



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 (“the 2017 Rules”) and the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/CV/20/2575

Re: Property at 5 Morar Place, Irvine, KA12 9PS (“the Property”)

Parties:

Easton Property Merkland Limited, 2 Newfield Drive, Dundonald, KA2 9EW (“the Applicant”)

Ms Megan McCartney, 5 Morar Place, Irvine, KA12 9PS (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment to the Applicant in the sum of £2,295 should be made against the Respondent.

Background

1. By application dated 10 December 2020, as amended on 4 February 2021, sought a payment order against the Respondent in the sum of £2,950 in respect of rent arrears. Supporting documentation including copy Lease, Rent Statement (and subsequent updated Rent Statement) was submitted in support of the application.
2. The application was accepted by the Tribunal by Notice of Acceptance dated 30 December 2020, in terms of Rule 9 of the Regulations, and duly served on the Respondent by Sheriff Officer on 11 January 2021. Written representations were to be made by 1 February 2021, which time limit was extended to 5 February 2021 at the request of the Respondent’s legal representative. Written

representations were lodged on behalf of the Respondent on 5 February 2021, together with photographs of the Property and an Invoice dated 20 April 2020 in the sum of £400 in respect of fence and gate repairs/replacement. Further representations were lodged by the Applicant on 4 February 2021, increasing the sum sought in respect of rent arrears and providing some information concerning the repairs issues being raised by the Respondent. All representations were circulated to the other party in advance of the Case Management Discussion (“CMD”).

3. A CMD took place on 15 February 2021 at 2pm with the Legal Member of the Tribunal. The CMD was attended by Mr Steven Easton, Director of the Applicant company and Mrs Lucia Petrescu of Barnetts solicitors for the Respondent. Also in attendance, as an observer only, was Miss Ainsley Barclay, an employee of the Applicant company. A detailed Note on the CMD prepared by the Legal Member who dealt with the CMD and a Direction, both dated 15 February 2021 were issued to parties after the CMD. An Evidential Hearing was fixed at the CMD to take place on 29 March 2021 at 10am. Both Tribunal Members had had regard to the terms of both the CMD Note and the Direction prior to the Evidential Hearing.
4. Neither party complied with the terms of the Direction which required both parties to intimate the details of any witnesses they intended to call at the Evidential Hearing and to lodge any further documents they intended to rely upon at the Evidential Hearing at least 10 days in advance of the Evidential Hearing. Nor did the Respondent comply with the terms of the Direction which required a note of legal argument/written submissions in relation to the withholding and abatement of rent to be lodged in support of the Respondent’s defence to the Applicant’s claim for payment of the rent arrears.
5. On 15 March 2021, the Tribunal received notification from the Respondent’s legal representative that she was withdrawing from acting for the Respondent. The Tribunal Administration thereafter corresponded directly with the Respondent regarding her attendance at the Evidential Hearing. Whilst the Tribunal Administration cannot provide any party with legal advice, the Respondent was given information regarding the practicalities of the Evidential Hearing and informed that she could still be represented by a non-legal representative or have a supporter present at the Evidential Hearing.

The Hearing

6. The Evidential Hearing took place by telephone conference call on 29 March 2021, commencing just after 10am. The Tribunal Members introduced themselves. Both parties were in attendance, Mr Steven Easton for the Applicant company and the Respondent, Ms McCartney. Miss Ainsley Barclay, an employee of the Applicant company was again present but, following discussion, it was apparent that she was intended as a witness for the Applicant as opposed to simply an observer on this occasion. Accordingly, she was asked to leave the telephone conference call and informed that she would be re-invited back in when it was time for her to give her evidence. She was also asked to remove herself from the room from which Mr Easton was taking part

in the proceedings so that she did not overhear other parties' evidence and to remain in a separate room whilst she subsequently gave her evidence which she confirmed she would. Miss Barclay then left the conference call.

