



Statement of Decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) under 70(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/0122

Re: Property at Broomhillock Farmhouse, Whitecairns, Aberdeenshire, AB23 8XQ (“the Property”)

Parties:

Mr Edwin Thomson, Noah Newton of Ardo, Whitecairns, Aberdeenshire, AB23 8XH (“the Applicant”)

Mr Stuart Berry, Ms Claire Rose, Whitebrae House, East Brucehill, New Deer, Turriff, AB53 6JY (“the Respondents”)

Tribunal Members:

**Ruth O'Hare (Legal Member)
Ahsan Khan (Ordinary Member)**

Decision

The First-tier Tribunal determined to make an order for payment in the sum of Four thousand one hundred and thirty nine pounds and seven pence (£4139.07) in favour of the Applicant against the Respondents

Background

- 1 By application dated 11 January 2019 the Applicant sought an order for payment of rent arrears against the Respondents in the sum of £3580. In support of the application the Applicant provided a copy of the Tenancy Agreement between the parties dated 1st October 2016.
- 2 On 7 February 2019 the Applicant confirmed by email that the arrears had increased to £4475 and sought to amend his application to reflect that sum. He provided a schedule of rent arrears as evidence of the sums sought.

- 3 A Case Management Discussion was assigned for 16th April 2019. The application paperwork was served upon both Respondents by Sheriff Officers on 27th March 2019.
- 4 By email dated 10th April 2019 the Respondents outlined their response to the application. In summary, the Respondents alleged that the Applicant had behaved in a threatening manner towards them and that rent was not lawfully due as a result of a number of issues of disrepair which had been reported to the Applicant but not resolved. The Respondents further alleged that two payments of rent had been made to the Applicant in cash but were not reflected in the claim.

The Case Management Discussions

- 5 The first Case Management Discussion took place on 16th April 2019. The Applicant did not attend. The Tribunal therefore determined to refuse the application in light of the Applicant's non-attendance. The Applicant subsequently lodged an application to recall the decision. In terms of its Statement of Decision dated 8 May 2019 the Tribunal granted the application for recall, having been satisfied that it was in the interest of justice to do so.
- 6 By email dated 9 May 2019 the Applicant provided comment on the Respondents' written representations and sought to amend his application to include the sum of £23,721.60, being the costs of works carried out following the termination of the tenancy. The Applicant listed damages and deterioration to the property which he submitted was the fault of the Respondents. The Applicant also provided a copy of the Energy Performance Certificate and an Electrical Installation Condition Report dated 1st July 2016.
- 7 The second Case Management Discussion took place on 26th June 2019. The Applicant was present and accompanied by Diane Gordon as his supporter. The First Named Respondent was present and authorised to appear on behalf of the Second Named Respondent. The Applicant advised that the tenancy had now ended and he sought to increase the sum of rent arrears to £5370 to reflect the final balance. This was agreed by the Tribunal. Having heard from the Respondent the Legal Member noted his position that the sum of £1790 had been paid to the Applicant in cash in October 2018 but was not reflected in the rent statement. In any event the Respondents' position was that rent was not lawfully due as a result of issues of disrepair at the property, which included damp in the master bedroom, lack of thermostat, leaking pipework, unsafe socket and faulty log burning stove.
- 8 The Applicant requested amendment of his application to include a further claim for damages in the sum of £23,721.60. However the Legal Member noted that the invoice was from the Applicant's company and did not provide sufficient specification as to the works carried out. The Applicant was therefore directed to provide a breakdown of the labour costs detailed on the invoice together with detail of the work carried out and evidence of the condition of the property following the Respondents' departure. The Respondents were given a further

period of time to respond to the request for amendment and the further information. The Case Management Discussion was thereafter adjourned for the further information to be received.

