



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

Chamber Ref: FTS/HPC/CV/18/1520

**Re: Property at The Garden Flat, Carbeth Guthrie, Carbeth Guthrie Estate,
Blanefield, G63 9AT (“the Property”)**

Parties:

**Mr David Trevithick, Mrs Marie Trevithick, Carbeth Guthrie, Carbeth Guthrie
Estate, Blanefield, Glasgow, G63 9AT; Carbeth Guthrie, Carbeth Guthrie Estate,
Blanefield, Glasgow, G63 9AT (“the Applicants”)**

**Mrs Alison Kipling, Flat 1, 30 Allan Street, Blairgowrie, Perthshire, DD8 1SJ
 (“the Respondent”)**

Tribunal Members:

Lynsey MacDonald (Legal Member) and James Battye (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the order for payment should be granted.**

1. Background

- 1.1. The Applicants sought an order for payment in respect of rent arrears. An application in terms of Rule 70 (civil proceedings in relation to an assured tenancy) was received by the Tribunal on 19th June 2018.
- 1.2. A Case Management Discussion was held on 6th September 2018. At the Case Management Discussion the Applicants’ motion to amend the sum sued for from £2,800 to £2,100 was granted. This reflected that *Safe Deposits Scotland* had adjudicated upon a dispute between the parties and had returned the Respondent’s security deposit to the Applicants.

- 1.3. In advance of the Hearing the Tribunal requested both parties to submit any documentation they had in support of or against the suggestion that the rent payments made related in part to rent for the Stables.

2. The Hearing

- 2.1. The second Applicant attended the Hearing and was unrepresented. The second Applicant had not lodged a list of witnesses, and confirmed that she did not wish to call any witnesses. She would give evidence on her own behalf.
- 2.2. The Respondent attended and was unrepresented. She had previously instructed a solicitor in relation to these proceedings, however he was not instructed to appear at the Hearing. The Respondent had with her daughter, Megan Kipling, who was acting as her supporter. Miss Kipling confirmed that she understood the limitations of her role as supporter. The Respondent had previously lodged a list of witnesses, and confirmed that James Henderson was present and that she intended to call him as a witness.
- 2.3. As a preliminary matter the second Applicant advised that in response to a request for further information by the Tribunal (see 1.3 above) she had submitted further documentation in support of her position that the rent payments related to both the property and the Stables. Whilst the documentation had been received by the Tribunal, it had not made its way to the case papers. The Respondent advised that she had not received the documentation, which the second Applicant confirmed had been intimated only to the Respondent's solicitor, who was not present. The Respondent was given sight of the documentation and confirmed that she was familiar it and could deal with it at the Hearing. In any event, the Respondent advised that her position at the Case Management Discussion, namely that the final two rent payments related only to the property, was an error. The Respondent conceded that the two final rent payments related to both the property and the Stables, and accordingly rent payments for the property had been made to October 2017, not December 2017 as previously stated. The Respondent accepted that rent payments for November 2017, December 2017, January 2018 and February 2018 had not been made.
- 2.4. Following this development, the parties were given a further opportunity to negotiate settlement, however neither the second Applicant or the Respondent wished to discuss settlement further.
- 2.5. The second Applicant gave evidence on her own behalf:
 - 2.5.1. The Respondent claimed she gave two months' notice. The lease did not allow for two months' notice before the date of expiry. There was a short assured tenancy which was for a fixed term from mid-February 2017 to mid-February 2018.

