



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Procedure Rules”)**

**Chamber Ref: FTS/HPC/CV/24/3459**

**Re: Property at Flat 0/1, 22 Craigpark Drive, Dennistoun, Glasgow, G31 2NP (“the Property”)**

**Parties:**

**Mrs Deirdre Bourke, Mr Lawrence Bourke, 40 Fraser Road, Applecross, Perth, Australia, WA6153, Australia (“the Applicant”)**

**Mr David Aitchison, Flat 0/1, 22 Craigpark Drive, Dennistoun, Glasgow, G31 2NP (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £7,784 should be made in favour of the Applicant.**

**Background**

1. The application submitted on 30 July 2024 sought a payment order against the Respondent in the sum of £4,696 in respect of rent arrears owing in respect of the tenancy of the Property which was ongoing. Supporting documentation was submitted with the application, including a copy of the tenancy agreement and a rent statement. The tenancy had commenced on 17 December 2021 at an initial monthly rent of £750. This application was conjoined with an eviction application which had been lodged at an earlier date.
2. Following initial procedure, the application was accepted on 20 August 2024 and a Case Management Discussion (“CMD”) was fixed to take place on 21 October 2024 in respect of this and the conjoined eviction application. Parties

were notified, the Respondent by way of Sheriff Officer service on 18 September 2024. No written representations were lodged by the Respondent prior to the CMD.

3. The CMD took place by telephone conference call on 21 October 2024. It was attended on behalf of the Applicant by Miss Blackwood of Looking to Rent, the Applicant's letting agent and by the Respondent, Mr Aitchison. The Respondent did not oppose the conjoined eviction application and an eviction order was granted at the CMD. However, the Respondent did oppose this application in respect of the sum sought. The Applicant's representative stated that the arrears now amounted to £7,012. Although the Respondent accepted there was unpaid rent of this amount, he claimed to have been withholding rent due to a rat infestation at the Property. The Applicant's position was that the rat infestation was only reported to them by the Respondent on 4 June 2024, by which time four months' rent was already owing and that he was just using this as an excuse for not paying rent. The Respondent conceded that he had not reported the rat infestation until 4 June 2024. As there were issues in dispute, the Tribunal continued the application to an Evidential Hearing, subsequently fixed for 16 January 2025. Following the CMD, parties were issued with a CMD Note outlining the discussions at the CMD and a Direction to parties to lodge certain documentation and written submissions by 23 December 2024.
4. Notification in respect of the arrangements for the Evidential Hearing were issued to both parties by email on 29 November 2024.
5. On 16 December 2024, two emails on behalf of the Applicant were lodged with the Tribunal, attaching supporting documentation in accordance with the Direction. The supporting documentation included:-
  - an updated Rent Arrears Statement showing a balance then outstanding of £8,556;
  - emails between the Applicant's letting agent and the Respondent dated between 19 June 2023 and 1 August 2023 regarding rent arrears and an overgrown hedge at the front of the Property which the Respondent was failing to maintain;
  - photographs of the front hedge before it was attended to by the Respondent and after he had cut it back;
  - emails between the Applicant's letting agent and the Respondent dated 5 and 6 June 2024 regarding the rats and alleged hygiene/waste issues;
  - Inspection Reports x 4 from the pest control contractor instructed relating to their visits to the Property on 5, 12, 21 and 28 August 2024; and
  - submissions stating the Applicant's position regarding this claim.
6. The Respondent did not lodge any documentation in response to the Direction.

