Respondent should withhold rent.
- (h) Letter dated 12 March 2020 addressed to “Touchstone” and headed “Termination of tenancy”. The letter is signed by the Respondent. No proof of posting or delivery is attached. The word “Protected” is typed across the letter, but it is not redacted. The letter states that the tenancy is being terminated as a result of the landlord failing to comply with the repairing standard or otherwise fulfil their obligations as landlord. The letter states that the recipient is invited to attend an inspection of the property on 7 April 2020 at 10am and that the keys would be returned at the end of the inspection.
- (i) Redacted medical report in relation to the Respondent (date, reference, address of author, name of recipient and signature, all redacted, and word “Protected” typed across the report .
- (j) Redacted letter (date, sender and recipient details redacted and word “protected” typed across it). Writer says they reside at 5 Shrubhill Walk and have experienced a number of repairs issues.
- (k) Redacted letter (date, sender and recipient details redacted and word “Protected” typed across it). The letter is unsigned but has the words “Director, Chartered Quantity Surveyor – Membership RICS” typed at the end. The letter is headed “Interim inspection” and refers to faulty patio doors and water ingress. It states that the doors could “crush you against the glass panel or it will tip you over the glass barrier, no doubt to your death”. The writer also refers to damp, mould, a smell of sewage and defective guttering. The writer recommends that the Respondent move out and stop paying rent.
- (l) Redacted letter (date, sender and recipient details, all redacted, and word “protected” typed across it). Letter is unsigned and sender says that the Respondent was their tenant between May 2019 and August 2020 and that they attended an exit inspection of the property in April 2020 and that they witnessed the return of the keys via signed mail.
- (m) Redacted document entitled “Summary Report”. The author of the report, the date and the recipient are all redacted and the word “protected “ is typed across it. The report states that there are several areas of “major concern” – toxic mould and hydrogen sulphide in the ensuite, defective guttering, defective patio doors and fire risk. A handwritten statement and redacted letter which says it is from a contractor who worked on the property is attached.

12. The additional documents lodged by the Applicant comprised; -

- (a) Check in inventory dated 23 February 2019.
- (b) Checkout inventory dated 8 December 2020.
- (c) Email regarding fire safety works and associated correspondence including completion report dated 10 October 2019.
- (d) Repairs log between March 2019 and September 2019.
- (e) Email regarding guttering works confirming completion dated 29 January 2020.

### **Case Management Discussion**

13. Ms Donnelly advised the Tribunal that the letting agents did not receive the letter dated 12 March 2020 or the keys for the property. They were therefore unaware of any proposed “exit inspection” on 7 April 2020. As they had been unable to get access to the property for some time, a right of entry application had been lodged with the Tribunal. A neighbour advised the letting agent on 14 October 2020 that the property seemed to be unoccupied and that they had noted furniture being removed in August 2020. On 26 November 2020, the Tribunal issued a decision that it would no longer assist the landlord, because the tenant had notified the Tribunal on 25 October 2020 that she had left the property. Following receipt of this decision, the letting agent attended at the property on 30 November 2020. The letting agent was unable to access the property with the set of keys they held as it appeared that the locks had been changed. The property was recovered, and a further lock change carried out. Ms Donnelly also confirmed that the letting agents had not been sent any of the other letters or reports lodged by the Respondent.
14. Ms Donnelly advised the Tribunal that the Applicant’s position is that the tenancy always met the repairing standard. Any complaints made by the tenant were addressed to the best of the landlord’s ability. However, the Respondent frequently failed to provide access which made this difficult. Ms Donnelly referred the Tribunal to the repairs log submitted. She confirmed that this provides a full list of all complaints, the last being in September 2019. She also referred to the property inventories. She advised that the checkout inventory showed that the property was in a good condition when it was recovered. The only work carried out between that date and the 16 December 2020, when it was re-let, was a deep clean. No repairs were required and there have been no complaints from the new tenant.
15. Ms Donnelly advised the Tribunal that the documents submitted by the Respondent should be treated as “inadmissible” because they cannot be regarded as evidence. Due to the extent to which they have been redacted, it is not possible to identify the author of the documents or verify their origin or validity. She commented that the format and style of most of the documents are

identical, suggesting they were written by the same person. In the absence of any evidence to establish that the reports and letters are genuine, and as the Respondent has not participated in the CMD to answer questions regarding them, Ms Donnelly said that these should be regarded as inadmissible. She confirmed that the Applicant seeks a payment order for £11,913.67 being the sum shown on the rent statement, less the tenancy deposit which has been recovered by the Applicant since the statement was lodged.

### **Findings in Fact**

16. The Applicant is the owner and landlord of the property.
17. The Respondent was the tenant of the property in terms of a private residential tenancy between 25 February 2019 and 30 November 2020.
18. The Respondent was due to pay rent at the rate of £664.07 per calendar month.
19. The Respondent stopped paying rent in April 2019.
20. The Respondent owes the sum of £11,913.67 unpaid rent to the Applicant.