- 9 By emails dated 16th July 2019 the Applicant provided photographs showing the condition of the property at the start and the end of the tenancy, together with photos showing the property after the works had been carried out. The Applicant further provided excerpts from Facebook purporting to be by the Respondents, correspondence to the Second Named Respondent, an email from Aberdeenshire Council Tax confirming the property had been subject to an empty property exemption from 1st February 2019 to 6th April 2019, and various receipts for materials. No further representations were received from the Respondents.
- 10 The third Case Management Discussion took place on 9th August 2019. The Applicant was present and accompanied by Diane Gordon as a supporter. The Respondents were not present, having intimated shortly before the start of the Case Management Discussion that they would be unable to attend due to childcare commitments. The Case Management Discussion proceeded in the absence of the Respondents. The Applicant had submitted photographs which purported to show the condition of the property at the commencement of the tenancy, at the end of the tenancy and following the works that he had carried out to the property, as claimed for in his invoice of 5th May 2019 in the sum of £23,721.60. Mr Thomson had also submitted invoices however these had not been crossed over to the Legal Member due to an administrative error.
- 11 The Legal Member noted however that Mr Thomson had not as directed provided a breakdown of the labour costs in his own invoice. It was the view of the Legal Member that the costs sought in the invoice were lacking in specification and on that basis Mr Thomson had not produced sufficient information to permit his claim to proceed to an evidential hearing. Accordingly the Legal Member was not prepared at this stage to allow the application to be amended. The request for amendment was therefore continued to the hearing and the Applicant was directed again to provide the breakdown sought.

The issues to be determined by the Tribunal were noted as follows:-

- (a) Whether payments were made by the Respondents to the Applicant in October 2018; and
- (b) Whether the arrears of rent were lawfully due having regard to the condition of the property and in particular:-
 - (i) Alleged damp in the master bedroom causing mould
 - (ii) No thermostat or switch following replacement of boiler
 - (iii) Pipework to new boiler leaking
 - (iv) Unsafe socket in living room; and
 - (v) Log burning stove not capable of use due to faults.

The Hearing

- 10 The Hearing took place at Credo Centre, Aberdeen on 18th September 2019. The Applicant was present and accompanied by Diane Gordon as supporter. The Respondents were both present. The Legal Member explained the purpose of the Hearing and the procedure to be followed.
- 11 As a preliminary matter, the Tribunal considered the Applicant's request to amend the application to include the damages in the sum of £23,170. The Tribunal noted that the Applicant had not provided a breakdown of the labour costs on the invoice from his company, despite being directed twice to do so. The Tribunal therefore determined that the application lacked specification on the basis that the Tribunal could not make a determination of what was due without further explanation as to what works the invoice related to, particularly given the requirement to take into account such issues as fair wear and tear and betterment. The Tribunal therefore refused the application for amendment however it was noted that the Applicant would be in a position to pursue a separate application to the Tribunal if he wished to do so.
- 12 The Tribunal proceeded to hear the evidence from the parties. Neither had sought to lodge a list of witnesses. On the basis that the Applicant had established a claim for rent arrears having provided evidence in the form of the Tenancy Agreement and rent statement, the Tribunal considered the onus to be on the Respondents to establish why the arrears were not due. The Tribunal therefore directed the Respondents to lead their evidence first. Having regard to the fact that both parties were unrepresented the Tribunal asked questions of them on what were considered to be relevant points before giving both an opportunity to sum up with any final matters they wished to highlight.

Evidence from the Respondents

- 13 Mr Berry gave evidence on behalf of himself and Ms Rose. He advised that payments had been made to the Applicant in cash which had not been taken into account in the rent statement provided. He explained that two payments of £895 had been made in this way, one at the start of October and one at the end of October. The last payment of rent made to the rent account had been the payment at the end of October. Nothing had been paid since then. In response to questions from the Tribunal, Mr Berry explained that he could not remember if he had taken the cash from the bank or if it was just cash he and Ms Rose had. They generally made payment by bank transfer but had been known on occasion to pay rent by cash. These payments had been made either at the property or at the Applicant's house. Mr Berry had not asked for receipts as he did not think he would need them.
- 14 Mr Berry explained that he and Ms Berry had stopped paying rent at the end of October 2018. The reason for this was the repairs that they had been asking the Applicant to carry out since the tenancy started. Mr Berry explained there were windowsills bubbling from damp, boiler pipes leaking and many other things. He also explained that the Applicant had behaved in an aggressive and threatening way towards himself and his partner. The repairs had been

reported to the Applicant since the start of the tenancy by text message. In response to questions from the Tribunal Mr Berry explained that he had not kept records of the text messages as he did not think there was any need for it and also he was unsure as to whether they would be admissible.

