



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

Chamber Ref: FTS/HPC/CV/20/2152

Re: Property at 87 TL Dens Road, Dundee, DD3 7HU (“the Property”)

Parties:

Mr Richard Bailey, 6 Castle Gogar Rigg, Edinburgh, EH12 9FP (“the Applicant”)

**Mr Gavin Clark, Ms Dayna Clark, 4 Mill Lane, Tayport, Fife, DD6 9EN; 16
Longtown Terrace, Dundee, DD4 8JP (“the Respondent”)**

Tribunal Members:

Jan Todd (Legal Member) and Frances Wood (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 in the sum of One Thousand Eight Hundred and Seventy Seven pounds, sixty nine pence should be granted.

- **Background**

1. This was a Hearing held to consider the application made by the Applicant Mr Robert Bailey for an order for payment of £2317.69 representing rent arrears allegedly accrued during a tenancy by the Respondents of the Property.
2. The Applicant is the owner of the Property and has submitted that it was let to the Respondents by lease dated 27th May 2016 which was entered into for one year.
3. The following papers were lodged with the application:-
 - The Tenancy Agreement between the Applicant and Respondent dated 27th May 2016.
 - A rent statement from 27th May 2016 to 25th July 2017 showing the sum of £2317.69 outstanding as unpaid rent.

4. There have been two case management discussions preceding this hearing and at both the Applicant did not attend but was represented by Ms Hazel Young of Rockford Properties who is the Applicant's representative. Both Respondents attended the first CMD and only the first respondent Mr Clark attended the second CMD. It was agreed that the Respondents had rented the property from the Applicant by entering a lease commencing on 27th May 2016. Mr Clark's position was that there were faults with the property that were not attended to and that the Respondents should not have had to pay rent for the full time because of this. He also indicated that he had been told by a representative of Rockford to stop paying rent during this time. Ms Young denied this would have been said but indicated she would investigate this statement and the issues regarding repairs. The CMD was continued to allow Mr Clark to clarify what repairs he was alleging required to be done and what happened and why and how much rent he felt should not be due as a result. Ms Young was also asked to clarify what complaints had been made, what response had been given and what repairs had been conducted if any. The Tribunal issued a direction requesting various items and the direction and the note of the first CMD are referred to for their terms.
5. The Applicants submitted in response
 - a. a written response; e-mails discussing repairs; copy e-mail from the tenants; inventory report, photographs from moving in and an EICR report.
 - b. The Respondent replied in two e-mails to the Tribunal dated 9th February 2021. He explained that due to the length of time since he had left the tenancy he did not have any e-mails or other evidence easily available but he did describe the several issues with the property of which he was complaining:-
 1. No living room door
 2. Problem with the heating banging incessantly due to valves being on back to front
 3. Bare wires in and around the meter at the top of the wall in the hall because there was not box round it
 4. No lighting in the close which led to an accident with one his daughter's friends when she fractured her ankle
 5. "the big incident" when his daughter nearly fell out of a window because the window was just hanging there not secure.
 6. Mr Clark explained that despite many complaints the issues were either not repaired or only attended to months later and as a result he did not pay 3 months' rent.

At the second CMD the Tribunal explored these issues in more detail to see what could be agreed or what was in dispute. Mr Clark could not remember what sums he had paid and what he had not paid though he thought it had been about 3 months' rent he had not paid because of the ongoing issues mentioned above, and that they were not repaired until several months later. He admitted that some were eventually repaired namely the window in the bedroom, and the heating. He also confirmed he had left the Property before

the end of the lease around January 2017 and moved back home. He confirmed that he probably did not tell the Applicant or Rockford Properties that he had left because he said the Police had become involved and he was not supposed to contact them. It was suggested bank records might be able to establish what was paid and what had not been paid.

14. After discussion of the issues the parties indicated they might wish to reach a settlement and it was agreed they would try and do so after the CMD and that if settlement was reached Ms Young advised she would confirm and advise if the application would be withdrawn.

15. The following matters were confirmed as the issues to be addressed at the Hearing.

- The Respondents are claiming that the rent was not due because of a lack of repairs to the Property and the standard of the Property. The Respondents are therefore saying that rent is not lawfully due or that part of the rent should be abated for the time repairs were not carried out. The Respondent should clarify what rent he agrees he did pay and how much rent he did not pay.
- The Respondent should also clarify how much rent he feels should be deducted in respect of the issues he complained about.
- The Respondent should advise the Tribunal of whom else if anyone he wishes to attend at the hearing to be a witness and he should advise this at least 7 days before the hearing.
- The Applicant requires to lodge copies of all invoices or reports from tradesmen instructed to carry out works relating to the items complained of by the Respondent with any written explanation they wish to provide regarding the timing of the fixing of any complaint.
- The Applicant should also advise at least 7 days before the hearing of which witnesses they wish to bring to the hearing.

The Applicant lodged 2 invoices and 1 income and expenditure from the landlord. The Respondent did not lodge anything and did not respond in writing with any further information.

