

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988 and Section 16 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/CV/18/0857 and FTS/HPC/CV/18/0856

Re: Property at Flat E 5 Rose Street, Kirkintilloch, Glasgow, G66 1NS (“the Property”)

Parties:

**Mr Fraser Craig (“the Applicant”)
Mr Vincent McDaid (“the Respondent”)**

Tribunal Members:

**Lesley Anne Ward (Legal Member)
Mary Lyden (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property at Flat E 5 Rose Street Kirkintilloch Glasgow G66 1NS be made in terms of s18 of the Housing (Scotland) Act 1988 on the basis of grounds 11 and 12 of Schedule 5 to the Act since the respondent has persistently delayed in paying rent and some rent lawfully due from the respondent is unpaid on the date the proceedings were begun and at the date of service of the notice in terms of s19 of the Act. The First-tier Tribunal for Scotland Housing and Property Chamber also determined that the respondent shall make payment to the applicant the sum of thirteen hundred and seventy five pounds (£1375).

This is the hearing of two applications, one purported to be in terms of Rule 66 and one in terms of Rule 70 of the First-tier Tribunal for Scotland (Housing and Property Chamber (Procedure) Regulations 2017, ‘the Rules’. A case management discussion took place on 19 July 2018 and the tribunal set out in the notes of that discussion, matters which were agreed and documents which each party was required to lodge in advance of today’s hearing.

The applicant did not attend the hearing but was represented by Mr Michael Ritchie solicitor. Ms Sharon Cooke of Coda, the letting agent also attended. The respondent attended and was accompanied by Mr Raymond Heath of the Citizen’s Advice Bureau as his supporter.

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The tribunal had before it the following copy documents:

1. Both applications dated 9 April 2018 and received by the Tribunal on 10 April 2018.
2. Short assured tenancy agreement dated 7 February 2017.
3. Rent statement dated 5 April 2018.
4. AT 6 dated 23 February 2018.
5. Sheriff Officer's Execution of Service dated 27 February 2018.
6. S11 notice to local authority dated 11 April 2018
7. Copy land certificate.
8. Respondent's inventory of productions numbered 1 to 72.
9. Second schedule of documents for applicant numbered 11 to 14.
10. Third schedule of documents for applicant numbered 15.
11. Respondent's email of 24 August 2018 with photographs attached.

Preliminary matters

1. The tribunal noted that the application for possession was in terms of Rule 66 but all of the documents lodged and the matters covered at the case management discussion suggested that the application was in terms of Rule 65. The applicant's solicitor moved to amend the application to Rule 65 and the respondent had no objection. The tribunal allowed the amendment.
2. The tribunal sought to consider the matters referred to in the case management discussion note. Dealing with the matters to be dealt with by the applicant first, the tribunal noted all three matters have been dealt with and it appeared that the documents referred to in the note had been lodged. The tribunal noted that the third schedule of documents were lodged late. They were not received by the tribunal until 30 August 2018 whereas the note stated that they should be lodged 14 days prior to today's hearing. The tribunal heard parties on this matter. The applicant's solicitor stated that some of the emails had been received very recently and therefore could not have been lodged 14 days before. The respondent objected to them being received. The tribunal decided to allow the third schedule to be received although late, given they related to recent email correspondents and the tribunal at the case management discussion had requested that the applicant lodge " All email and other correspondence between the Applicant and Respondent".
3. Turning to the matters to be dealt with by the respondent (erroneously referred to in the case management discussion as "Matters to be dealt with by the Applicant" , the tribunal noted that the second matter had been attended to but the tribunal has not had sight of the first matter, namely, "Proof of payment of invoices productions number 27 and 29 of the Respondent's productions to be lodged with the Tribunal." Mr McDaid was surprised that the tribunal had not seen the receipts. He produced a receipt issued by the tribunal on 24 August 2018 and stamped with the tribunal's date stamp. The copy letter attached to the receipt referred to the two invoices lodged as productions 27 and 29. The tribunal adjourned so that a search for the
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productions could take place. They were not found. The tribunal advised Mr McDaid that it would proceed to hear the application on the basis that it had no reason to doubt that the receipts had been lodged by the respondent. The applicant's agent made no objection.

Hearing

The tribunal invited both parties to set out their case. The applicant's solicitor stated that he was proceeding on ground 8 of schedule 5 as there were more than three months arrears at the date of the AT6 being served, namely £1960 and at the time the application was lodged the arrears stood at £2075. The current rent arrears stand at £2775 and an up to date rent statement has been lodged in the second schedule of documents. The last payment of rent was paid on 24 July 2018.

The respondent's case can be summarised as follows:

- The respondent paid out £1400 in relation to the two invoices referred to above.
- The respondent considers that due to typing error by the applicant's letting agent, two payments of rent should be credited to his account for February 2017 rather than one.
- The respondent has had to pay out further sums of money to replace locks on the door and the kitchen floor.
- The respondent has had telephone and email contact with the letting agent regarding outstanding repairs to the property and he gave notice to the letting agent that he will pay for the repairs himself and withhold rent.