7. The Legal Member made some introductory remarks, referred to the previous CMD and explained the purpose of today's Evidential Hearing. Ms McCartney confirmed she was representing herself. She advised that her partner was elsewhere in the Property and could give evidence on her behalf but, after discussion, it was clear that her partner would be unlikely to be able to provide any evidence over and above what Ms McCartney herself could speak to. As regards any further documentation, Ms McCartney said that she would be able to provide further documentation in support of her case as she has two years' of emails with the Applicant regarding repairs issues, but had been unaware that this was an Evidential Hearing. She explained that, although she had been sent a copy of the CMD Note and Direction by her solicitor by email, she had been unable to open the Direction attachment and had not received anything further from her solicitor in response when she advised her solicitor of this. Ms McCartney had not asked the Tribunal Administration for a copy of the Direction to be sent to her and did not explain why she was unaware from reading the CMD Note that it was an Evidential Hearing that was taking place today. She stated that she thought the purpose of today's Hearing was for the Tribunal to find out the outcome of the Applicant's recent inspection of the Property and the update with the repairs situation. The Legal Member indicated that it might be required, in the circumstances, for the Tribunal to consider continuing the matter to a further date but would first hear from Mr Easton as to his views on that and the up to date position, given that he too had mentioned that an inspection of the Property had taken place since the CMD.
8. Mr Easton explained that the Respondent had been the tenant for two years, that his company have procedures in place to deal with repair issues and had had prior repairs carried out at the Property during the tenancy. However, he does not consider that the two years' of emails that the Respondent has referred to are relevant as the rent arrears and withholding of rent has only occurred in more recent months. He considers that the Tribunal should only focus on the repairs that the Respondent has raised in support of her defence to this payment action and which she has stated justify her in withholding the rent payments. His position is that the Applicant has done all it can currently to address these repairs issues, given current Coronavirus restrictions preventing all but essential repairs to Property. He stated that the Respondent has specifically stated to him that she will not be paying any further rent for the Property and that she and her partner were looking for another property. Indeed, they made enquiries recently about another property of the Applicant. He stated that the Applicant is in a difficult position as repairs are being used by the Respondent as the reason for not paying the rent, despite having refused access for repairs in recent months and despite further repairs now having been carried out, with only very minor issues remaining. In his view, there is no justification for rent being withheld and would like the Tribunal to deal with the matter today.

9. The Legal Member explained to the Respondent the issues that the Tribunal requires to decide today, namely whether the figure sought by the Applicant of £2,950 is an accurate figure as regards the outstanding rent arrears; whether the Respondent was entitled to retain rent payments; and whether the rent due over those periods should be abated (reduced) either in whole (100%) or in part and if so, by what proportion. It was explained that the Tribunal has to have regard, in assessing this, to factors such as the significance/seriousness of the repairs issues claimed by the Respondent and whether the issues make the Property unreasonable for habitation or parts of the Property unoccupiable or unusable. The Legal Member further explained that the Tribunal Members were aware from the written representations and what had been discussed at the CMD that there was a lengthy background of repairs issues concerning the Property and that the Respondent clearly feels that the Applicant has not dealt with these issues properly, that she herself has not been treated well by the Applicant, has mental health issues and that the situation has caused her a lot of stress. However, it was explained that some of what the Respondent wished the Tribunal to do, such as the Tribunal inspecting the Property, or compensating her for alleged losses such as damage/theft of her belongings was not possible in the context of this application. The Legal Member reiterated the discussions which had taken place at the CMD and were detailed in the CMD Note as to the requirement for the Respondent to make a separate Repairs application and/or a Payment application to the Tribunal against the Applicant if she wished to further pursue these matters.

10. Mr Easton was asked to update the Tribunal as to the inspection of the Property which has taken place since the CMD and the outcome of that. He advised that on 24 February 2021, he and Miss Barclay had carried out an inspection of the Property and had some discussions with the Respondent who was present at the inspection. He advised that he is a surveyor and has 20 years of experience in assessing property repairs. He said they were approaching this from the point of view of assessing which of the repairs issues raised by the Respondent could be regarded as emergency repairs and therefore justified in terms of current Coronavirus restrictions. They looked at issues with the patio door handle, the front door lock and gap in surround, the pipes in the kitchen, the plumbing under the sink, missing drawer facias and handles in the kitchen, gaps in the flooring in the hall, alleged water ingress at the living room window, cracks in the paintwork; a panel in the hallway which used to house a gas or electricity meter and checked the smoke alarms and carbon monoxide detector which were in order. On inspection, Mr Easton and Miss Barclay had found no sign of a continuous leak in the kitchen; had noted that the valve in the pipes for the cold/hot water feed was closed off and thought that the valve may have been knocked which had caused the water leak requiring the emergency plumber call-out a few weeks prior; had seen the kitchen sink in use and draining fine; did not consider the gaps in the hall floor to constitute any trip hazard; considered that the water at the living room window to possibly have been caused by condensation but accepted that the sealant needed replaced; that the patch on the ceiling was from previous water damage caused by a leak from the shower which had been fixed; that the cracking in the paintwork is simply caused by wear and tear and does not indicate any structural problem; and that the panel in the hallway did not in any way affect the enjoyment of the Property.