- 2.5.2. The Respondent's daughter leased a separate property under a separate lease ("the Stables").
- 2.5.3. The Respondent left the property in mid-October 2017. The Respondent had paid rent up to the end of October 2017. When the Respondent left there were four months left to run on the lease. No further rent was paid and there were four months outstanding. The sum sued for was reduced because £700 had been received from Safe Deposit. The payment on 1st September 2017 was for £1,400 and only £700 was in respect of the property. The payment on 6th October 2017 was for £1,400 and only £700 was in respect of the property. The Nationwide bank statement for November confirms there was no further rent payment.
- 2.5.4. The property was in good state of repair throughout the lease, as it had been when the Respondent moved in in February 2017. The lease confirmed that the property was good and habitable at the date of entry. There is no explanation for any deterioration in the property in the five months following the date of entry, as suggested by the Respondent.
- 2.5.5. There is no damp issue in the property. The property was purchased by the Applicants in January 2017. The Home Report confirms the good condition of the property. In particular, the Home Report confirms that a damp course had been installed by Richardson and Starling prior to the Applicants' purchase. Following a complaint of damp by the Respondent in July 2017, Richardson and Starling attended the property on 18th August 2017 and assessed the damp course. Their report dated 5th September 2017 confirmed that there was no damp, however did recommend the use of a dehumidifier. The Respondent was informed of Richardson and Starling's findings, and the Applicant offered to provide a dehumidifier for use by the Respondent. The Respondent did not respond to the offer.
- 2.5.6. The exterior of the property was marked. This is caused by salt rising to the surface of the stone work and is to be expected in an older property. Richardson and Starling confirmed that the marking on the wall was not caused by damp. Their report dated 5th September 2017 confirms that there was no damp issue. Richardson and Starling recommended consulting with a qualified tradesman. A stonemason carrying out other work informally looked at the marking on the wall and confirmed that no remedial work was required.
- 2.5.7. The property is heated by a biomass boiler. There is a backup oil boiler, which heats the two bedrooms, but not the lounge and kitchen. The biomass boiler was present at the time of purchase and is still present at the property. There is no problem with the biomass boiler. The biomass boiler requires to be fed with wood pellets, which can

involve three hours work per week. The Applicant agreed with the Respondent's daughter, Megan Kipling, that she would feed the biomass boiler in exchange for payment. That arrangement did not work well as the boiler was sometimes left to run empty, which was not good for the system because it was designed to run continuously. Eventually the first Applicant took over feeding the boiler.

2.5.8. There were two failures of the biomass boiler while the Respondent lived in the property. The first failure was in June 2017 and was for four days. The second Applicant cannot remember the cause of the first failure. The second Applicant did not delay in calling for assistance, and would not have waited for four days for a boiler engineer to attend. The engineer likely attended the day after the call, but may have needed parts, which would account for the repair taking four days. The Applicants offered the Respondent the use of a bedroom suite in the main house whilst the biomass boiler was being repaired. The second failure of the boiler was in September 2017. By that time an electric shower had been installed to provide an alternative source of hot water. The oil boiler would heat the two bedrooms. There was an open fire in the lounge/kitchen, for which an unlimited supply of logs was offered to the Respondent.

2.5.9. The Applicant took out a maintenance contract with *Yarrow Energy Solutions*, for maintenance of the biomass boiler. There is a monthly payment of £69 which covers a monthly inspection, labour and parts. There were no ongoing issues with the biomass boiler.

2.5.10. There were minor issues with paintwork in the property, which had been caused as a result of rewiring when a smoke alarm and carbon monoxide alarm were installed. The installer had left small holes in the ceiling. The second Applicant offered to touch up various paint issues, but the Respondent did not respond to her offers.

2.5.11. There were issues with strimming work not being carried out on the grass in front of the property. In or around April 2017, the Applicants contracted the Respondent's daughter's boyfriend, Ross Darroch, to do work, which included the strimming. He did not carry out his duties adequately and after a few weeks, perhaps five to six weeks, he stopped turning up. In or around July 2017, the Applicants contracted the Respondent's friend, William Doig, to carry out work, which included strimming. He did not carry out his duties adequately and after 28th July 2017 he stopped turning up. The Applicants then contracted their own gardener to do the strimming from early August and he carried out his duties to a high standard. There was a further problem with the strimming, in that it could not be carried out because the Respondent's dog was fouling on the grass area. The second Applicant would not allow the grass to be strimmed whilst there was dog excrement on the grass. In any event, although the grass was longer than it should be, it was not deep grass.