## Evidential Hearing

7. The Tribunal at the Evidential Hearing involved the same Ordinary Member as previously, but a different Legal Member. It took place by telephone conference call on 16 January 2024, due to commence at 10am. The Tribunal delayed the start of the hearing by over 5 minutes to allow the Respondent an opportunity to join late but he did not do so. The Applicant was not in attendance but was represented again by Ms Lynn Blackwood, Lettings Manager, of Looking to Rent.
8. Following introductions and introductory comments, the Legal Member confirmed that no representations or documents had been lodged by the Respondent to date and asked Ms Blackwood if she had any update regarding the Respondent's circumstances. She confirmed that there had been some communications with the Respondent since the CMD regarding the eviction date, now scheduled for 24 January 2025, and his intention to remove from the Property. Very recently, the letting agent has been contacted by a housing association who confirmed that the Respondent was due to enter into a tenancy agreement with them shortly. Ms Blackwood thinks that the Respondent is still living at the Property but is likely to move out soon.
9. Reference was made to the documentation lodged on behalf of the Applicant. Ms Blackwood confirmed that no payments have been made by the Respondent since around February 2024 and that, since the updated Rent Statement was lodged in December 2024, the arrears have since increased from £8,556 to £9,328. It was noted that the Applicant's representative had not lodged a request to amend the sum sought from the £7,012 due at the time of the CMD. Ms Blackwood explained that she had been unaware that, in terms of the Procedure Rules, she had to specifically submit a request to amend or directly notify the Respondent at the same time. She had thought that this was covered by the lodging of the updated Rent Statement on 16 December 2024, which the Tribunal had then circulated to the Respondent. The Legal Member explained that the Tribunal would consider the request to amend the sum claimed in due course but that, if granted, this would be restricted to £8,556, being the arrears balance shown in the updated Rent Statement which has been notified to the Respondent.
10. As to the Respondent's argument that he was entitled to withhold rent/have the rent due abated, due to the rat infestation, Ms Blackwood stated that the Applicant's position was that an abatement was not justified in the circumstances. She referred to all the supporting documentation lodged and stated that it was clear from the Rent Statements that the Respondent had simply stopped paying rent altogether in February 2024 when he was served with a Notice to Leave and that it was not until four months after this that the Respondent had reported the rat issue in early June 2024. The Respondent had previously had issues with his rent and a Notice to Leave had previously been served during 2023 on the basis of the rent arrears. He had managed to clear the arrears at that time, but, since the fresh Notice to Leave was served, there have been no rent payments made nor attempts by the Respondent to resolve the arrears.

11. Ms Blackwood confirmed that they had exercised due diligence in dealing with the rat infestation and that, after the Respondent complained about finding a dead rat on the Property in early August 2024, the property factor had immediately attended and the rat issue was resolved in around three weeks with the works concluded on 28 August 2024. There were no further complaints made regarding rats. Ms Blackwood submitted that this was a reasonable timescale for the matter to be resolved and that there was therefore no justification for any abatement of rent.
  
12. Ms Blackwood was asked some questions by the Tribunal Members. She was asked about what had happened in the period between 4 June 2024 when the Respondent had first reported an issue with rats and the Respondent complaining that he had found a dead rat in early August 2024. Ms Blackwood stated that she could not specifically recall if the issue had been reported to the factor in June 2024 but considered it unlikely as the factor would probably have acted immediately as they did in August 2024. She thought that it was more likely that they would have followed their usual procedures in such situations which was to offer advice on any hygiene or waste management issues that they considered may attract vermin. Ms Blackwood referred to the issues they had raised previously with the Respondent concerning hygiene issues/food waste issues within the Property, dog fouling by the Respondent's dog in the rear garden area leading to the property factor not being able to properly maintain that area, and the previous issue regarding the front hedge which had arisen through the Respondent's failure to cut back the hedge and thereafter remove the hedge clippings. Ms Blackwood confirmed that they had considered that all of these issues created an environment which could attract rats and that they therefore offered advice to the Respondent in June 2024, which they hoped would resolve the issue. The Respondent did not follow-up with any further reports of rats at that stage, so they assumed the issue had been resolved. Reference was then made to the email response from the letting agent to the Respondent dated 5 June 2024 to his first report of rats which stated that the letting agent would immediately report this to the factor and that he would be kept updated. Ms Blackwood conceded that this must have been an error on their part in stating this in the email.
  
13. Reference was made to the reports lodged from the pest controller and Ms Blackwood accepted that there were no hygiene-type issues noted by the contractor on any of the four visits to the Property during August 2024. She also accepted that the contractor had identified at least three entry points for rats into the Property and that joiners had been instructed to rectify this, which they did on 28 August 2024, the date of the last visit from the pest control contractor. Ms Blackwood was asked if the Applicant or their letting agent had been aware of any background issues concerning rats at or around the Property, given that the pest control contractor seemed to allude to a wider rat problem affecting the building and that the Respondent had stated in one of his emails to the letting agent that a neighbour had told him of a rat problem when he first moved in, in 2021. Ms Blackwood stated that she was not aware of a larger problem affecting the building, nor previously affecting the Property itself and reiterated

that the Respondent's first report to them regarding rat activity was in June 2024.

