



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 (Act)**

**Chamber Ref: FTS/HPC/CV/19/1685**

**Re: Property at 30 Hagthorn Ave, Kilbirnie, Ayrshire, KA25 6EH (“the Property”)**

**Parties:**

**Miss Melanie Scott, Birtlebog, Kilbirnie, Ayrshire, KA25 7LJ (“the Applicant”)**

**Mr Alexander Beattie, Mrs Frances Beattie, 6 Cypress Avenue, Beith, KA15 2EG (“the Respondents”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Leslie Forrest (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents pay the Applicant the sum of £2,875.00 with interest at the rate of 4.75%.**

**Background**

This is an application under section 16 of the Act and Rule 70 of the *First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017* (Rules).

In terms of the application the Applicant seeks payment in respect of alleged rent arrears of £2,925 with interest at 4% and £400 in respect of the cost of repairs, removal of abandoned property and cleaning.

The Tribunal had regard to the following documents:

1. Application received 3 June 2019;
2. Short Assured Tenancy (**SAT**) commencing 2 May 2017;
3. Written Representations from Respondents by email dated 24 June 2019 with enclosures being a timeline and correspondence from tradesmen;

4. Email from Respondents dated 23 July 2019 comprising further written representations;
5. Email from Respondents dated 26 July 2019 comprising further written representations;
6. Multiple colour pictures of the Bathroom and Property submitted by the Respondents by email of 26 July 2019;
7. Direction of the Tribunal dated 30 July 2019;
8. CMD Note dated 30 July 2019;
9. 12 separate documentary submissions from the Respondents by emails of 2-5 August 2019 including photographs, texts and correspondence all as detailed in an email dated 5 August 2019;
10. Email of 2 August 2019 from Applicant in response to Direction;
11. Email of 14 August 2019 from Respondent with attachments in response to Direction;
12. Email of 27 August 2019 with photographs, DSC statement, Joiner statement and letter from Mr and Mrs Scott;
13. Email of 28 August 2019 from Applicant with statement of Martin Graham;
14. Emails of 29 August 2019 from Applicant enclosing pictures in support of damage to Property and condition Property was left in at end of tenancy;
15. Email of 29 August 2019 from Applicant enclosing statements of joiner, electrician, contractor who conducted repairs, Mr and Mrs Scott;
16. Email of 9 October 2019 comprising further written submissions from the Respondents;
17. Receipt from DCS dated 10 August 2019.

## **Hearing**

The Applicant was in attendance and represented herself. Neither Respondent appeared or was represented. The Respondents had advised in advance that they would not be in attendance. They had asked to postpone the Hearing which request had been refused by the Tribunal.

The Respondents had lodged additional written submissions with the Tribunal by email of 9 October 2019.

The Applicant's position was that there were arrears of rent in the sum of £2,925 with interest at 4% and £400 in respect of the cost of repairs, removal of abandoned property and cleaning. The rate of interest was the contractual rate specified in the SAT at clause 5.2.

The Respondents position was that they did not say they would not pay the rent just that they disputed the amount due as the Property was not fit for dwelling and they had left the Property clean at the end of the tenancy. They disputed the evidence lodged by the Applicant in support of the repairs, cleaning and damage. They stated that the photographs did not show such damage, the Property was clean at the end of the tenancy and the letters produced were not receipts for payment to the various contractors

The Respondents further disputed the installation of 5 internal doors and who had paid for them.

The Respondents produced photographic evidence of the condition of the bathroom and other areas of the Property which they submitted showed the poor state of the Property. They could not use the bathroom, had to use a neighbour's, there was asbestos and the condition of the bathroom was dangerous and health and safety risk. They produced documentary evidence comprising correspondence and texts from a contractor which they say supported the submission regarding the condition of the bathroom.

There was a dispute with regard to access to the Property for repairs.

The Respondents had withheld rent to force the Applicant to undertake the necessary repairs. They claimed that they had suffered mental and physical distress and wished recompense. They had replaced the internal doors at their own cost.

The Applicant disputed that the repairs were as extensive as claimed by the Respondents. She had the repairs carried out. She disputed that any repairs other than to the shower were necessary and that there were no issues with damp, asbestos or the sink/toilet. She gave evidence in support of her contentions and referred the Tribunal to the photographs she had lodged and the various written statements she had lodged from tradesmen.

The statement from J Birney confirmed that tiles and ceiling in the bathroom of the Property were removed and wet wall installed in July 2019. It also confirmed there was no evidence of dampness or damage to the shower room walls, flooring area or ceiling of the kitchen.

The statement of DS Contracts confirmed a temporary repair had been conducted on the bathroom on 7 March 2019. This stated an area of 3 tiles had been removed, holes were present in the wall and that the temporary repairs enabled the shower to be used.

The Applicant confirmed that she was aware of the issues regarding the bathroom shower from around January 2019. She did not accept there were issues with any other part of the bathroom and the Respondents' claims were exaggerated. They had frustrated attempts by her to have tradesmen attend the Property and price repairs. After the temporary repairs were affected, the Applicant stated to the Respondents that the repairs would not be carried out to the bathroom until the rent was paid. At this time the Respondents were in arrears. She also decided to progress eviction proceedings.

The Applicant disputed that she had been told by the Respondents that they were withholding rent due to the condition of the Property.

The Applicant also gave evidence with regard to the condition of the Property, the property of the Respondents that had been left behind and the cleaning required. The laminate damage was the fault of the Respondents. She referenced the photographic evidence and the invoice from DCS.