- 15 Mr Berry responded to questioning from the Tribunal regarding the length of time it had taken before the payments of rent had stopped, particular when some of the issues of disrepair dated back to the previous year. Mr Berry explained that the main concern and main issue had been the Applicant's conduct. He explained that up until that point he and Ms Rose had a reasonable expectation that the repairs would be sorted at some point. They had therefore decided to withhold the rent until the repairs were done. Mr Berry confirmed that they had not advised the Applicant that they were going to stop paying rent, nor had they put it in writing. When asked why he had not made an application to the Tribunal as a result of the repair issues, Mr Berry explained they had obtained the paperwork in December 2018 but had subsequently found somewhere else to live and just wanted to be done with the whole situation.
- 16 Mr Berry stated that Mr Thomson's conduct had forced them into finding somewhere else to live and contributed to the decision to stop paying rent. He and Ms Rose had reported the Applicant's threats and behaviour to the Police at some point in December and to the Landlord Registration department at Aberdeenshire Council. The Police had spoken to Mr Thomson and had told him to leave the Respondents alone. There had been no response from the Council. Mr Berry explained that he and Ms Rose had found somewhere else to live at the start of January. They had told the Applicant at the start of January that they would be moving out. The Applicant had been aware that they were moving out before the Notice to Quit was issued. The Police had advised him in December.
- 17 The Tribunal then asked the Respondents to provide further detail on the issues of disrepair complained of, with reference to the photographs lodged. Mr Berry advised that there was damp in the bedroom causing mould. The Applicant had been aware of that since the start of the tenancy. There had been an attempt to block off some of the window vents by one of the Applicant's employees. They had put chipboard over the vents.
- 18 The Tribunal then asked about the thermostat for the boiler. Mr Berry explained that a new boiler had been installed in Christmas 2016. However no thermostat had been fitted. Mr Berry had been told that someone would come back and fit it at a later date. That had not been done. Mr Berry confirmed that the boiler was operational, but had to be turned on and off with switch at the wall. The temperature of the radiators was adjustable but they couldn't set the boiler to turn off when the house reached a certain temperature. When the boiler was on the heating worked fine.
- 19 Mr Berry then referred to the photograph of pipes. He explained that the pipes were located in a cupboard in the kitchen close to the boiler. The pipe was leaking and the floor was wet as a result. He stated it was a drip and had

started around the time the boiler was fitted. In response to questions from the Tribunal Mr Berry explained that it was not a combi-boiler and no annual maintenance was carried out. The heating system was oil fired heating. Mr Berry confirmed that the leak had persisted for such time until he and Ms Rose had left the property. He further stated that it had minimal impact on their use of the property.

- 20 Mr Berry then spoke about the unsafe socket in the utility room. He explained that neither he nor Ms Rose made use of the switch as a result. It was not low enough to endanger any of their children. Mr Berry was asked about the Electrical Installation Condition Report produced by the Applicant which had been carried out before their tenancy had commenced and did not identify any issues with sockets. Mr Berry stated that it had been like that when they moved into the property. Finally, Mr Berry explained that the log burning stove was not capable of use due to faults.
- 21 The Tribunal asked the Respondents why they had stopped paying rent in October 2018, when the issues of disrepair dated back to 2016, 2017 and 2018. The Tribunal queried what the Respondents had hoped to achieve at that point by withholding rent. Mr Berry explained that they were moving so by that then were no longer interested in getting repairs carried out. They were fed up with the Applicant's threatening conduct.
- 22 Mr Berry explained that the Applicant had found out they were moving out when he was spoken to by the Police in late December, early January. He and Ms Rose had started moving their things out of the property at the end of January. They returned to the property in February to find the locks had been changed. They were therefore unable to enter the property to collect the remainder of their things and clean the house. They contacted Mr Thomson and were initially told they weren't getting access, however the position then changed and a man attended the property with a key to give them access. Mr Berry explained that it was their understanding they had a lease until 7th March which was the date on the Notice to Quit served upon them. It was however their impression when they attended the property in February that they only had a limited amount of time to remove their things and hand the key back. The man returned after a few hours to see if they were finished. They had asked about the remainder of the items left in the property but were told by the man that it wasn't their problem anymore. Mr Berry advised that they did not know who the man was. It wasn't the Applicant.
- 23 Mr Berry then gave evidence regarding the deposit. He noted the Applicant had stated that no deposit was paid for the property. However Mr Berry had paid a deposit of £500 at the commencement of the tenancy back in 2016. Accordingly that payment should be deducted from the overall balance of arrears. In response to questions from the Tribunal he advised that he did not obtain a receipt for the deposit but it was paid from his bank account in 2016. He was aware that he had not lodged any statements to that effect and explained that he could no longer obtain a printout from his bank.