The Hearing

1. The hearing was scheduled for 10am by teleconference on 17th March 2021. Details of the teleconference had been sent to both parties initially on 22nd February and then again by letter dated 8th March 2021. Ms Hazel Young on behalf of the Applicants attended and confirmed she would be the only witness. No-one attended for the Respondents and the Tribunal waited an extra 10 minutes before starting to see if Mr or Ms Clark would join. As the Tribunal was satisfied they have had due notification of the hearing the Tribunal proceeded.
2. Ms Young advised that the Landlord, the Applicant was seeking payment of rent arrears from the Respondents and referred to the rent schedule lodged with the application showing a sum of £2,317.69 outstanding after the deposit of £590 had been deducted by the Landlord. She confirmed that the tenancy had been a fixed term

tenancy entered into between the Applicant and Respondent for 12 months ending on 26th May 2017. She advised that Mr Clark had stated at the last CMD that he had in fact left the Property early around the start of 2017, however he had not advised Rockford Properties and had not returned the keys or given notice, so they went to check on the Property several times at the end of the tenancy and being satisfied it was empty took possession then. She confirmed that prior to that there had been no correspondence from the Tenant or any payment of rent apart from one payment of £152. 31 paid on 27th March 2017. She had no idea why this small sum had been paid and there had been no other payments in made from the end of December to 26th May 2017. Ms Young confirmed that their contact with the Respondent was generally by e-mail as he had been hostile to staff before, but there had been no response.

3. Ms Young confirmed that the Applicant had not known where the Respondent was and had to contact a tracing agent to find him to raise this application.
4. Ms Young also advised that although she had tried to contact Mr Clark to discuss a possible settlement she had had no response.
5. The Tribunal then asked Ms Young about each of the complaints Mr Clark had raised in his e-mail response to the Tribunal and verbal submissions at the previous CMDs.
6. Firstly and most significantly Mr Clark had indicated there was an issue with a bedroom window when his young daughter had nearly fallen out when it had given way. He also had indicated an issue about the mechanism for the living room window. Mr Clark had previously advised that his main complaint was about the bedroom window which he alleged was in a dangerous position as the casement was old and it came out and his daughter nearly fell out of the window. He alleged that Rockford were informed but had done nothing about it. Ms Young has lodged e-mails showing that Mr Clark had complained about this and the other matters set out below in emails dated late June 2016. She has also lodged an e-mail from Natalie Robertson, a previous employee with Rockford Properties, dated 27th June 2016 to Mr Clark confirming that a contractor had looked at the windows and that parts were ordered and should be there within a few days at the end of the week and that the contractor would then contact him to make arrangements to finalise the repair. Ms Young also confirmed that as per the invoice she lodged from WD Property Maintenance dated 4th November 2016, this covered the repair of faulty mechanisms to the lounge and bedroom windows. Under questioning from the Tribunal she agreed that the work was likely to have been carried out before the invoice was sent and that she thought it was likely to have been finished by September 2017 but that she thought this was quite late given the repair and parts were ordered in late June and agreed it was later than it should have been. Ms Young advised though that Mr Clark would often not respond to calls asking for access and that some of the difficulty would be getting access.
7. The next complaint was that some lights were not working internally and again this was raised by Mr Clark in his e-mail to the landlord's

agents in June 2016. Ms Young referred to the invoice from SBM building Maintenance dated 21st September 2016 as confirmation the lights were repaired, again she did not have an exact date as to when the work would be carried out but advised it would have been a few weeks before hand as it was likely the invoice would have been submitted before the end of the month. Again she admitted under questions that this is later than she would normally have expected for fittings to be fixed in a property, which she thought should have been done in a matter of weeks.

8. Mr Clark's third issue in his previous statements was that the heating was extremely noisy, causing a banging that was so loud that his daughter could not sleep at times. He had previously indicated that he complained several times to the letting agent but it was not fixed for several months. Ms Young advised that several plumbers were sent to investigate, on 5 separate occasions, but reported that they could not find anything wrong. She advised that finally on the 5th visit a plumber changed the valves and this appeared to fix the issue. She confirmed that she thought that maybe the tenant had not left the heating on long enough for the plumbers to hear the problem and she confirmed that there was no issue throughout this time with any lack of heating or hot water.
9. The fourth issue from Mr Clark is a complaint of the wiring around the meter box which was at the top of the ceiling in the hall being exposed he alleges in his written statement that this should have a box or cupboard around it and it was dangerous. Ms Young advised that this was normal for meters like this in some properties, that the meter and any wires are well out of reach of anyone especially children and that as it was not an issue or repair it was never changed. She confirmed it is still like that and the Property is currently tenanted. She also advised there had been an electrical inspection carried out just before the tenancy began and there was no issue raised by the electrician. She has submitted the EICR to the Tribunal dated 20th May 2016 where the author has ticked the box stating "There are no items adversely affecting electrical safety."
10. The final complaint is about the lack of lightning in the close. Mr Clark had previously advised and has confirmed in his e-mail that while he lived at the Property there was no lighting at all in the close and that it was never fixed. He claimed this was dangerous especially when living on the fourth floor. He also confirmed that a friend of his daughters had suffered an injury on the stairs due to the lack of lighting. Ms Young explained that the lights were very old in the communal close and the landlord agreed they should be replaced but as this was a communal repair issue it took several months to resolve and involved contacting all eight owners in the block, getting quotes and approval to proceed and a grant from the Council. Ms Young also confirmed after questioning that there were individual wall lights on each floor which could be switched on by the tenant but that if the bulb went it would have to be replaced and unless the letting agent was contacted about this they might not be aware of a broken bulb. She did however advise that anyone could change the bulb as the lights were not placed very