Evidence

The tribunal heard oral evidence from Ms Cooke from the letting agent and from the respondent. The respondent had very helpfully lodged copies of all the rental payments he had paid for the property. Looking at the first rent account lodged the tribunal heard evidence from Ms Cooke regarding the payments and the credits made to the respondent's rental account. The tribunal cleared up a few discrepancies and it was clear that the payments matched exactly. The respondent agreed with the calculations made regarding the rent arrears. What he did not agree with was the applicant's contention that the full rent arrears were due and that the order for possession should be made.

The tribunal heard detailed evidence from Ms Cooke regarding the emails she received from the respondent. She spoke to numerous emails she sent in response to invoices and bills her company was sent by the respondent. She gave evidence to the effect that the letting agent were at a loss to establish what was wrong with the property and what he wanted done. She also gave evidence that the respondent was unwilling to allow access to the property for workmen to carry out any repairs.

In her evidence Ms Cooke referred to previous court actions for eviction of the respondent. She also gave evidence that the property had been sold around February 2017 and her agency took over the letting of the property with the respondent as a sitting tenant. In February 2017 when the current tenancy agreement was executed there
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were no arrears. She was aware that the respondent had difficulties in connection with his benefits application and this is referred to several times in the early email correspondent between the parties. She gave evidence regarding her email of 27 January 2017 in which she makes reference to the housing benefit claim and issues with the boiler for the property. Her evidence was that the respondent never allowed access for the boiler to be inspected and following on from her email of 27 January 2017 the respondent stated that there was no further requirement for any maintenance needed to the boiler. She also gave evidence that she thought the respondent's benefits were suspended because of a job offer which was subsequently withdrawn.

Ms Cooke gave evidence regarding the rental payments made in February 2017. She made reference to productions 5 and 6 of the respondent's productions. Her evidence was that production 5 is a receipt for the February payment 6 is the text of an email she sent. It contains an error and the rent period should be February 2017 until March 2017 and not March to April 2017.

Ms gave evidence regarding the email exchanges numbered 7, 8 in the second schedule. These relate to rent arrears. Ms evidence was that she was not asked by the respondent about any repairs which were need to the property. She was asked about the two invoices from Mr Sneddon dated 31 May 2017 and lodged by the respondent as production 27 and 29. Her evidence was that she was not aware of these repairs and she had no discussion with the respondent. Her evidence was that the respondent " kept sending in valuations 1, 2 3 and invoices and figures and I was confused. I did not understand that he would do the work." She referred to her email of 9 November 2017 which stated among other things "Can you please advise if there is a problem with the boiler? It is important that we know this in order that we can send a contractor down to your premises?" She also referred to her email of 8 November 2017 which was sent in response to the respondent's email of 7 November 2017 containing "valuation 2 " and photographs. She asked the respondent to clarify his correspondence and stated: -

"Can I ask why you have undertaken these works and sent an invoice for these? We have had no discussion over being compensated for any maintenance or upgrades of the flat. I am particularly concerned why you have changed all the locks in the flat? Can I ask why this was done?"

Ms evidence continued in the same vein making reference to invoices sent in by the respondent and her emails regarding the arrears and asking for clarification and access to the property culminating in an email of 3 January 2018 which stated: -

"[We have asked on numerous occasions for access for a tradesman to look into any faults that there may be. We do not authorise any rent to be withheld if there is an issue as we have persistently tried to arrange for someone to attend and resolve any faults therefore we do not accept any rent reductions as you have declined us access". She also gave evidence that the respondent called her on 3 January 2018 and stated that no action was required and that " he was handling it".

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The tribunal went on to hear oral evidence from the respondent. It was his evidence that his locks were superglued by his landlord. He made reference to a text message received from his landlord during the previous court proceedings (which the tribunal understands were dismissed). This meant that the respondent has had to incur the sum of £136 to reinstate his lock (item 36 of his productions).

Regarding the two payments of rent for February 2018 it was the respondent's evidence that if the applicant's agents had made an error in their communications he should be the beneficiary of that and be credited for two payments rather than one.

Regarding the benefits position, the respondent's evidence was that the initial arrears of rent were incurred between March and April 2017 due to an issue with his universal credit. The respondent started a job but then the job offer was withdrawn and he had to reapply for benefits. It was not clear to the tribunal whether the respondent had his benefits reinstated and backdated to the date of his claim in February 2017. The respondent's evidence was that his universal credit was reinstated in April 2017 and around £425 was paid to him for the rent for his property. The money was paid directly to the respondent and not to his landlord or their agents.

The tribunal assisted the respondent in putting his case to Ms Cooke. She was referred to items 24 and 26 of his productions. Her evidence was that she had seen both items as they had been lodged as productions, but she did not recall receiving them at the time. Her evidence was that, even if they did receive the letters here was no explanation given of what the problems were. There was no agreement for the respondent to carry out the work.