- 24 Mr Berry was asked if he had anything further to state in support of his application. He advised that he had more information about the repairs claim but noted that this was no longer being considered as part of the current application before the Tribunal. Ms Rose was content that Mr Berry had given evidence on behalf of them both and she did not require to say anything further.

Evidence from the Applicant

- 25 The Tribunal then heard evidence from the Applicant. He was asked by the Tribunal about the payments the Respondents alleged were made by cash in October 2018. The Applicant advised that the rent had never been paid in cash. It was paid by bank account. The last payment had been received at the start of September. The Applicant explained that relations between the parties had started to deteriorate some time ago, following an issue with the next door neighbours. There was a dispute between them and the Respondents. Both were tenants of the Applicant and he felt caught in the middle. The Applicant advised that since the start of the tenancy there had been problems with the rent payments. They were regularly overdue and the Applicant found himself having to chase the Respondents however they always paid, up until October 2018. One exception was when Mr Berry had undertaken work in relation to a van for the Applicant and he waived the rent as payment in kind.
- 26 The Applicant was asked about the issues of disrepair alleged by the Respondents. They had spoken about the damp and the windowsill in the bedroom however it didn't seem to be much of an issue at the time. The Applicant had given them advice on ventilating the property. There were new windows put into the property when the tenants moved in. The Applicant advised that he had carried out one inspection during the two year tenancy, during which he noticed evidence of mould. The vents on the windows had never been opened. The Applicant's position was that any mould was caused by condensation and behavioural issues in terms of a lack of heating and ventilation by the Respondents. The Applicant noted the Respondents had mentioned vents being blocked up but the Applicant had found no evidence of this when he recovered possession of the property.
- 27 With regard to the lack of thermostat, the Applicant advised that he was not able to enter the room where it should be fitted but he was under the impression that it had been done. The Respondents had not told him otherwise. It was the same situation with the leaking pipes. The Respondents had not notified him of this. It had only been brought to his attention after they had left the property.
- 28 The Applicant advised that the Respondents had not mentioned the socket hanging out the wall. He pointed to the Electrical Installation Condition Report which had been signed off prior to the Respondents taking up occupation of the property which had not identified any issues.
- 29 With regard to the log burner stove the Applicant advised that the door seal had been taken off at some point during the tenancy which he had discovered when he took possession again. His position was that the stove was in proper

working order at the start of the tenancy and was in proper working order now, having been fixed. He advised that the stove would not work without the seal.

- 30 The Tribunal questioned the Applicant as to when he had recovered possession of the property. The Applicant advised that he had been told by Aberdeenshire Council that the Respondents had left on 1st February 2019. He had not received any notice from the Respondents that they had vacated. The Applicant had then attended the property and noticed the lights were on and the locks had been changed. The Applicant had concerns regarding security and it appeared obvious that the Respondents had left. The Applicant took the decision to recover possession of the property on 19th February 2019. He had not taken any legal advice but the Council had advised that the Respondents had moved out. The Applicant advised that Mr Berry subsequently turned up at the property and "went nuts". The Police were called and attended the property. They initially advised the Applicant that he did not have to let the tenants in but subsequently changed that advice. The Applicant then arranged to return a key to Mr Berry via a third party. Mr Berry was told he had a short period of time to remove his belongings. The Applicant advised that the property was in poor condition.