However, following the inspection, Mr Easton confirmed that they did prioritise some of these issues for repair and arranged for their operative to attend at the Property on 11 March 2021 to attend to these. Their operative repaired the front door by sealing the gap and tested the lock which was found to be secure, replaced the patio door handle and ensured that the patio door could be secured from the inside, resealed the living room window and replaced the drawer facias in the kitchen. The Respondent declined to have the handles put on the kitchen drawers and to have their operative apply filler to the gaps in the hall floor. Mr Easton stated that, beyond what has been done, they do not consider anything further can be done due to Coronavirus restrictions. He also considers that, whilst the repairs which have been carried out were important to the Respondent, they were all fairly minor, many were just wear and tear issues and he does not think that any of them would have resulted in the Property not meeting the Repairing Standard. All rooms in the house appeared to be in use when they inspected. He reiterated that he considered it unreasonable for the Respondent to use these issues as justification for not paying rent.

11. As regards the earlier retention of rent by Ms McCartney in March/April 2020, Mr Easton does not think that was justified either and when asked, he stated that he cannot recall exactly the explanation she had given at the time for retaining the money and does not recall her complaining previously about the fence having been blown down. He accepts, however, that Ms McCartney has lodged an invoice for £400 and that, depending on the overall outcome of this case, he might be prepared to deduct the £400 from the sum claimed, although he would usually query the amount of such a bill. Ms McCartney, on the other hand, was adamant that she had emailed Ms Farrell of the Applicant company for 11 weeks about the fence before finally getting someone out herself to do the work. She said that she had no option as she has a 10 year old daughter and two dogs and her property was stolen from the back garden whilst the fence was down. She was worried about security and attempted break-ins to the Property.
12. Ms McCartney was asked to confirm if, as a starting point, she accepted that the sum claimed in respect of rent arrears of £2,950 was a correct calculation of the figures. She accepted that it was and that it represented the sum of £400 which she had withheld from the rent payments in March/April 2020 to cover the costs in respect of replacing the fence, plus 5 months' rent payments of £510 per month which she had retained from October 2020 onwards, amounting to £2,550. She confirmed that she had not made any further payments towards rent and also that she had no intention of doing so. She does not see why she should pay rent, given the background of repairs left undone for months during the tenancy, or carried out repeatedly but not properly and given the condition of the Property that she has been expected to live in. She said that she has spent a lot of money on the Property and should be able to claim that back from the Applicant. Ms McCartney confirmed that she had put the rent money aside and has not just spent it as Mr Easton seems to think. She stated that much of the information being given to the Tribunal by Mr Easton is untrue and she does not consider that the recent repairs have been done properly or that the Property is fit to live in. She accepts that she is aware

of Coronavirus restrictions affecting the ability of tradesmen to go into people's houses to carry out repairs but feels that the Applicant has just been using this as an excuse as many of the repairs which she complained about before the pandemic were not carried out either. She said that the Applicant's tradesman told her that the Applicant never carries out repairs for tenants and that it makes his job difficult. Ms McCartney confirmed that she and her partner are looking for somewhere else to live but says that this is because the Applicant is evicting her and she is being made to leave the Property in June. She said that she will move out but that there are not many properties available at the moment.

13. Ms McCartney was referred to the written representations which had been submitted on her behalf by her legal representative prior to the CMD and the repair issues listed there which were being put forward as justification for Ms McCartney withholding and seeking abatement or rent. Ms McCartney was asked to confirm if these issues had been resolved or were, in her view, still outstanding:-

- (a) Water pipes on kitchen floor leaking – Ms McCartney confirmed that the emergency plumber dealt with this a few weeks ago and it was a valve on a feed pipe to a redundant washing machine connection which was the problem. She denies having knocked this as Mr Easton has suggested. There is a history of the pipes bursting and leaking water all over the kitchen so she thinks this may well happen again.
- (b) Kitchen window has no handle and there is a draught as the window seals need redone – no one has looked at this so it is still the same and this means the kitchen is a very cold room. Ms McCartney confirmed that there are two handles on the window so it can still be opened using the remaining handle but it does not close properly.
- (c) Problems with sink drainage – has always had problems with this. It drains slowly and when she uses the washing machine, the dirty water comes up into the sink.
- (d) Kitchen floor is damaged and is a trip hazard – there are holes and gaps in the kitchen floor.
- (e) Wasps come into the hallway in the summer of 2020 through cracks in the ceiling – she complained to the Applicant last year about this and a contractor came out once in August to deal with a wasps nest in the loft. Ms McCartney confirmed that she would not allow the contractor in on his second visit in November as he had not done the work properly the first time. Wasps are not yet a problem this year, given the time of the year.
- (f) Front door is not secure, there is a gap between the door surround and wall and the door handle is broken – Ms McCartney said the gap was at the ledge at the bottom of the door. She accepts this was filled with silicone and screwed down when the Applicant's contractor was out recently and this has stopped the draught there. She thinks the front door was previously bashed in as it is not in good condition. The handle/lock mechanism is still not right and is difficult to use but the door is more secure now.
- (g) The radiator in the hallway has been leaking for 6 months – Ms McCartney said that the leak has been repaired 7 times, but accepts it is now fine. Her main problem here is that she wanted the Applicant to replace the flooring which had been damaged by the leak but the Applicant will not spend