14. Ms Blackwood confirmed that the Respondent was 54 years old and was the sole tenant of the Property, although they learned later that his son had moved in with him. She is not aware of the Respondent being on any benefits. He was employed but his work seemed to be a bit erratic. He did seem to encounter financial difficulties from time to time when he would be unable to make the full monthly rental payments but, until 2024, he would then make additional payments to make up the arrears. Ms Blackwood confirmed that the Respondent would go and stay with his mother from time to time but has no reason to think he has already removed from the Property or was currently staying with his mother. Ms Blackwood confirmed that the Respondent never stated in writing that he was withholding rent payments due to the rat issue and nor did he ever mention withholding rent, until the CMD.
15. Ms Blackwood was given the opportunity to sum-up but stated that she considered everything had already been covered.
16. The Tribunal adjourned to discuss and, on re-convening, the Legal Member confirmed that the Tribunal had decided to permit the increase in the sum claimed to £8,556 but not to the current arrears balance of £9,328. It was explained that a separate application to the Tribunal could be made to the Tribunal in due course to cover any further rent arrears accruing after December 2024 until the date the Respondent removes from the Property. The Tribunal had thereafter decided to abate the rent due for the months of June and July 2024, by 50%, with the effect that the total abatement amounted to the equivalent of one months' rent payable at the relevant time, namely £772. The Tribunal was therefore granting a payment order in the sum of £7,784, being the sum of £8,556 less the abatement of £772. Ms Blackwood was thanked for her preparation for and attendance at the Evidential Hearing and informed that the Tribunal's written decision would be issued to parties shortly. The appeal period and further procedure was explained and the Evidential Hearing brought to a close.

## **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy commencing 17 December 2021 which is ongoing.
3. The rent was initially £750 per calendar month, which increased to £772 as from 1 November 2023.
4. There was a history of rent arrears, with rental payments being short or missed but these arrears had been cleared by the Respondent by November 2023.

5. Arrears accrued again from January 2024 and the last payment made by the Respondent was £300 on 26 February 2024.
6. A Notice to Leave was served on the Respondent in or around February 2024.
7. No rent payments or payment proposals in respect of arrears have been made by the Respondent since that time.
8. During the tenancy, issues arose concerning the Respondent's dog fouling the rear garden at the Property, his failure to cut back and thereafter remove clippings from an overgrown hedge at the front of the Property and the Applicant's letting agent's concerns regarding hygiene-type issues at the Property which had been noted on inspection.
9. On 4 June 2024, the Respondent reported an issue with rats at the Property to the Applicant's letting agent.
10. The Respondent had not previously reported any issue with rats.
11. The Applicant's letting agent responded on 5 June 2024 by providing advice on hygiene and waste issues which may attract rats and other vermin but also stating that the issue would be immediately reported to the property factor.
12. The issue appears not to have been reported to, or actioned by, the property factor at that time.
13. The Respondent complained again about rats on 5 August 2024, stating that he had found a dead rat on the Property.
14. The Applicant's letting agent reported this to the property factor who attended at the Property that day.
15. Thereafter a pest control contractor was instructed on behalf of the Applicant, inspected, and confirmed there was a rat infestation.
16. The pest control contractor attended at the Property on four occasions during August 2024 to inspect, monitor and lay traps and bait to remediate the rat infestation.
17. Joinery contractors were also instructed on behalf of the Applicant to block the access points for rats into the Property that had been found on inspection by the pest control contractor.
18. These works were completed on 28 August 2024.
19. There have been no further reported issues regarding rats at the Property since 28 August 2024.

20. Prior to the CMD on 21 October 2024, the Respondent had not intimated verbally or in writing to the Applicant's letting agent that he was withholding rent due to the rat infestation.
21. Rent arrears amounted to £4,696 when this application was lodged on 30 July 2024 and had risen to £7,012 by the date of the CMD, £8,556 by December 2024 and now amount to £9,328.
22. The Respondent admitted unpaid rent of £7,012 at the CMD but claims that he was withholding rent/due an abatement of rent in respect of the rat infestation.
23. The Respondent was notified of, and did not contest, the increased rent arrears figure of £8,556 shown in the updated rent statement lodged by the Applicant on 16 December 2024.
24. The Respondent did not comply with the Tribunal's Direction dated 21 October 2024, lodge any written representations or documentation with the Tribunal, nor attend the Evidential Hearing.
25. The Tribunal found the Respondent entitled to an abatement of rent amounting to £772.
26. Rent arrears amounting to £7,784 are due and owing by the Respondent to the Applicant.
27. The Respondent has been called upon to make payment to the Applicant but has failed or at least delayed to do so.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the written representations and further documentary evidence lodged on behalf of the Applicant and the oral evidence and submissions of the Applicant's letting agent at the Evidential Hearing.
2. The Tribunal initially considered the Applicant's request to amend the sum claimed in respect of rent arrears in terms of Rule 14A of the Procedure Rules. The Applicant's representative had not strictly complied with the terms of Rule 14A in that they had not specifically lodged a request to amend with the Tribunal, nor intimated this to the Respondent. However, the Tribunal noted the Applicant's representative's explanation in this regard and that they had lodged an updated Rent Statement on 16 December 2024, which was timeous in that this was at least 14 days prior to the hearing. It was also noted that this was intimated by the Tribunal to the Respondent by email on 19 December 2024. The Tribunal was satisfied that this gave fair notice of the increased sum sought of £8,556 to the Respondent and sufficient time for him to contest this figure if he wished to do so, prior to the hearing. Accordingly, the Tribunal exercised