Exclusion of Party from Proceedings

- 31 At this point in the hearing Mr Berry became angry, stood up in his chair and stated that he would assault the Applicant if he had to listen to him for any longer. The Tribunal determined to adjourn the proceedings and allow parties to return to the waiting rooms. The Tribunal then considered Rule 34 of the Procedural Rules which permits a party to be excluded from proceedings where that person's conduct has disrupted the hearing or is likely, in the opinion of the First-tier Tribunal, to disrupt the hearing or where that person's presence is likely to make it difficult for any other person to make representations or present evidence necessary for the proper conduct of the hearing. The Tribunal considered the threat of violence that had been made against the Applicant and the disruption to the proceedings that had already taken place as a result of Mr Berry's conduct. The Tribunal further noted previous allegations of a similar nature had been made against the Respondent in the Applicant's paperwork. It could therefore be reasonably assumed that the ongoing presence of Mr Berry had the potential to disrupt the proceedings. Having regard to the fact that Mr Berry had already given his evidence and having noted that Ms Rose would be able to continue to take part in the proceedings, the Tribunal considered it would not be prejudicial to the interests of the parties to exclude Mr Berry for the remainder of the hearing. The Tribunal therefore allowed Mr Berry a time with Ms Rose to enable him to raise with her any further issues he wished the Tribunal to take into account before resuming the hearing, under exclusion of Mr Berry.

Continuation of Applicant's Evidence

- 32 The hearing continued with the Applicant, his supporter Diane Gordon and Ms Rose. The Applicant continued to give his evidence. He advised that a Notice to Quit had been served with an end date of 7th March, however he conceded that

the tenancy had been terminated by mutual agreement on 19th February when the keys were returned.

- 33 The Applicant was then asked about the deposit. The Applicant confirmed that a payment of £500 had been made at the start of the tenancy however that was a payment of rent for an agricultural shed the Respondents were renting from him. He understood Ms Ross was keeping horses on land there. The Applicant advised that he didn't take deposits at that time but had since changed his practice.
- 34 In response to questions from the Tribunal the Applicant confirmed that he had been told by the Police in December that the Respondents were looking for a new property and that he should stay away from them. However he had no confirmation if they were leaving or not. The relationship between himself and the Respondents had broken down. They had turned up at his property in December looking for a reference which he had refused to give. He didn't want to lie. The Applicant concluded his evidence at that point.

Final Submissions

- 35 Ms Rose was then given the opportunity to make any final submissions. She advised that in relation to the £500 deposit, that wasn't payment for a shed. They didn't have the shed when the tenancy commenced on 1st October. She questioned why the Applicant had said he didn't know they had moved out, when he appeared to have then said the opposite. She then explained that on multiple occasions she had been threatened by people coming to the property and she had two children. Ms Rose concluded by stating that a qualified chimney sweep had checked the log burning stove and had said it required repair. The door seal had fallen out due to cheap quality and the internals of the stove had fallen apart.
- 36 The Applicant was asked if he wished to make any final submissions but advised that he did not. The hearing therefore concluded and the Tribunal determined to issue its decision in writing.

Findings in Fact and Law

- 37 The parties entered into a Tenancy Agreement dated 1st October 2016 which commenced on that date.
- 38 In terms of Clause 6 the said Tenancy Agreement the Respondents undertook to pay rent of £895 per month.
- 39 The tenancy between the parties terminated by mutual agreement on 19th February 2019.
- 40 As at the date of termination arrears of rent in the sum of £4139.07 were outstanding.
- 41 The arrears of rent are lawfully due by the Respondents.

- 42 The Applicant did not receive a tenancy deposit at the commencement of the tenancy. A payment of £500 was made by the Respondents to the Applicant as rent for an agricultural shed.