money on this. There is no trip hazard, but there are some gaps between the boards. She accepts that she did not want these filled by the Applicant's contractor recently as she does not think this is sufficient.

- (h) Living room ceiling is damaged from water ingress and is now caving – Ms McCartney said that she thinks this was caused by a leak from above before she moved in. There is still a big dip in the ceiling. When she first moved in, bathwater leaked through the ceiling. This was repaired but the ceiling has never been fixed.
- (i) Cracks around the doorways in the living room – Ms McCartney says there are cracks all over the Property which she thinks are more serious than just the wear and tear that Mr Easton claims.
- (j) Birds nesting in the loft – Ms McCartney says this is at the front and back and is all year round, but the noise is worst in the Spring. She says she cannot access the loft because of the birds and wasps.

14. When asked by the Legal Member whether, despite the background, she now considers the condition of the Property still justifies her withholding the rent, Ms McCartney stated that she intends to pay rent from now until she leaves the property. She still considers that she was right to retain the rent both in March/April 2020 and again for the five months from October 2020 to February 2021 and that she should be entitled to the £400 that she deducted from her March/April rental payments to cover the cost of the fence she had paid to have replaced. Ms McCartney was then asked if, given what the Tribunal had heard today about the nature of the repairs required and the more minor issues now outstanding, she still considered that she was entitled to a 100% abatement of the rent due over the 5 months' period from October 2020 or if she was willing to accept that less of a reduction might be appropriate. She conceded that she thought something like half the rent would be reasonable.

15. Mr Easton was then asked the same. He indicated that he would be open to some sort of agreement to try and resolve the matter. He was prepared to concede the £400 deduction for the fence costs but felt that a 50% reduction in rent for the 5 month period was quite excessive. He reiterated that he did not consider that there had been any breaches of the Repairing Standard or Tolerable Standard and that Ms McCartney had had full use of the Property over the whole period. The issues were minor. To get a resolution, however, he would be amenable to a small deduction. He stated that he empathises with Ms McCartney's mental health issues. He stated that the Coronavirus pandemic has caused everyone concerns, that it has had a serious impact on a lot of people, including significant financial pressures but wishes to refute strongly that Ms McCartney was intimidated or treated badly by the Applicant.

16. In response to some final questions from the Ordinary Member, Mr Easton confirmed that the Respondent had been served with a Notice to Leave on 4 December 2020 with the date specified in the notice being 7 June 2021 and also that the ground specified was 3 months' rent arrears. Mr Easton was asked if anything he had heard today had changed his views as regards the repair issues that the Respondent had put forward, to which he responded not really. As regards the loftspace, Mr Easton was asked about the situation with the wasps and birds. He stated that it was a pest control officer from North Ayrshire

Council who had attended the first time, in summer 2019 and was then refused further access by the Respondent. He is aware that it does sometimes require two visits to eradicate a wasps nest completely. Mr Easton said that he would need to check the regulations about removal of nesting birds but, in any event, he considers that both the wasps and birds in the roof would not be deemed urgent matters in terms of the Coronavirus restrictions, so would not be addressed until restrictions are relaxed. Finally, Ms McCartney was asked about the comment that she had enquired about another property let out by the Applicant. She clarified that she had not known that it was another property of theirs and that she would not rent again from the Applicant.