Both letters related to repairs which the respondent stated were needed to the property and the second letter dated 31 May 2017 stated "I have arranged and had these works carried out by my sub contractor. These monies will be deducted from any future rents due".

The respondent's evidence was that he made telephone calls to the letting agents and spoke to Ms. The letting agent were aware of the issues he had with the property and if the survey report had been lodged as he requested, this would clearly set out the issues with the property that he had.

Findings in fact and law

- The parties entered into a short assured tenancy agreement in February 2017 to let the property at Flat E % Rose Street Kirkintilloch Glasgow G66 1NS.
- The respondent has been in arrears of rent since March 2017.
- The respondent was served with a valid AT6 on 27 February 2018.
- The respondent has persistently delayed or refused to pay rent for the property.
- At the date of service of the AT6 the rent arrears were £1960.
- At the date of the raising of these actions the rent arrears were £2285.

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- The rent arrears at the hearing today are £2775.
- The respondent instructed work to his boiler and paid out £1400 on 31 May 2017.
- The respondent believed that he was entitled to pay for this work and withhold rent as a result.
- The parties did not reach an agreement for the respondent to carry out any repairs to his tenancy.
- It is reasonable in all of the circumstances for an order for possession to be made.

Reasons

The tribunal considered the oral evidence carefully. The tribunal also took into account the written evidence lodged. The tribunal decided that in fairness to the respondent he should be given the benefit of the doubt that he paid the two invoices referred to in his productions 27 and 29 and the receipts for which had been lost or mislaid by the tribunal administration.

The respondent's evidence was that he paid this money out due to plumbing and electrical issues with the boiler. He gave evidence that he lodged the receipts for this work with the tribunal on 24 August 2018 and the tribunal stamped his copy letter with the date as proof that he lodged these documents. The respondent produced this stamped letter at the hearing. The respondent did not give any evidence regarding any current difficulties with the boiler or the property. The respondent gave evidence that he paid out £136 because his locks had been superglued. Other than the respondent's view that this landlord superglued his lock's there was no evidence that this was the case. The respondent has lodged a receipt for £12 (Item 38 of the productions) but every other "invoice " lodged by the respondent appears to be invoices drawn up by him for work that he has carried out to the property himself. The tribunal heard no evidence that the parties had agreed that the respondent could carry out work to the property. The evidence from Ms Cooke was that there was no agreement regarding this, The emails exchanges which have been lodged suggest that the respondent and the applicant's agent were at cross purposes for much of the time. The applicant's agent's correspondence does tend to focus on the previous eviction proceedings and the arrears, so it is possible that the question of outstanding repairs may not have been at the forefront of their minds. There was nothing in the tenancy agreement to suggest that repairs could be instructed by a tenant and the evidence of Ms Cooke was that this would never be the case and certainly not without an agreement to that effect.

The tribunal decided to give the respondent the benefit of the doubt regarding the repairs which he says he carried out. It appears to the tribunal that after May 2017 the focus seems to be on the respondent being reimbursed or given credit for the payments he made, rather than any work being needed on the boiler. Ms gave credible evidence that there was no agreement made for the respondent to carry out work himself. The respondent also gave credible evidence that he carried out the work due to his perception that he was being ignored by the applicant's letting agent

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and that the work was necessary. The tribunal was satisfied that the current arrears are £2775 and deducting the £1400 paid out by the respondent leaves a balance owed of £1375.

The tribunal having made that deduction went on to consider the legal test. Since a deduction is being made from the arrears, the respondent would not be three months in areas as at the date of the AT6 and ground 8 is not applicable. (The tribunal also heard evidence to the effect that the delay in the respondent's benefits was not a material reason for the rent arrears and the respondent may well have had the benefits backdated in any event).

It then falls to the tribunal to consider if the respondent has persistently failed to pay rent and if there were rent arrears outstanding at the date of the AT6 and at the date of these proceedings, in terms of grounds 11 and 12. The tribunal heard evidence that the respondent has persistently delayed in paying rent and that there are rent areas at the date of the hearing of £2775. The respondent did not dispute the evidence but considered that he has a reason for not paying, namely the sums which he has paid and the work he has carried out to the property. The tribunal also heard evidence and took into account the written evidence regarding the rent arrears. When the AT6 was served the respondent had rent arrears of £1960. Even if the respondent could withhold £1400 he still owed at least £560 at the date of service of the AT6. The rent arrears at the date of the application were £2075.

The tribunal then had to consider in terms of s18(4) if it is reasonable to grant the order for possession. The tribunal took into account the level of arrears, the lengths the applicant has gone to recover the arrears in terms of the email correspondence and the respondent's failure to enter into any agreement regarding the arrears. The respondent by his own evidence is receiving a housing benefit element to his universal credit but this is not being passed on to the applicant. Even taking into account the £1400 paid out in May 2017 the arrears are substantial and the respondent has made no payments since July 2018 despite receiving benefits to assist with his rent. The tribunal therefore decided that an order for possession was reasonable in all of the circumstances. The decision 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.

Lesley A Ward Legal Member
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12 September 2018.