### **Reasons for Decision**

21. The Tribunal considered the application, the documents lodged by both parties and the information provided by the Applicant's solicitor at the CMD. The Tribunal noted that the Respondent does not dispute that rent is unpaid. Her position is that rent is not due for the relevant period because (i) she did not occupy the property and terminated the tenancy on 12 March 2020, and (ii) she is entitled to a full abatement of rent because the property did not meet the repairing standard and was uninhabitable.
22. The Tribunal considered the documents lodged by the Respondent prior to the CMD and Ms Donnelly's submissions regarding same. It is not clear why the Respondent has redacted these. An expert or specialist report from a surveyor is of little value if the name and credentials of the surveyor are not provided. As Ms Donnelly pointed out, these documents could have been written by anyone. The Tribunal is therefore of the view that items 11 (c) to (e), (g) and (i) to (m) can only be regarded as submissions from the Respondent regarding the condition of the property, but not evidence of that condition. The Tribunal is also of the view that the "advice" in some of these documents about withholding rent should be disregarded. The Tribunal acknowledges that a tenant may have the right to withhold rent and seek abatement if a landlord does not fulfil their contractual obligations. However, the fact that a tenant has received advice on those rights does not mean that she is entitled to do this. That is for the Tribunal to determine.

## **Occupation/termination of tenancy**

23. Whether the Respondent was occupying the property or otherwise is not relevant to the application. The Respondent entered into a private residential tenancy agreement on 19 February 2019. In terms of that agreement, she contracted to pay rent at the rate of £664.07 per month. Her liability for this rent charge continued until the tenancy terminated.
24. The Respondent submitted a letter, addressed to the letting agent, and dated 12 March 2020. In the letter the Respondent states that she is terminating the tenancy. However, although there are several references to recorded delivery and items being signed for, the Respondent has provided no evidence that this letter (or the keys) were sent by recorded delivery or signed for by the agents. The Applicant disputes the Respondents claim and state that neither the letter nor the keys were received. The Respondent is aware of this, as the note issued in connection with the CMD which took place on 16 March 2021 clearly states that the Applicant did not give notice or return the keys (paragraph 10). In the absence of any evidence that the termination letter and keys were sent and delivered, the Tribunal is satisfied that the tenancy did not come to an end until 30 November 2020, when the letting agent received notification from the Tribunal that the Respondent had vacated the property and changed the locks.

## **Abatement of rent**

25. As previously stated, the Tribunal has noted the information contained in the various redacted letters and reports regarding the alleged condition of the property. However, the Respondent provides no evidence of this condition that can in any way be verified or substantiated. Furthermore, she has notified the Tribunal that she will not participate in a CMD or hearing. Contrary to the Respondent's claim regarding the burden of proof, the Tribunal is of the view that once a landlord has established a prima facie case regarding rent arrears, it is for the tenant to establish that unpaid rent is not due. In any event, the Applicant has submitted evidence in support of their statement that the rent for the property was due. The checkout inventory shows photographs of the property in good order at the end of the tenancy. There are also emails in relation to repair work to the gutters and fire safety. They have also provided the log of complaints and repairs for the property. This shows several reports between March and September 2019. On various occasions the log indicates that the Respondent failed to provide access. There appear to have been no reports regarding fire safety or the gutters. There are two separate reports regarding the smell from the ensuite, with information about unsuccessful attempts to get access to investigate this. There is also a reference to a patio door repair being carried out.
26. A claim for abatement of rent is based on a failure by a landlord to fulfil their contractual obligations to a tenant, usually in relation to repairs. A failure to comply with the repairing standard is not itself grounds for abatement since the Housing (Scotland) Act 2006 does not refer to rent and instead provides a tenant with a remedy – a repairing standard application to the Tribunal. That said, the Respondent's tenancy is based on the Scottish Government model



which incorporates the repairing standard as a contractual term. The Tribunal is therefore satisfied that, if the Applicant failed to fulfil its obligations to the tenant in terms of the repairing standard to such an extent that the property was uninhabitable or the Respondent had been deprived of the full use and enjoyment of the property, then an abatement or partial abatement might be appropriate. It is not enough that the Applicant moved out of the property. She must establish that the condition of the property made this necessary. For the reasons already stated, she has not done so. Furthermore, there is some uncertainty regarding her occupation of the property. She has produced a letter which purports to be from the landlord of a property rented by her from May 2019 until August 2020. However, she continued to make complaints regarding repairs issues at the property until September 2019 and did not notify the Tribunal that she had vacated the property until October 2020. In the circumstances, the Tribunal is satisfied that the Respondent has not established that she is entitled to an abatement of rent for the period May 2019 to November 2020, and accordingly the Applicant is entitled to a payment order in relation to the unpaid rent.

## **Decision**

27. The Tribunal determines that a payment order should be granted against the Respondent for the sum of £11,913.67.

## **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.**



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**Josephine Bonnar, Legal Member**

**11 May 2021**