



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/1068**

**Re: Property at 2 Sandyhall Cottages, Glendoick, Perth, PH2 7RQ (“the Property”)**

**Parties:**

**Mr Kenneth Cox, Glendoick House, Glendoick, Perth, PH2 7NS (“the Applicant”)**

**Mr James Bryden, Ms Suzanna Spiller, Ardlea, Ardler Road, Meigle, PH12 8RY (“the Respondents”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant failed to establish liability on the part of the Respondents for payment and therefore dismissed the application.**

**Background**

1. The Applicant made an application to the Tribunal dated 30 March 2023 seeking an order for payment in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules and Procedure) Regulations 2017 (“the 2017 Rules”).
2. This application previously came before the Tribunal for a Case Management Discussion (“CMD”) on 11 July 2023. The Tribunal issued a Note and Notice of Direction following that CMD.

3. On 11 October 2023, the Tribunal received an email from the Applicant's representative, advising that the witness she intended to call is not available for the Hearing and attaching a letter from that witness.
4. On 12 October 2023, the Tribunal received an email from Respondents' representative with questions he had for the Applicant's witness.

### **The Hearing – 23 October 2023**

5. The Hearing took place by telephone conference. The Applicant did not take part in the Hearing but was represented by Mrs Penny Cox. The First Respondent participated in the Hearing and both Respondents were represented by Mr Alan Finlay.
6. The Tribunal explained the purpose of the Hearing and referred to the issues noted in the Note issued following the CMD. The Tribunal also referred to the emails that the parties had sent to the Tribunal on 11 and 12 October 2023. The Tribunal explained that it may be difficult to give much weight if any at all to the very brief letter from the Applicant's witness because the Respondents cannot cross examine the witness. The Tribunal enquired whether the Applicant's representative wished to adjourn the Hearing to another date to enable the witness to be available to give evidence. The Applicant's representative advised that she wished to proceed with the Hearing today and in the absence of the witness. The Applicant's representative explained that she intended to give evidence and did not intend to call other witnesses; the First Respondent indicated that he intended to give evidence and did not intend to call other witnesses. The evidence given by the parties is summarised below. At the conclusion of the evidence, the Tribunal adjourned the Hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to parties.

### **Summary of evidence**

#### Mrs Penny Cox

7. The First Respondent sent a text message to her on 7 September 2021 advising that there was a fault with the shower and the toilet was causing the shower to come on. She arranged for a plumber to attend. She read the text to the plumber which she had received from the First Respondent and asked him to fix the problem. The plumber attended on 9 September 2021 and she was present when the plumber arrived. The plumber told her that it

was not possible for the toilet to cause the shower to come on. The plumber replaced the shower and tested it. She examined the repair and was happy with it. She does not know whether the plumber examined the toilet. Although she was present when the plumber was there, she expected the First Respondent to tell the plumber what the problem was. She inspected the property on 28 September 2021 and the Respondents did not raise any problems and did not report any problems with the toilet. She told the Respondents they should use the extractor fan in the bathroom because there was a smell of dampness.

### Mr James Bryden

8. He noticed a problem in the bathroom on 7 September 2021. When he returned home from work, he noticed that the shower was on and it seemed as though it had been on for some time. The toilet and the shower seemed to be interlinked. Anytime the toilet was flushed, the shower came on. He had to shut the water off at the stopcock. He reported the problem to the Applicant's representative on 7 September 2021 and she arranged for a plumber to attend on 9 September 2021. The Applicant's representative was present when the plumber arrived and she took the lead on explaining the problem because he was looking after his son. He did not speak to the plumber, other than to say hello. The shower was replaced and the shower no longer came on after the toilet was flushed.
9. The Applicant's representative carried out an inspection of the property on 28 September 2021. She said the extractor fan should be used in the bathroom because it was damp.
10. Since the Respondents moved into the property, there was a hissing noise from the back of the cistern when the toilet was flushed. He was not aware of water coming out of the cistern when he heard the hissing noise.

### **Submissions**

11. The Applicant's position was that if the Applicant's representative had been told about an issue with the toilet cistern, she would have had it repaired. The Respondents did not report the problem, so the repair was not carried out. As the water mark became bigger, she would have expected the Respondents to report it.
12. The Respondents' position was that there was no real evidence about dampness. The Respondents reported an issue with the toilet and shower on 7 September 2021. The repair carried out was effective as far as the shower was concerned, but did not address the problem with the pipework.

The Respondents cannot be held liable for repairs that should have been carried out when the report was made in September 2021.

### **Findings in fact**

13. The parties entered into a private residential tenancy which commenced 9 August 2019 and ended on 28 October 2022.
14. The Respondents reported to the Applicant's representative on 7 September 2021 that there was a problem between the toilet and the shower.
15. The Applicant's representative attended at the property on 9 September 2021 with a plumber and the plumber replaced the shower.

### **Reasons for decision**

16. The onus of proof rests with the Applicant to establish his claim for the work carried out to the bathroom. In light of the evidence given at the Hearing, the Tribunal was not satisfied that the Applicant has discharged the onus of proof.
17. The Applicant's representative relied upon the photographic evidence of the bathroom and a letter dated 11 October 2023 from the plumber who replaced the shower on 9 September 2021. The Applicant's representative explained that she read out the First Respondent's text message to the plumber to advise what the problem was. There was no evidence that the plumber examined the toilet or the pipework at all.
18. Neither the Applicant's representative, the Respondents nor the plumber noticed that there was anything wrong with the pipework which had caused the water damage in the bathroom. There was no evidence about how long the water damage had been there and for how long that would have been obvious. The Applicant's representative said that there was a smell of dampness when she attended the property on 28 September 2021. Notwithstanding that, there was no evidence about investigation of the source of that dampness.
19. There was an absence of any evidence about the repair which was carried out to fix the problem which caused the water damage. Although invoices have been lodged in support of the claim, the Tribunal did not hear any evidence about what the problem was. The Tribunal was left not knowing whether it was a latent or patent problem and therefore could not reach the conclusion that it was something which ought to have been reported by the Respondents.

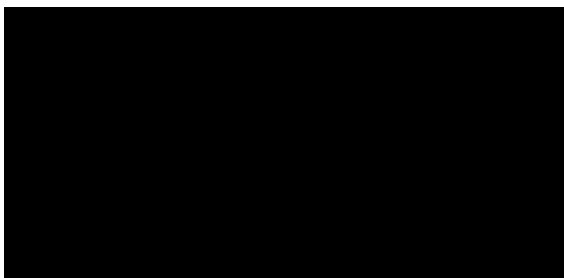
20. The thrust of the Applicant's argument was that the Respondents had failed to report the water damage. There was no suggestion that the Respondents had caused any damage which resulted in water damage.
21. Crucially, there was no evidence that if a report had been made by the Respondents, that the cost of a repair would have been any less than was ultimately incurred by the Applicant.
22. For all of the reasons set out above, the Tribunal refuses the application and makes no order for 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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**



**Legal Member/Chair**

**23 October 2023**

**Date**