The Applicant produced and spoke to the written timeline she had lodged in advance.

The Tribunal noted that the CMD Note and Direction of 30 July 2019 had required the Respondents to provide confirmation of the sums they disputed and the reasons they considered that they were entitled to refuse to make payment. They were also required to produce evidence of the repairs they considered necessary, estimated costs of repairs and notification given to the Applicant regarding these and the fact they were withholding rent and the reasons for so doing.

The Tribunal considered the photographs and other documentary evidence lodged by the Respondents. The Respondents had lodged texts and correspondence dated 28 February 2019 from RDB Maintenance Limited which confirmed the shower should be condemned and replaced at a cost of £5,250. This also confirmed their opinion that the shower, toilet and sink were hazardous and unsafe and needed replacing. Asbestos was also referenced as being in the ceiling.

The Respondents had produced a timeline setting out their contact and complaints to the Applicant.

The Respondents referenced further issues with regard to repairs required detailed in their written submissions such as their email of 2 August 2019 in which it is stated North Ayrshire Council could provide evidence of the extent of the required repairs. No such evidence was produced.

The Respondents also produced photographs which they submitted showed they had left the Property clean and tidy.

The Respondents assert that they did not obstruct access to the Property for the conduct of repairs.

The Tribunal considered the oral and documentary evidence before it and made the following findings in fact:

1. The Parties entered in to an SAT in respect of the Property commencing 2 May 2017;
2. The monthly rent was £450;
3. A deposit of £450 was paid which remained with Safe Deposits Scotland;
4. Interest was payable at the rate of 4% above base in terms of clause 5.2 of the SAT;
5. In January 2019 the Respondents raised issues regarding repairs required to the bathroom with the Applicant by telephone;
6. The Applicant experienced difficulty in enlisting the services of a tradesman and in gaining access to the Property to conduct repairs;
7. The Respondents frequently chased the Applicant by telephone and text throughout February and March as detailed in their timeline to progress the repairs;
8. On 7 March 2019 a temporary repair was effected to the shower which rendered it usable and safe;

9. In March 2019 the Applicant told the Respondents that no repairs would be carried out until the rent was paid up to date;
10. The Respondents vacated the Property on 15 July 2019;
11. As at the date of the Hearing the rental arrears were £2,925.00;
12. The Applicant had incurred costs of repairs/cleaning/removal of property due to the actions of the Respondents for £400. The details of the work undertaken was contained in the invoice from DCS dated 1 August 2019;
13. The Applicant emailed the Respondents on 16 July 2019 advising them they had 14 days to remove the furniture and rubbish they had left behind or it would be disposed of;

## **Reasons**

It was unfortunate that the Respondents had not attended to give evidence. Nevertheless, the Tribunal were satisfied that they had every opportunity to present their case. The Tribunal took into account the detailed submissions and additional supporting evidence produced by them.

The Tribunal found the Applicant to be a credible and reliable witness. She had given her evidence in a candid and professional manner. The Tribunal accepted and preferred her evidence where it conflicted with the evidence of the Respondents.

Although the Applicant had made some efforts to remedy the issues with regard to the shower, the temporary repair consisting of taping a shower curtain over the area where tiles had come loose from the enclosure was not reasonable and she should have arranged for the permanent repairs to be undertaken in a timely way, although to an extent her efforts had been frustrated due to unreliability of tradesmen and difficulty in gaining access to the Property. Once the temporary repairs had been carried out, she should have then progressed quickly the permanent repairs. She did not do so and informed the Respondents that she would not do so until the rent was paid up to date.

The Respondents conceded in their submissions to the Tribunal that they did not dispute the rent was due they simply disputed the amount given that she had not undertaken works which she had a legal duty to undertake and the inconvenience, stress and danger they had been subjected as a result.

The Tribunal accepted the Applicant's evidence with regard to the necessary repairs, cleaning and removal of Property all occasioned due to the actions of the Respondents. The Tribunal considered the cost of the works undertaken to be reasonable and awarded the sum of £400.

There was no argument as to the amount of rent due. The Tribunal did not consider that the Respondents had established a legal basis for non-payment and had not established to the satisfaction of the Tribunal that they had formally put the Applicant on notice as to the reasons they were not paying rent advanced by them. The Tribunal had no evidence of formal notification or of the rent being placed in a deposit account pending resolution of the dispute over repairs. The Respondents had not taken any action under the Repairing Standard or sought rent relief.

The Tribunal did, however, consider that the Applicant should have performed the permanent repairs to the shower and not stated that she would only do so when the rent was paid to date. The Tribunal considered that the Applicant breached her obligations as a landlord by refusing to carry out necessary repairs. The Tribunal did accept that the repairs had been carried out on a temporary basis and had rendered the shower safe to use.

Due to the Applicant's breach of obligations the Respondents had to live with a temporary repair from March until the date they vacated in July. The Tribunal considered that a deduction of 1 month's rent was sufficient to address this breach. The Tribunal accordingly deducted £450 from the rent admitted due and found the Applicant entitled to £2,475.00 along with contractual interest at 4.75%.

The Tribunal noted that the sum of £450 remained with Safe Deposit Scotland. The deposit, if recovered by the Applicant, is not to be in addition to the amount awarded by the Tribunal in this matter and is to be treated as payment towards settlement of the sums found due by the Tribunal in this matter.

### **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.**

**Alan Strain**

**10 October 2019**

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**Legal Member/Chair**

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**Date**