high up on the wall and a ladder was not required to access. Ms Young advised the work to replace all the lights with ones that came on automatically was completed in March 2017 but noted that the Respondents had probably left by then.

- **Findings in Fact**

- The parties entered into a lease of the Property which commenced on 27th May 2016 and in terms of the lease continued until 26th May 2017 and thereafter on a monthly basis until the Landlord or Tenant gave two months' notice.
- The Applicant is the landlord and the Respondents are the tenants.
- The Rent due in terms of the lease was £440 monthly payable in advance
- The tenants left the Property in early 2017 but failed to advise the Landlord and had not arranged to terminate the lease early so the lease continued and rent was due until and including 26th May 2017.
- The Respondent has failed to pay the rent in full. The Respondent has failed to pay from 27th September 2016 to 27th November 2016, has paid one payment of £440 and an extra £20 on 7th December and then one further payment of £152.31 on 27th March 2017.
- The tenant has not paid any further sums.
- The Applicant as landlord has claimed and applied the deposit of £590 towards the outstanding rent.
- The rent outstanding at the end of the tenancy after deduction of the deposit is £2,317.69.
- There were issues of repair raised by the Respondents in June 2016 namely the bedroom window and internal lights that failed to work properly and these were not fixed for several weeks.
- There were issues for the letting agent getting in contact with the Respondents and arranging for access for repairs.

- **Reasons for Decision**

11. Both parties accept they entered into a tenancy and the Tribunal accepts from the verbal and written evidence of the Applicant that the rent not paid by the Respondents for the time they remained the tenants in the Property from 27th May 2016 to 26th May 2017 was £2317.69. This is clearly set out in their rent statement and the Respondent has not produced any further evidence in the way of bank statements to show he has paid any further sums. The monthly rent and deposit are both set out in the lease agreement and so the Tribunal is confident this sum was not paid. The question for the Tribunal was whether as claimed by the Respondent there should be any abatement of rent for repairs he claimed had not been carried out timeously, or at all.
12. The Tribunal carefully considered all the evidence before it in both the written submissions of both parties and the oral evidence of Ms Young who has read over the written records held by Rockford Properties and

spoken to some of the contractors used by Rockford during this tenancy and to former staff members. The Tribunal found her evidence to be clear and credible.

13. The Tribunal accepts that in respect of the bedroom window which the Respondent was most disturbed by, the hinging mechanism was not working properly and had to remain shut to keep it safe. The Tribunal notes that the landlord's agent did instruct repairs promptly and their e-mail of 27th June confirms they had instructed someone to look at it and order replacement parts but that it was not fitted for several weeks. Ms Young advises that part of that delay was due to not gaining access quickly and she advised that relationship with Mr Clark and some of her colleagues at that time were strained due his behaviour but admits that this was still a delay that would not normally be acceptable. She also admits the same of some of the lights not working in the Property. The Tribunal notes that in terms of the Repairing Standard, fittings and fixtures are expected to be in a reasonable state of repair and in proper working order. The Tribunal considers that an abatement of one month's rent for the inconvenience of living without proper lighting in some rooms and a window that could not be operated properly is reasonable compensation. We did not hear conclusive evidence that there was any danger of someone falling out of the window.
14. With respect to the other items complained of by the Respondent the Tribunal finds that the letting agent has responded appropriately to each of these issues. With regard to the noisy heating it accepts the letting agent did send a plumber five times to check and that on finding a fault eventually it was fixed. The agent and therefore the Landlord have responded appropriately to this complaint.
15. With respect to the wires in and around the meter box the Tribunal accepts the explanation of Ms Young that this is not a safety issue and this is backed up by the Electrical Installation Condition Report carried out just before the start of the tenancy.
16. With regard to lack of lighting in the close the Tribunal finds that there was lighting available and finds that if asked the letting agent did change bulbs as required and eventually replaced all the lighting with a more modern version after agreement had been reached with mutual owners, and Council grant funding secured. The Tribunal finds there was no outstanding repair issue here.
17. Finally the Respondents had previously asked for a living room door to be fitted as this was an open plan living arrangement when they took on the tenancy and it is noted the Landlord did arrange for this to be fitted at the tenant's request but that this had not been considered as a repair.

- **Decision**

An order for payment of the sum of £1,877.69 being the sum claimed less one month's rent is granted.

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.

Jan Todd

Legal Member/Chair

Date 17th March 2021