



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Case Reference Number: FTS/HPC/CV/19/0630

Re : Property at 1 The Maltings, Montrose Angus DD10 8PF (“the Property”

The Parties:-

Mrs Anne Tasker, 1 The Maltings, Montrose, Angus DD10 8PF (“the Applicant”)

William McDonald, residing formerly at 1 The Maltings, Montrose, Angus, DD10 8PF and now of no fixed abode (“the Respondent”)

represented by Karen McDonald, 3 Goodhope Road, Aberdeen AB21 9NX

Tribunal Members:

David Bartos (legal member and chairperson)
Eileen Shand (ordinary member)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent shall pay to the Applicant the sum of one thousand one hundred and seventy Pounds (£1170.00) Sterling and otherwise refuses the application and absolves the Respondent.

BACKGROUND

1. By lease entered into on 12 and 13 March 2018 the Applicant let the Property to the Respondent. The rent was £ 370 per month payable in advance on the 5th day of each month. The let was unfurnished. The lease came to an end on or about 3 February 2019. Until that time the Respondent resided in the Property. The Applicant sought an order for payment of :
 - (1) unpaid rent;
 - (2) damages (compensation) for damage caused to various parts of the Property;
 - (3) damages for non-return of items within the Property at the end of the let.

The Hearing

2. A hearing was fixed originally for 4 October 2019. This had been postponed at the unopposed request of the Respondent's representative in connection with the recent terminal illness diagnosis of her and the Respondent's father.
3. A fresh hearing was held on 14 November 2019 at 14.00 hrs at Caledonian House, Greenmarket, Dundee DD1 4QX. The Applicant appeared. There was no appearance by or for the Respondent. The parties had been notified of the date, time and venue by letters from the Tribunal's Casework Officer dated 11 October 2019. This was sent to the Respondent's representative and sister Ms McDonald by e-mail on the same date.
4. On 30 October 2019 Ms McDonald had written to the Tribunal acknowledging receipt of the notification and asking for the hearing to be held in Aberdeen or by telephone conference call. The reason given was her father's terminal illness diagnosis and she was his primary carer and could not travel out of Aberdeen. This request was opposed by the Applicant. The Tribunal refused to cancel the venue or allow the conference call. This was notified to Ms McDonald by e-mail on 7 November.
5. With regard to the conference call request, the refusal had made it clear that there were a number of factual disputes to be resolved and a significant amount of documentation to be referred to all of which could involve misunderstanding and communication difficulties if the hearing was held by conference call. In its refusal – communicated on 7 November to Ms McDonald by e-mail – the Tribunal noted that the Respondent could look for and instruct another representative for the hearing in Dundee.
6. After 5 pm on the afternoon before the hearing Ms McDonald e-mailed the Tribunal indicating that she "can not be forced to attend a meeting" and that the Respondent was "unable to represent himself or appoint another person due to his mental illness". The Applicant opposed any postponement. There had already been sufficient postponements in the proceedings, she was prepared to present her case and further delay would cause prejudice to her. With regard to the allegation of the Respondent's mental illness she had seen on Facebook over the previous fortnight that he had been advertising a casual job for his builder's business. Respondent had left the Property on about 3 February 2019. She was sceptical that he was too ill to instruct another representative.
7. The Tribunal considered whether cause had been shown for a postponement of the hearing taking account of the overriding objective of the Tribunal, namely to deal with the case justly and the need to balance undue delay with giving each party so far as practicable a full opportunity to present its case.
8. With regard to the Respondent being given a full opportunity to present his case, in May 2019 Ms McDonald had sought a relocation of the case management discussion of 14 June 2019 to Aberdeen. This had been refused but a request for adjournment of that discussion on the basis of ongoing medical

treatment being received by her father had been granted on that occasion. In granting the adjournment the then Legal Member had indicated that it would be unlikely that any further request involving a delay would be granted.