their discretion in terms of Rule 14A(2) to allow the increase in the sum sought to £8,556. Although the rent arrears now exceeded that figure, the Tribunal was not prepared to allow amendment of the sum sought to £9,328 as no advance request for amendment had been made on behalf of the Applicant and no updated Rent Statement showing that figure had been lodged.

3. On the whole, the Tribunal was satisfied that the Applicant's claim against the Respondent was well-founded and had been established in evidence. The Tribunal found the Applicant's letting agent to be credible and to have presented the evidence and her submissions on behalf of the Applicant in a straightforward and thorough manner. She answered numerous questions from the Tribunal Members. The Tribunal was satisfied, from consideration of the background circumstances and previous rent arrears, and the chronology of events, that the reason for most of the rent arrears was not the rat infestation, as had been claimed by the Respondent. From consideration of the supporting documentation, it was apparent to the Tribunal that there was a history of rent arrears and the Respondent experiencing some financial difficulties. He had, however, stopped paying rent altogether around February 2024 and had not, by his own admission at the CMD, reported any issue with rats until 4 June 2024, by which time four months' rent was owing and Notice to Leave had already been served. In addition, the Tribunal considered it significant that the Respondent had never intimated to the Applicant's letting agent, either in writing, or verbally that he was withholding rent for that reason. Accordingly, the Tribunal did not consider this to be a valid withholding of rent situation.
4. However, having considered all the circumstances and supporting documentation, the Tribunal was persuaded that the Respondent was entitled to some abatement of rent. There was a genuine rat infestation which the Respondent first reported to the Applicant's letting agent on 4 June 2024 and which was not resolved until 28 August 2024. The pest control contractor had found on his first inspection of the Property on 5 August 2024, at least three separate access points for rats into the Property. It was clearly the responsibility of the Applicant, as landlord, to rectify the issue of the access points, albeit that the Applicant's agents had some pre-existing concerns regarding hygiene and waste management failings by the Respondent. Although the letting agent had responded to the complaint in June by offering advice to the Respondent on hygiene and waste management, they appear not to have immediately reported this issue to the property factor, despite stating in an email to the Respondent on 5 June 2024 that this was being done. For whatever reason, the issue does not appear to have been actioned by the property factor until the Respondent made a second complaint to the letting agent on 5 August 2024, by which time he had found a dead rat on the Property. The Tribunal was satisfied that, once action was taken on 5 August 2024, the Applicant's agents and contractors resolved the rat issue quickly and effectively. The Tribunal accepted the letting agent's submission that due diligence on behalf of the Applicant had been demonstrated at that time. Accordingly, the only period during which the Tribunal considered there was an argument for abatement of the rent was from 5 June 2024 to 5 August 2024, ie. a period of two months.

5. The Tribunal then considered the appropriate level of abatement to which the Respondent should be entitled. Given that there was no evidence before the Tribunal to show that the Property was uninhabitable, or that the Respondent had moved out of the Property during the two-month period, the Tribunal did not consider full abatement of the rent over that period to be appropriate. Although there was some evidence presented on behalf of the Applicant as to the Respondent's previous failings in respect of hygiene and waste management, both inside the Property and in respect of the garden areas outside and the Tribunal accepted the letting agent's assertion that these issues could have attracted vermin, the Tribunal was not persuaded that this negated the Applicant's responsibility to maintain the structure of the Property in a condition which prevented access by rats or other vermin into the Property. Furthermore, it was conceded on behalf of the Applicant that the pest control contractor found no hygiene/waste-type issues at the Property at any of their four visits to the Property during August 2024. Given the extent of the rat infestation found in the Property and the unpleasant nature and public health concerns of rat infestation, the Tribunal was satisfied that it was appropriate to abate the rent by 50% over the relevant two-month period. This effectively amounts to one month's rent which at that time was £772. The Tribunal accordingly deducted the sum of £772 from the relevant rent arrears of £8,556, leaving a balance due to be paid by the Respondent of £7,784.
6. The Tribunal concluded that, in all the circumstances, the Applicant was entitled to a payment order against the Respondent in the sum of £7,784.

### **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.**

Nicola Weir

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**Legal Member/Chair**

**16 January 2025**  
**Date**