

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**



**Decision of a First Tier Tribunal for Scotland (Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/CV/18/0725**

**Re: Property at Room 2, 75B Whitecrook Street, Clydebank, G81 1QW ("the Room")**

**Parties:**

**A&M Lettings Ltd, 27 Dowanhill Street, Glasgow, G11 5QR ("the Applicant")**

**Miss Natascha Rosinski, Flat 3/2, 75 Oban Drive, Glasgow, G20 6AD ("the Respondent")**

**Tribunal Members:**

**Virgil Crawford, Legal Member**

**Elaine Munroe, Ordinary Member**

**Representation :-**

**Applicant: Mr E Doull, Messrs Brunton Miller Solicitors, Glasgow**

**Respondent: Miss A Halsey, Company Director**

**BACKGROUND**

1. The Applicant presented an application to the Tribunal seeking an Order against the Respondent for Payment in the amount of £3,411.18, with interest thereon, being an amount claimed to be due by way of rent arrears;
2. By Lease dated 29<sup>th</sup> August 2017 the Applicant let the Room to the Respondent for the period from 29<sup>th</sup> August 2017 until 29<sup>th</sup> August 2018;
3. The rent payable was £340 per month;
4. A deposit of £340 was also required and that deposit was paid and lodged with an approved tenancy deposit scheme;
5. The Respondent made payment of rent for the period until 28<sup>th</sup> October 2017. No further rental payments had been made;
6. By email dated 4<sup>th</sup> October 2017 the Respondent advised the Applicant that she intended to vacate the Room by 28<sup>th</sup> October 2017. The keys were thereafter returned, being received by the Applicant on 2<sup>nd</sup> November 2017;
7. The Room was a self contained room within a self contained flat ("the Flat") within a tenement building at 75 Whitecrook Street, Clydebank. The door of the Room was secured by a five lever mortice lock. The main door of the Flat was secured by a five lever mortice lock and,

- separately, a "Yale" type latch lock. The door to the common close of the tenement was fitted with a latch type lock;
8. Prior to intimating her intention to vacate the Room the Respondent had advised the Applicant that the "Yale" type latch lock on the door of the Flat was inoperative. The Respondent dealt with that matter promptly, arranging for the lock to be examined and subsequently replaced;
  9. Separately, the Respondent communicated with the Applicant intimating that the latch lock on the door of the common close of the tenement was often inoperative. It was accepted that the lock was not, in fact, broken nor defective, rather it was, on a regular basis, rendered inoperative by other persons using the common close.

## THE HEARING

10. Prior to the Hearing the Respondent submitted written responses to the Tribunal. The Respondent, amongst other things, stated that she *"believes that the security issues which were the reasons for vacating the flat, are not unreasonable, therefor should not be held accountable for the rent of the entire tenancy ending on 28<sup>th</sup> August 2018"*;
11. The exact legal basis of that assertion – i.e. that she should not be held accountable for payment of rent in accordance with the terms of the lease – was not made clear. Accordingly, in advance of the Hearing, the Tribunal requested that the parties be made aware of, and consider, the following cases/law:-
  - a) GH&W Lamont of Heathfield Farm and Others .v. Chattisham Ltd [2018] CSIH 33;
  - b) Valentino Adolpho Pacitti .v. Thomasso Mangeniello 1995 SCLR 557;
  - c) Housing (Scotland) Act 2006, ss12-28 (the "repairing standard provisions");
  - d) Thomas Stobbs and Sons .v. William Hislop 1948 SC 216;
12. The Tribunal was advised that the Respondent had two witnesses in attendance. Those witnesses were expected to give evidence to confirm the fact that the latch on the close door of the tenement was regularly inoperative, that the Respondent had genuine security concerns arising from the same and, as the consequence of that evidence, would be supportive of the credibility and reliability of the Respondent;
13. The Tribunal was anxious to clarify the exact nature of the defence to the application and whether or not there was any valid legal basis for it. Accordingly, the Tribunal asked the Respondent's agent to address the Tribunal on that matter. The Respondent's agents thereafter submitted the following:-
  - a) The issue with the latch on the door of the common close was of such a nature and degree that it constituted a material breach of contract on the part of the applicant;
  - b) In those circumstances, the Respondent was entitled to rescind the contract and that she had, accordingly, done so;
  - c) The contract having been lawfully rescinded due to a material breach, there was no obligation upon the Respondent to make payment of rent due thereafter;