2.5.12. On 28th July 2017 the second Applicant confronted the Respondent about the Respondent's dog fouling on the grass at the property. This led to a falling out between the second Applicant and the Respondent and is the reason that the Respondent now claims that there were problems with the property.

2.5.13. There had been discussions about terminating the lease early. The second Applicant had proposed ending the lease with two months' notice along with a payment of £2,440 to reflect to the cost to the Applicants in arranging what they thought would be a lease lasting for a year. The offer was made as a joint offer in respect of both the property and the Stables. The Respondent did not accept the offer. The Respondent said that she would give two months' notice but would not pay the additional sum. The Respondent did not give notice. The Respondent's email of 30th August 2017 did not give notice. Notice has to be given in a particular way using a particular form of words. Even if notice had been given, it was part of a counter-offer and that counter-offer was not accepted by the Applicant.

2.6. The Respondent gave evidence on her own behalf.

2.6.1. In her email of 15th August 2017 the Applicant offered to terminate the lease early on two months' notice and with payment of £2,440 which was for solicitors fees relating to the original drafting of the leases. The Respondent accepted the first part of the offer, namely two months' notice, but rejected the second part. The Respondent did not require to pay the sum that reflected the drafting of the leases, because this was not provided for in the terms of the lease. In any event the Applicant had not provided details of how much the drafting of the leases cost, and had not provided evidence of same. It was clear from the first Applicant's email of 29th August 2017 that he did not understand the counter offer that had been made by the Respondent, and the Respondent clarified the counter offer in her reply.

2.6.2. The Respondent blocked the second Applicant's email address when she left the property but the Applicants had her telephone number and Facebook details. The Respondent told the Applicants not to contact her directly, but had already given her solicitor's details to the Applicants in order that they could contact her through him.

2.6.3. The Respondent left the property on 2nd October 2017, taking with her furniture. She returned to the property on 13th October 2017 to do a final clean and hand back the keys. Her daughter, Megan Kipling, who had returned to the property with her, gave the keys to the second Applicant.

- 2.6.4. During the tenancy the Respondent had carried out DIY work on the property. In particular, she had renovated the kitchen which involved replacing cupboard doors, counter tops and installing a new floor covering. The existing oven was old-fashioned and did not work properly: the grill didn't work and two hob rings didn't work. The Applicant supplied a new hob, but did not offer to provide a new oven. The Respondent replaced the existing oven with a new oven. The original oven was removed and placed outside, for the first Applicant to put in a skip that he was going to have for other reasons. The Respondent had assistance from James Henderson in carrying out the renovation of the kitchen.
- 2.6.5. The Respondent had no faith in the biomass boiler. It had failed on two occasions. The first occasion was probably in June, and there was no heating or hot water for four days. The cause of the failure was a faulty timer switch. The second occasion was in September 2017, which occurred when the Respondent had returned from holiday, and there was no heating for six days. There was a back up oil boiler to provide heating to the two bedrooms, but the Respondent had no control over the timings that the heating operated, as it was linked to the main house upstairs. There was an open fire in the lounge, for which the Applicants offered to provide firewood. The Applicants only provided one bucket of logs on the Saturday. The Respondent did not ask for more logs until the Monday, at which time the first Applicant probably did provide another bucket. The Applicants should have been delivering logs every day as they would have known that it was required.
- 2.6.6. After the first failure of the boiler the Applicants installed an electric shower in the bath.
- 2.6.7. There was a problem with damp both inside and outside the property. Inside there was paint peeling from the walls and the exterior of the property was not aesthetically pleasing. When the Respondent entered into the lease the property had been in good condition but it had deteriorated over the following months. The Respondent had not been told by the Applicants about the assessment carried out by Richardson and Starling and had not been offered the use of a dehumidifier. The first the Respondent knew about the report was when it was lodged with the Tribunal. In any event the issue of damp was first raised verbally with the Applicants in July, and then in an email on 31st July 2017. The Applicants took too long to have the assessment carried out.
- 2.6.8. When the Applicants had installed a carbon monoxide alarm and a smoke alarm the rewiring had left holes in the ceiling that needed painted. The Respondent repeatedly asked the Applicant to paint the ceiling and the Applicants failed to do so. When the electric shower was installed on 31st July 2017 the installer painted the holes. The

Respondent then clarified that the man who installed the shower filled in the holes, but did not paint them as this was an outstanding disagreement in September. The Applicant had agreed that the work to the ceiling be carried out by the man installing the electric shower, and that the Applicants would be billed for that.