Reasons for Decision

- 43 The Tribunal was satisfied having considered the written representations and the evidence from the parties at the hearing that it had sufficient information upon which to make a determination of the application.
- 44 The Tribunal first considered the Respondents' position regarding the alleged payments made to the rent account in October 2018. It noted the evidence from the Respondents regarding these two payments of £895, one at the start of the month and one at the end of the month. However the Tribunal found it difficult to accept that the Respondents would have paid such a significant sum of money in cash without obtaining some form of proof of payment. The details the Respondents gave in terms of how the payment was made also appeared vague. The Tribunal noted that these two alleged payments also coincided with the cessation of payments to the account. The Tribunal therefore preferred the evidence of the Applicant in this regard and concluded that these payments were not made.
- 45 The Tribunal then considered the Respondents' position that any arrears were not lawfully due on the basis that there were issues of disrepair at the property. The Respondents had also made mention of the Applicant's conduct when explaining the reason for non-payment of rent however the Tribunal was clear that whilst there may be alternative remedies available to the Respondents in such circumstances, the alleged conduct of the Applicant was not in the view of the Tribunal a ground for non-payment of rent. The Tribunal's sole consideration was therefore the allegations of disrepair at the property.
- 46 The Tribunal noted that the Respondents had sought to withhold rent from October 2018 onwards as a result of a number of alleged issues of disrepair. The Tribunal therefore considered the various items of disrepair complained of. Mr Berry had conceded in relation to the leak from the pipe and the faulty socket that neither had a significant impact on the Respondents' occupation of the property. It was also noted by the Tribunal that the lack of thermostat had not prevented the operation of the central heating system and that the radiators had temperature controls. With regard to the damp in the living room, the Tribunal was not persuaded on the evidence from the Respondents that this was an issue attributable to any fault with the property and preferred the evidence of the Applicant that this was likely a result of the occupants lifestyle and a failure to properly heat and ventilate the room. Finally with regard to the stove, the Tribunal was not persuaded that any fault with this item had a significant impact on the Respondents' enjoyment or use of the property particularly when there was a proper functioning central heating system.

- 47 The Tribunal further noted that all of the alleged items of disrepair seemed to have occurred some time before the payments of rent had stopped. Indeed, the evidence from the Respondents was that some, for example the faulty socket, were present at the commencement of the tenancy. It was difficult to see why it had taken the Respondents up until October 2018 to decide to withhold the rent as a consequence of these issues. Furthermore Mr Berry had conceded at points during his evidence that the reason for not paying rent was a result of the Respondents having decided to move out and the deterioration of the relationship between the parties.
- 48 The Tribunal therefore concluded that the property was not in a state of disrepair that would have rendered it uninhabitable. On that basis the Respondents were not entitled to withhold rent from 1st October 2018 and had no grounds for seeking an abatement of rent for the period from 1st October 2018 to the end date of the tenancy.
- 49 The Tribunal then had to determine the end date of the tenancy. The Tribunal noted from the evidence from the Applicant that he had sought to secure the property following reports from the Council that the Respondents were no longer in occupation. He had then allowed the Respondents to return to the property on 19th February to recover any remaining items. It was clear however from the evidence that the Applicant had considered the Respondents to have vacated as at this date, in that he had only allowed them access for a short period of time via his representative who had attended the property on his behalf. It could therefore be inferred by the actions of both parties that the tenancy had been terminated when the keys were returned by the Respondents to the Applicant's representative. This had been conceded by the Applicant. The Tribunal therefore concluded that the tenancy had terminated by mutual agreement on 19th February 2019 and calculated the balance of arrears outstanding as £4139.07 at that date, based on a daily rent figure for the year.
- 50 Finally the Tribunal considered the Respondents' position that a deposit of £500 had been paid at the commencement of the tenancy and that this should be applied to the final balance of arrears. The Tribunal did not however accept that the payment of £500 equated to a tenancy deposit. In reaching its conclusion the Tribunal took into account the fact that the Tenancy Agreement did not provide for a deposit to be paid. Further, the Tribunal noted that it would be normal practice for a deposit to reflect the rent payable under a tenancy which in this case was £895. The Tribunal therefore preferred the evidence of the Applicant that the payment of £500 received from the Respondents was payment of rent for an agricultural shed which had been the subject of a separate lease arrangement between the parties.
- 51 The Tribunal therefore determined to make an order for payment against the Respondents in the sum of £4139.07, being unpaid rent for the period 1st October 2018 to 19th February 2019.
- 52 The decision of the Tribunal was unanimous.

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.

R O'Hare

14th October 2019

✓ _____
Legal Member/Chair

Date