- d) The defence to the claim by the Applicant was not based upon any alleged right of retention of rent to secure performance of the contract nor to satisfy any claim for damages by the Respondent;
14. The Tribunal enquired further in relation to the submission that the issue with the latch on the common close gave rise to a material breach of contract, particularly having regard to the terms of the lease and the absence of any provision therein in relation to the latch on the door of the common close. The Respondent's agent thereafter submitted the following:-
- a) In terms of s13(1)(b) of the 2006 Act, the property did not meet the repairing standard;
  - b) In terms of s15 of the 2006 Act, which makes provision for flatted dwellings, the lock on the door of the common close was a common part of the property which the Applicant was responsible for maintaining;
  - c) Separately, there was an implied term of the contract and the Applicant was in breach of the same. The implied term which ought to be read into the Lease was as follows:-  
*"The Landlord will provide secure accommodation and that obligation will extend to the close door."*
- No authority was provided in support of the submission that such an implied term ought to be read into the Lease;
15. The Applicant did not dispute that the latch on the door of the common close was often rendered inoperative by other persons using the common close. It was not accepted, however, that it was the responsibility of the Applicant to ensure that it was operative at all times. The Room itself was secured and the Flat was also secure;
16. It was accepted that the issue before the Tribunal was whether or not the latch on the door of the common close was rendered inoperative on occasions and, separately, the legal consequences of the same;
17. The Tribunal enquired as to whether or not the Respondent had made an application to the First Tier Tribunal for Scotland for a repairing standards order in terms of ss22 and 24 of the 2006 Act or a rent relief order in terms of ss26 and 27 of the 2006 Act. It was confirmed that the Respondent had made no such application to the First Tier Tribunal;
18. The Tribunal thereafter enquired of the Respondent's agent as to whether the Respondent was entitled to use a common law remedy if there was a statutory provision regulating the point in issue. The Respondent's representative had, of course, previously made specific reference to the repairing standard provisions of the 2006 Act. The Respondent's agents maintained that the security issue referred to was such as constituted a material breach of contract and, therefore, rescission of the contract was an available common law remedy.
19. The Tribunal thereafter adjourned for a short period to consider the submissions which had been made, the legal issues arising and whether or not, given the points which were agreed, it was necessary to hear evidence from witnesses;
20. While witnesses were in attendance for the Respondent, the Tribunal considered it was not necessary to hear from them as the evidence to be led, insofar as it was relevant to the decision to be made by the Tribunal, was not in dispute. The relevant facts relating to the lock on the door of the common close was agreed between the Parties;

## FINDINGS IN FACT

21. On the basis of matters which were agreed between the Parties the Tribunal made the following findings in fact:-

- a) By lease dated 29<sup>th</sup> August 2017 the Applicant let the Room to the Respondent;
- b) The period of lease was from 29<sup>th</sup> August 2017 until 29<sup>th</sup> August 2018. The rent was £340 per month;
- c) The Lease contained no provisions for early termination by the Respondent;
- d) Rent was paid covering the period up to and including 28<sup>th</sup> October 2017. Thereafter, no further rental payments were made by the Respondent;
- e) The Respondent removed herself from the Room during October 2017, the keys being returned to the Applicant on 2<sup>nd</sup> November 2017;
- f) Prior to vacating the Room, the Respondent had advised the Applicant that the "Yale" type latch on the door of the flat was inoperative. The Respondent inspected the same and arranged for a repair and did so promptly;
- g) The Respondent had also advised the Applicant that the latch on the door of the common close was often inoperative. This latch was not, however, broken. It was rendered inoperative by persons and in circumstances outwith the control of the Applicant;
- h) The Room had a door which was secured by a five lever mortice lock which was operative;
- i) The door of the Flat was secured by a 5 lever mortice lock and, separately, a "Yale" type latch, both of which were operative;
- j) The Room was secure, as was the Flat.

## REASONS FOR DECISION

22. The Tribunal does not accept that any issue relating to the lock on the door of the common close, even if it was a permanent problem, amounts to a material breach of contract on the part of the Applicant. The lease contains no provision making reference to the same. The admitted issues in relation to the lock were not caused by the Applicant nor anyone for whom the Applicant was responsible;

23. The Tribunal does not accept that there is an implied term of the lease as submitted by the Respondent's agent. No authority was submitted to the Tribunal in support of that proposition;

24. The Tribunal does not accept that the terms of s13(1)(b) and s15 of the 2006 Act assist the Respondent for the following reasons:-

- a) The lock on the door of the common close is not an item falling within the terms of ss13(1)(b) and 15 of the 2006 Act;
- b) S15(1)(b) of the 2006 Act provides as follows:-  
*"Nothing in subsection (1) requires the landlord to carry out any work unless any part of the premises, or anything in the premises, which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order"*

Having regard to the same, the issue with the lock did not adversely affect the Room nor the Flat and, accordingly, the Applicant did not require to carry out any work in relation to the same;

- c) In any event, even if it did fall within the said provisions of the 2006 Act, the remedy available to the Respondent was to make an application for a repairing standards order in terms of ss22 and 24 of the 2006 Act and thereafter, if necessary, a rent relief order in terms of ss26 and 27 of the 2006 Act;
  - d) In the event that the lock on the door of the common close does fall within the terms of ss13(1)(b) and 15 of the 2006 Act, the Respondent was not entitled to ignore the repairing standards provisions therein and seek to use a common law remedy instead (Ref Stobbs v Hislop 1948 SC 216);
25. There has been no material breach of the tenancy agreement by the Applicant entitling rescission of the contract by the Respondent. In the circumstances, rent due in terms of the lease was due and payable by the Respondent to the Applicant.
26. Clause 19.2 of the Lease contained a provision to the effect that interest at the rate of eight per centum per annum was payable on any sums not paid from the date due until paid;

## **DECISION**

27. The Tribunal ordered that the Respondent make payment to the Applicant in the sum of Three Thousand Four Hundred and Eleven Pound and eighteen pence (£3,411.18), with interest thereon at the rate of eight per centum per annum from 29<sup>th</sup> August 2018 until payment.

## **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.**

Virgil Crawford

**5 November 2018**

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**Legal Member/Chair**

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**Date**