- 2.6.9. The Applicants failed to keep the grass strimmed. There had been an issue with dog fouling on the grass, but it arose because the dog was actually a puppy and did the toilet a lot. The dog excrement was cleared up and the strimming was still not carried out. The contractor, Stuart Marshall, said that the Applicants had instructed him not to strim the grass at the property. The grass became extremely long.
- 2.6.10. There was an incident where an alarm had gone off in the main house, and the Respondent and her daughter, Megan, stood outside for thirty-two minutes because they were worried that it was a fire alarm. The second Applicant returned from work to deal with the alarm but did not go downstairs to the property to inform the Respondent. That was another nail in the coffin and showed that the Applicants were not good landlords.
- 2.6.11. There had been discussions about terminating the lease early. The Respondent accepted the second Applicant's offer of terminating the lease with two months' notice. The Respondent gave notice in the email of 30th August 2017 and by solicitor's letter dated September 2017.
- 2.6.12. If the lease had not been ended by the giving of two months' notice then the lease was continuing when the Applicants reinstated a door from the main house to the property. The Applicants would not have been entitled to enter the property at that time. If the lease had ended in October 2017 after two months' notice, the Applicants should have done more to find new tenants more quickly. The Applicants did not need four months to renovate the property for reletting.
- 2.7. The Respondent indicated that she would not call James Henderson. The main reasons for calling him were to corroborate that the Respondent had renovated the kitchen, and to corroborate that the wall between the property and the main house was in place when the Respondent left the property. The Applicant had confirmed during the Hearing that these matters were accepted, so they were no longer in dispute.
- 2.8. The Respondent was asked whether she wished the Tribunal to have regard to the affidavits previously lodged by her. She confirmed that this was not necessary because the matters they related to had been accepted by the Applicant during the Hearing.

3. Findings in Fact

- 3.1. The Applicants and the Respondent entered into a tenancy agreement on 24th February 2017. The tenancy was a short assured tenancy. The date of expiry of the lease was 23rd February 2018 and provided for monthly renewal thereafter.
- 3.2. The rent payable was £700 per calendar month.
- 3.3. The lease provided for termination of the lease by giving a minimum of two months' notice in advance of the date of expiry or the date of termination. The date of termination would be the 25th of each month following the date of expiry.
- 3.4. The Respondent left the property at the beginning of October 2017. The Respondent returned to the property on 13th October 2017 to collect her belongings. The Respondent's daughter, Megan Kipling, returned the keys to the second Applicant on 13th October 2017.
- 3.5. The Respondent made rent payments up to and including October 2017. The Respondent did not make rent payments for November 2017, December 2017, January 2018 and February 2018.
- 3.6. The relationship between the Applicants and the Respondent broke down after a disagreement on 28th July 2017 about dog fouling.
- 3.7. The property was heated by a biomass boiler. There was a backup oil boiler which was capable of providing heat to the two bedrooms only. The Respondent did not have control over the timing of the oil boiler. There was an open fire which was capable of providing heat to the lounge/kitchen. The Applicants would provide firewood as requested by the Respondent.
- 3.8. The biomass boiler failed for a period of four days in June 2017. There was heating for the bedrooms during the failure. There was no hot water during the failure. The Applicant offered the Respondent the use of a bedroom suite whilst the boiler was being repaired.
- 3.9. Following that failure of the biomass boiler, the Applicants installed an electric shower to provide an alternative source of hot water. In August 2017 the Applicants entered into a maintenance contract in respect of the biomass boiler.
- 3.10. There was a second failure of the biomass boiler in September 2017, which lasted for six days. The Applicants were informed of the failure of the boiler on the second day. There was heating for the bedrooms during the failure. The Applicants provided firewood to heat the

lounge/kitchen by way of the open fire in the lounge. There was a source of hot water via the electric shower.

