



**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/20/1667**

**Re: Property at Flat 0/1, 60 Bank Street, Paisley, PA1 1LN (“the Property”)**

**Parties:**

**Mr Stuart Campbell, Flat 2/2, 5 Old Castle Gardens, Cathcart, Glasgow, G44 4SP (“the Applicant”)**

**Ms Iseult Timmermans, 1 Ardgowan Crescent, Inverkip, PA16 0BH (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

**Background**

The Applicant seeks a Payment Order against the Respondent under the terms of a Guarantee entered into in respect of the Respondent’s son who was the Applicant’s tenant. The Application is for a Payment Order for rent arrears and for a plumber’s invoice for work which, it is said, should be recoverable from the Respondent as Guarantor.

The Respondent’s defence to the Application is not by disputing the validity of the guarantee itself or even by disputing that rent was ultimately left unpaid by the tenant, but rather by arguing that the rent claimed was not lawfully due on account of defects

within the Property during the tenancy which the Respondent argues was not fit for habitation. The Respondent's position is therefore that the rent claimed is not due as the Respondent is entitled to an abatement of rent. Liability for the plumber's bill is also disputed on the merits of whether those costs should be recoverable from the Respondent.

### **Preliminary Issues**

The Application called for a Hearing by conference call at 10 am on 8 February 2021. The Applicant and the Respondent were both present on the call. Both parties had complied with the Tribunal's directions that had been made at the Case Management Discussion that took place on 15 December 2020.

Parties had each lodged a bundle of documents and further representations setting out their respective positions. Both parties confirmed that they did not wish to have evidence given by anyone other than themselves.

The Tribunal began by considering preliminary matters to ensure the issues in dispute were properly understood, that all parties had all the relevant paperwork and that the parties were able to proceed with the Hearing.

Both parties confirmed that they were happy to proceed with the Hearing and there was no need for any further delay.

The Tribunal began by confirming again at the outset what the issues in dispute were.

The Applicant sought a Payment Order in the sum of £1,460.00. This figure was comprised of £1,110.00 in respect of rent arrears and £350.00 claimed to be due for the costs of engaging the plumber to remedy damage said to have been caused by the tenant at the Property.

However, at the outset of the Hearing, Mr Campbell indicated that he had made an error in his calculations of the rent said to be due and that the sum claimed for rent arrears was accidentally overstated by £50.00. Accordingly, he was now seeking the sum of £1,060.00 for rent arrears together with the £350.00 claimed for the plumber's invoice totalling £1,410.00.

It was confirmed again at the outset that these issues were the issues in dispute and that there was no challenge made by the Respondent to the validity of the guarantee itself that underpinned the Application against the Respondent.

These matters having been addressed; the Tribunal turned to hearing evidence.

## **Evidence of the Applicant.**

The Tribunal heard evidence from Mr Campbell. Mr Campbell talked the Tribunal through his bundle of documents and expanded on his Application. He showed the Tribunal a rent statement that supported his Application by showing how the rent arrears claimed were calculated. He also produced bank statements in support of the figures included in the rent statement.

After this Mr Campbell moved on to refer the Tribunal to text messages exchanged between himself and the tenant of the Property.

Mr Campbell described these text messages as showing that the tenant was a “happy tenant” and that these messages confirmed that the tenant had even intended to remain in the Property.

Mr Campbell also referred to a message which was said to be the only text message where any sort of unhappiness was expressed by the tenant regarding the state of repair of the Property. This message was dated 29 November 2019 which Mr Campbell explained was five weeks before the tenant left. Mr Campbell pointed out that the tenant had “happily” been in the Property for around two years before then without complaint.

Mr Campbell suggested that there was no merit in any argument that the Property did not meet the appropriate standards for tolerable living. His evidence was that this was never raised with him by the tenant during the tenancy. Mr Campbell did concede that there was no hot running water in the kitchen but his position was that the matters raised by Ms Timmermans in her defence had never been raised by the tenant during the tenancy other than in this text message 5 weeks before leaving when reference was made by the tenant solely to the existence of some unspecified electric problem.

Mr Campbell referred to messages in which the tenant had apologised for late payment of rent and given assurances that the arrears would be cleared. Mr Campbell’s position was that this was far removed from the position adopted by the Respondent for which there was, he said, no evidence at all.

Mr Campbell gave evidence in a reasoned and logical manner. His evidence was supported by documentation that was easy to follow. Mr Campbell appeared to the Tribunal to be credible and reliable and the Tribunal had no basis for considering that he was not being truthful.

The issue of the plumber’s invoice was however less clear cut. The Plumber’s invoice appeared to have three component parts.

These were narrated on the invoice itself as:

- *Fitted kitchen tap*
- *Supplied and fitted wet wall panels in bathroom*
- *Checked cold supply in bathroom.*

Mr Campbell was forthright in confirming that he did not understand what “*Checked cold supply in bathroom*” actually meant and also acknowledged that the “*kitchen tap*” could well have had nothing to do with any damage caused by the tenant.

Mr Campbell showed the Tribunal photos said to be of the shower before the tenant moved in and after the tenant moved out. These photos were said to support the “*Supplied and fitted wet wall panels in bathroom*” part of the invoice. Mr Campbell appeared to suggest this work was needed because the tenant had failed to adequately heat the shower room, but this explanation was not convincing. Mr Campbell himself seemed unsure here of what might have caused the damage in the shower or even if the damage could fairly be described as general wear and tear.

The Tribunal struggled to understand this part of the Application and could not conclude that it had adequately at all been demonstrated that it was the Respondent’s responsibility to settle the plumber’s invoice.