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 Private Rented Tenancy dated 4 April 2019.
3. The rent in terms of the tenancy was £510 per calendar month.
4. The monthly rental payments for March and April 2020 were retained by the Respondent who subsequently made up the balance less the sum of £400 to cover costs incurred by her in having the rear garden fence which had blown down earlier in the year, replaced.
5. From October 2020 onwards, the Respondent again retained rent payments, claiming that this was in respect of outstanding repairs issues which had not been addressed by the Applicant.
6. The Applicant was claiming the sum of £2,950 from the Respondent in respect of rent arrears, being the £400 shortfall from March/April 2020 plus £2,550 for the five monthly rent payments due for October 2020 to February 2021.
7. The Respondent was defending the claim for payment on the basis that she was entitled to retain the rent in view of the repairs issues and was also entitled to abatement of the rent payments due over the relevant period.
8. There was a background of repairs issues being raised throughout the tenancy by the Respondent.
9. Some repairs had not been carried out by the Applicant, had been delayed or had not been carried out to the Respondent's satisfaction.
10. Some minor repair issues remain outstanding.
11. The Respondent had, on occasion, refused to allow tradesmen instructed by the Applicant access to the Property or to carry out certain repairs, including during the period of retention of rent.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the written representations from both parties, the documents lodged by the Respondent in support of her written representations and the oral evidence given at the Hearing by both parties.
2. The Tribunal was satisfied that it had sufficient evidence on which to make its decision in the case and did not require to hear evidence from any additional witnesses or to require any further documentation to be lodged.
3. On balance, the Tribunal accepted elements of both parties' cases. It accepted that the current dispute surrounding non-payment of rent had arisen against a background of repairs issues having been raised by the Respondent throughout the tenancy and her belief that the Applicant delayed unreasonably and did not deal adequately with the issues she had raised. This led to a deterioration in relations between the parties and to the Respondent essentially 'taking matters into her own hands' and retaining rent payments. On the other hand, the Tribunal also accepted the evidence of Mr Easton in that the Respondent had not always acted reasonably in relation to the repairs and had, in more recent months, refused access to the Applicant and their tradesmen or refused for certain repairs to be carried out. The Tribunal agreed with Mr Easton that some of the remedies that the Respondent was seeking were not competent in the context of this application, such as a claim for payment of compensation against the Applicant in terms of Section 16 of the 2016 Act for alleged failure to provide documentation to the Respondent at the outset of the tenancy and the potential remedies available to a tenant in a Repairing Standard application under the Housing (Scotland) Act 2006. These matters had been discussed at the CMD and were explained to the Respondent again by the Legal member at the Hearing.
4. Although the background was relevant in general terms to the dispute, the Tribunal considered that it had to focus on the specific repair issues referred to by the Respondent in her written representations as the justification for her withholding the relevant rent payments and requesting that the Tribunal abates the rent due to nil (or at least by a significant amount as requested by the Respondent at the Hearing). In this regard, the Tribunal considered the Applicant's position to be stronger in that the Tribunal accepted that the repair issues were, on the whole, fairly minor. Some had, understandably, been delayed due to Coronavirus restrictions applying during the relevant periods and some of the issues had now been rectified or, at least, partially rectified (as conceded by the Respondent at the Hearing). The Tribunal was not persuaded that, at any point, the condition of the Property was such that it was unreasonable to expect the Tenant to continue living there, nor that her enjoyment of the Property was so significantly affected by the outstanding repairs that she was entitled not to pay any rent or to a significant abatement of the rent. The Tribunal agreed with the Applicant that there is no longer any justification for the Respondent withholding rent, a fact that appeared to be

conceded by the Respondent during the Hearing as she indicated that it is now her intention to resume rent payments for the remainder of her tenancy. However, the Tribunal was of the view that some of the repairs required had affected the Property being wind and watertight and accepted the Respondent's evidence that she had experienced draughts from the front door and some of the windows due to their condition and that this caused parts of the Property to be cold, particularly the kitchen. In addition, the Tribunal was persuaded by the Respondent's evidence that some of the repairs required, such as the reinstatement of the back fence and the handle/lock problems with the front and patio doors may have had a bearing on the security of the Property may have had a bearing on the security of the Property and certainly the Respondent feeling that the Property was insecure. The Tribunal was prepared to accept that the apparent existence of wasps and birds in the roofspace at certain times of the year was inconvenient and understood the Respondent's stated reluctance to go into the loft at those times during the year. However, the Tribunal had noted that the wasp situation might have been resolved in summer 2020, had the Respondent allowed the pest controller access to the Property on the second occasion. Accordingly, in all of the circumstances, the Tribunal assessed that an abatement of rent by £400 over the March/April 2020 period and a further abatement of 10% of the rent claimed over the 5 month period from October 2020 was appropriate and equitable. The 10% reduction over the 5 month period amounted to £255 and with the further deduction of the £400, the Tribunal found the balance owing to the Applicant in respect of their claim for payment to be £2,295, reduced from the £2,950 sought.

5. The Tribunal determined that an order for payment against the Respondent in the sum of £2,295 should be made.
6. The decision of the Tribunal 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.

N. Weir

Legal Member/Chair _____

29 March 2021
Date