- 3.11. The property had been given a damp course by Richardson Starling. In 2017 there were no ongoing issues with damp.
- 3.12. The front wall of the property was stained as a result of salt in the stonework.
- 3.13. The grass at the front of the property was not regularly strimmed.
- 3.14. The parties discussed terminating the lease early. The Respondent did not accept the Applicant's offer of two months' notice together with a monetary sum. The Applicants did not accept the Respondent's counteroffer of two months' notice.
- 3.15. When the Respondent left the property in October 2017 the lease continued.

4. Reasons for Decision

- 4.1. The Tribunal reached the view that in the majority of matters of the fact the parties were not in dispute. Where there was dispute, the documentary evidence provided considerable assistance.
- 4.2. The first issue for the Tribunal would have been to determine whether the rent had been paid until October 2017 or December 2017. The Respondent conceded that the Applicant was correct, and that the rent had only been paid until October 2017. Accordingly the Tribunal did not require to determine this issue, and proceeded on the basis that four months' rent was unpaid.
- 4.3. The second issue was whether the parties had agreed to vary the terms of the lease to allow early termination by giving two months' notice.
- 4.4. The Applicants offered to terminate the lease early if the Respondent gave two months' notice and paid £2,440. The £2,440 was a sum that related to both the property and the Stables. The Tribunal found that the Respondent did not accept the Applicant's offer. The Respondent purported to accept the offer, however the Respondent only accepted the offer in part, namely the equivalent giving of two months' notice by paying rent until the end of October 2017. With reference to the email exchange between the first Applicant and the Respondent on 29th and 30th August 2017, it is clear that the first Applicant was seeking to clarify the Respondent's counter-offer. The Respondent indicated in her email that she looked forward to receiving confirmation that her proposal was acceptable. The Respondent also indicated that if her proposal was not

acceptable, the Applicants should not contact her again other than via her solicitor. The Applicants did not respond to the Respondent's offer.

- 4.5. The Tribunal does not accept the Applicant's suggestion that the Respondent required to give notice using a particular form of words.
- 4.6. The Respondent relied upon her solicitor's letter of 25th September 2017 as confirmation that she had given notice to the Applicant. The Tribunal does not accept that the solicitor's letter amounts to giving notice. The solicitor proposes that two months' notice is given to bring the leases to an end, and that they end at the end of October. Leaving aside the obvious issue that the letter could not give two months' notice, there being only one month until the proposed termination date, it is clear from the letter that as at 25th September the parties had not reached agreement about terminating the lease early. The Tribunal is satisfied that there was no consensus between the parties, and therefore no agreement to terminate the lease early.
- 4.7. The final issue before the Tribunal is whether the Respondent was entitled to terminate the lease early on the basis of the condition of the property.
- 4.8. The Tribunal was not satisfied that the Respondent left the property as a direct result of the poor condition of the property. The Tribunal considered that the breakdown in the relationship between the parties was the real cause for the Respondent's departure.
- 4.9. There was no suggestion in the evidence that the property was uninhabitable at the time the Respondent left the property. Whilst the two failures of the boiler would undoubtedly have been frustrating to the Respondent, the Tribunal was not satisfied that the failures were such that would entitle the Respondent to terminate the lease. The Applicant had taken reasonable steps to ensure that the boiler would not fail again, including making alternative arrangements for feeding the boiler and starting a maintenance contract. In addition, there were alternative sources of heating and hot water available.
- 4.10. The Tribunal considers that the remaining issues relating to paint work, strimming, and the appearance of the front wall are minor issues, which are insufficient to provide a basis for early termination of the lease.

5. Decision

- 5.1. The order for payment is granted in the amount of £2,100 (two thousand, one hundred pounds) together with interest thereon at the rate of 5% above the Royal Bank of Scotland base rate from the due date for payment until paid.

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.

L MacDonald

20/11/18

Legal Member/Chair

Date