Some of work carried out by the plumber was clearly nothing to do with the tenant’s acts or omissions and it was impossible for the Tribunal to come to any conclusion about what part of the invoice the tenant might have been liable for.

The Tribunal also noted that, in any event, the Applicant had actually retained the tenant’s deposit of £280.00 and this had to be weighed in the balance by the Tribunal in assessing if what, if any, sums were due in any final Payment Order.

Ms Timmermans had the opportunity to ask Mr Campbell questions.

The Tribunal noted that, under questioning by Ms Timmermans, Mr Campbell conceded that he would have had little knowledge of the communications there might have been between the tenant and Mr Campbell’s ex-partner, Jill Connell, who had been the main point of contact prior to the Property being transferred into Mr Campbell’s sole name on or around 4 September 2017.

The Tribunal frequently itself intervened to ask Mr Campbell to clarify matters or expand on his evidence. Despite attentive questioning by both the Tribunal and Ms Timmermans, there was no cause for the Tribunal to doubt Mr Campbell’s credibility or reliability.

The Tribunal heard evidence from the Respondent.

## **Evidence of Ms Timmermans**

Ms Timmermans gave evidence that the rent claimed was not lawfully due because of serious defects in the Property. The Tribunal asked Ms Timmermans to set these out in detail. Ms Timmermans' position was that they included allegations that there was no running water and or/ no running hot water in the kitchen; that there was a lack of ventilation in that windows didn't open in the living room and that there was a dangerous electrical fault in the Property that was shown up in the Electrical Installation Condition Report that was submitted by the Applicant.

The electrical fault in question that was referred to by Ms Timmermans, is an entry on p3 of the report that says "*MCB blanks missing from 2 DB's* (these were installed at the time of testing). This entry is then categorised as a "C2" which is described as "*Potentially dangerous- urgent remedial action required*".

In addition, Ms Timmermans referred the Tribunal to a photograph of a window which was said to show condensation. Ms Timmermans also identified a lack of heating as being a serious defect with the Property and showed the Tribunal various photos of parts of the Property.

The Tribunal considered this evidence carefully and asked Ms Timmermans questions about her position. Ms Timmerman's evidence on these matters could however not be described as reliable, albeit the Tribunal had no basis for considering that Ms Timmermans was not genuine in her beliefs.

Ms Timmermans acknowledged that she did not know what the alleged electrical fault in the report actually meant. It seemed significant to the Tribunal that Ms Timmermans would seek to place such weight on an alleged defect in the Property such that might negate the obligation to pay rent, without any understanding of what the alleged fault actually meant.

This provided no reasonable basis for the Tribunal to conclude that rent should be abated because of an unspecified electrical fault. Similarly, the Tribunal could not consider the photos Ms Timmermans directed us to, to be in any way compelling.

It was also of note that Ms Timmermans's acknowledged that she had not been in the Property for around a year prior to helping her son move out. Much of Ms Timmerman's evidence on the matter could be categorised as innuendo and guess work and provided the Tribunal with no basis upon which any findings of the existence of serious defects could be made.

Ms Timmermans also suggested that the tenant might have made payments towards the rent that were not recorded in the Applicant's rent statement. Ms Timmermans explained that her son had told her that when he left the property, "*he owed about three months' worth of rent but the landlord would keep the deposit meaning two months would be due.*"

The Tribunal considered this to be unacceptably vague and uncertain. The Tribunal could not attach any weight to this and preferred the evidence of the Applicant on this point which was supported by documentary evidence.

### **Findings in Fact**

Having heard evidence from all parties the Tribunal made the following findings in fact.

- I. *The Applicant is the owner of the Property and was the landlord in respect of a Short Assured Tenancy of the Property which commenced on 9 June 2016.*
- II. *The tenant was Louis Timmermans who is the Respondent's son.*
- III. *The Respondent signed a guarantee confirming that she would pay to the Applicant any rent due under the tenancy if the rent was unpaid by the tenant.*
- IV. *The guarantee was dated 8 June 2016.*
- V. *The monthly rent due by the tenant to the Applicant under the terms of the tenancy was £280.00 per month. In addition, a deposit of £280.00 was paid.*
- VI. *The tenant fell into rent arrears.*
- VII. *The sum of £1,060.00 was outstanding and lawfully due as rent by the tenant to the Applicant when the tenant vacated the Property on 5 January 2020.*
- VIII. *There was no lawful reason for this rent being withheld.*
- IX. *The tenant had not raised any issues with the Applicant that might support a defence of rent abatement.*
- X. *The Respondent has failed adequately to set out a defence of rent abatement.*
- XI. *The Applicant's claim for reimbursement of the plumber's invoice is without merit.*

- XII. *There is no means of properly apportioning which parts of the plumber's invoice may relate to repairs required by damage carried out by the tenant and other general repairs on the property which cannot be attributed to the tenant.*
- XIII. *The Applicant has established the merits of the Application to the extent of demonstrating to the satisfaction of the Tribunal that the sum of £1,060.00 worth of rent was unpaid by the tenant without lawful excuse.*
- XIV. *The £280.00 deposit was retained by the Applicant following the tenant's departure from the Property and the Tribunal has no basis for making a finding that this sum was needed to pay for any repairs said to have been necessary by the acts or omissions of the tenant.*
- XV. *This £280.00 deposit should therefore be deducted from the sum to be awarded to the Applicant.*

## **Decision**

Having made the above findings in fact, the Tribunal granted the Application for a Payment Order to the extent of the sum of £780.00 with interest to run on that sum from today's date until the date of payment at the rate of 5 per cent per year.

The Tribunal's 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.

  
ANDREW McLAUGHLIN

8<sup>th</sup> February 2021

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**Legal Member/Chair**

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**Date**

