

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/18/1766

**Re: Property at Flat 1/1, 43 Church Street, Lochwinnoch, PA12 4AE (“the
Property”)**

Parties:

Mr Gordon McPhail, 3/1, 10 March Street, Glasgow, G41 2PX (“the Applicant”)

**Mr Norman Smith, Auchengrange Stables Cottage, 2 Belltrees Road,
Lochwinnoch, PA12 4JS (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

An application was made to 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”) seeking an order for payment of £300 being the first month’s rent for the Property.

The application contained a copy of the Tenancy Agreement, and a number of letters and emails between the Applicant and the Respondent.

The Applicant advised that he was unable to move into the Property as the heating and hot water were deficient. He had not been told this in advance of taking entry to the Property and three weeks after notifying the landlord the repairs had not been carried out.

The Applicant attended the case management discussion. There was no appearance from the Respondent. The Respondent had emailed the Tribunal on 28 August 2018 to advise that he was abroad on the day of the hearing. The Respondent also submitted a letter in support of his position and advised that he was

happy for a determination to be made based on the written submission. The Applicant confirmed that he had received a copy of the Respondent's written submission and had had the opportunity to consider it.

Accordingly, I was prepared to proceed with the matter today.

The Hearing

The Applicant advised that he was looking for the return of his rent, as while he had taken the keys to the Property on 1st May, he then became aware that the heating in the bedroom was not working (electric wall mounted heater) . He also advised that the hot water was deficient as it would run out after about 30 seconds.

He advised that initially the Respondent had said he would get the issues fixed, but that the electrician was on holiday. However after two weeks nothing had been done. The landlord had indicated that the hot water was fixed, however the Applicant disputes this.

The Applicant advised that he could not use the flat as there was no hot water and no sign of it being fixed.

The Respondent's written submission stated that the Applicant had been advised that he had ordered a replacement heater and had offered an interim oil heater. The Respondents also advised that there was a heater in the sitting room. The Applicant denied that he had been advised of this or offered an interim replacement.

The Respondent's position in relation to the hot water, was that it might not have been up at full temperature, however the shower was electric, and the electrician had adjusted the thermostat, and he submitted that the hot water was "fine". The Applicant disputed that this and advised that the hot water only ran for around 30 seconds.

In relation to the EPC rating the Respondent appears to believe that it was for the Applicant to have investigated this matter in advance of taking the Property, however he noted that he had put in double glazing and insulation and as an old building he did consider that the EPC rating would rarely meet that of modern flats. He also advised that he had offered a reduced rent of £250 for the first month, as the Property had been in the course of redecoration and electrical upgrading and the Applicant agreed to clean and check it over in return for a reduced rent. The Applicant did not dispute this, but advised that the reduced rent was £300 and not £250.

The Respondent advised that when notice was given by the Applicant that he wanted to leave the Property, he returned the deposit but did not return the rent as he did not consider that the Applicant had given a plausible reason to terminate. He stated that the Applicant was entitled to terminate the tenancy but should have provided one months' notice.

The Applicant advised that he had stayed in the flat for at least two nights and had taken entry to the flat.

Findings in Fact

I found that there existed between the parties a tenancy. That it appears to have commenced on 27 April 2018.

The Applicant had paid the deposit of £400 and one month's rent of £300 for the first month.

That the Respondent had returned the deposit to the Applicant.

The Applicant had taken entry of the Property.

That on 4 May 2018 the Applicant had notified that the Respondent of the two apparent repairs, the heater in the back bedroom and the hot water.

That the Respondent had responded to the Applicant regarding these matters.

As at 13 May 2018 the Applicant did not consider that these matters had been fixed by the Respondent.

On 13 May (by email) the Applicant advised that the Respondent that he was terminating the tenancy and asked for the return of his rent and deposit.

That the deposit of £400 was repaid to the Applicant.

That the tenancy agreement has a provision dealing with the Repairing Standard at Clause 18, which includes in summary, that the landlord is responsible for ensuring that the let property meets the repairing standard. That the landlord must carry out a pre-tenancy check of the Property. The landlord has a duty to repair and maintain the Property. This duty only applies when the Tenant informs the landlord of work required or the Landlord otherwise becomes aware of it. The landlord must complete the work within a reasonable time.

That if the Tenant believes that the Landlord has failed to ensure that the Property meets the repairing standard at all times during the tenancy, he or she should discuss this with the Landlord, if the landlord does not rectify this in a reasonable time the Tenancy has a right to apply to the First Tier Tribunal and the tribunal has the power to order the landlord carry out the repairs.

That the tenancy agreement has a provision dealing with ending the tenancy. Clause 24 Ending the Tenancy. Clause 24 in summary includes, that the tenant requires to give the landlord notice, of at least 28 days in writing, or any other period as validly agreed in writing between the landlord and the tenant, that he wishes to end the tenancy.

Reasons for Decision

I refuse to make an order in favour of the Applicant.

The Applicant entered into a tenancy agreement with the Respondent. In terms of the tenancy agreement rent was agreed for the first month of £300. The Applicant admits that he entered into the tenancy agreement and took possession of the property. However due to the heater in the bedroom not working and the hot water apparently not working properly, he decided to terminate the tenancy. He advised the landlord on 13 May that he was terminating the tenancy agreement.

Clause 24 of the Tenancy Agreement deals with termination. The Tenant is required to give 28 notice of his intention to terminate his lease. In this case the Landlord would appear to have allowed the tenant to terminate his lease earlier and allowed for 12 days' notice only (i.e. From the date of entry of 26 April to the 25 May 2018). The Respondent did not seek any rent to cover the full 28 day notice period.

I consider that the while repairs may have been notified to the Respondent, the response which the Landlord is required to meet for repairs is set out in the Clause 18, whereby the Respondent would have a reasonable time to carry out the repairs. In the event that the time taken by the landlord is not reasonable, and as provided for in lease, the Applicant had the right to refer to the Tribunal under a breach of the Repairing Standard.

I consider that the decision by the Applicant to terminate the lease due to the alleged outstanding repairs does not provide me with a basis on which order that the first month's rent be returned to the Applicant.

I consider that the lease had commenced, and rent was therefore due. I consider that the repairs are a separate issue which did not in themselves provide the Applicant with a basis on which to have his rent returned to him. I consider that he had a legal avenue to pursue the fixing of any repairs.

Decision

Order refused.

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.

Melanie Barbour

Legal Member/Chair

4.9.18

Date