9. The terminal illness of the Respondent's and Ms McDonald's father appeared to have been the reason given by Ms McDonald for her previous request for the postponement of the earlier scheduled hearing date of 4 October 2019. A postponement had been granted on that occasion.
10. No supporting evidence had been provided of any mental illness of the Respondent which prevented him from appointing another representative. Yet Ms McDonald had been made aware in seeking the previous postponement that medical evidence in support of illness was required but none had been provided. There was nothing to suggest that the Respondent had not had a full opportunity of appointing a representative who could represent him at the hearing in Dundee.
11. So far as delay was concerned the application had been made at the end of February 2019. It, with supporting documentation, had been notified to Ms McDonald in time for the case management discussion of 14 June which had required to be postponed at her request. Ms McDonald had attended the continued discussion on 15 August by conference call. Over 8 months was more than enough for the determination of the application. The Applicant should not be required to suffer further delay which could prejudice her in the time and cost of having to attend a further hearing and possible enforcement of a future order. She was also relying on her oral recollection which might fade with time.
12. For all of these reasons, and recognising that in her e mail of 13 November 2019, referred to at paragraph 6 above, Ms McDonald had not requested a further postponement, the Tribunal, having regard to the overriding objective decided to go ahead with the hearing.
13. Written representations had been received by the Tribunal from Ms McDonald by e-mail dated 26 June 2019 and were considered by the Tribunal together with the Notes of the Case Management Discussion of 15 August 2019 and the submissions and issues in dispute noted at that discussion. The Tribunal also took account of the submissions and documents relied on by the Applicant at the hearing.

The Evidence

14. The material evidence before the Tribunal consisted of:-
 - The title to the Property ANG44427
 - Copy lease of the Property between the Applicant and the Respondent dated 12 and 15 March 2018
 - Copy invoice from Lock & Roll Security to the Applicant dated 18 February 2019
 - Copy photographs numbered 5A to 8D

- Copy invoice from Montrose Project Management (Sandy Leith) dated 11 June 2019
- Copy un-numbered photographs of the Property
- copy invoice from Stevensons to the Applicant dated 27 November 2018 for a Bosch washing machine
- copy Nationwide Bank statements
- The oral evidence of the Applicant

15. The Applicant spoke about the various heads of her claim. Her evidence is summarised under the heads in question below. She spoke to someone having changed the locks of the Property and the Respondent not supplying her with keys for the new locks. She had required to have the locks changed when she gained entry to the Property on the termination of the lease. She explained that she had taken photographs of the Property when she had first let it to the Respondent's wife Shannon McDonald in April or May 2017. She had taken photographs on having re-entered the Property in February 2019. The Tribunal found the Applicant credible in her oral evidence. She gave her evidence in a clear and straightforward fashion. The Tribunal accepted it.

Findings of Fact

16. Having considered all the evidence, the Tribunal found the following facts to be established:-

- (a) The Property is a two bedroom flat in Montrose. It comprises a lounge, two bedrooms, a galley kitchen and bathroom. The Applicant is the owner of the Property.
- (b) By lease on or about 22 May 2017 the Applicant granted a tenancy of the Property to the Respondent's wife Shannon McDonald. The tenancy included a washing machine, and a fitted oven in the Property. The Respondent took entry to the Property with his wife. The Applicant gave one set of keys to Mrs McDonald as the tenant and kept another set of keys. During the course of her tenancy Mrs McDonald left the Property.
- (c) In early March 2018 the Applicant agreed with Mrs McDonald that the Respondent would be the tenant from 5 March 2018 under a new tenancy in place of her old tenancy. The new tenancy was a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016. The parties signed a form of the model private residential tenancy dated 12 and 15 March 2018 in terms of the copy document given to the Tribunal.
- (d) The Applicant did not inspect the Property during either of the two tenancies. That covered the period from about 22 May 2017 to about 4 February 2019. There was no inventory for the new tenancy with the Respondent. There was no schedule of condition for that new tenancy.
- (e) The Respondent paid a deposit of £300 following the entering into of the new lease. The Applicant lodged it with Safe Deposits Scotland.

- (f) Rent was payable by the Respondent at the rate of £370 per month in advance by the fifth day of each month.
- (g) The Respondent paid the instalments of rent due in the months commencing 5 March to 5 September 2019 plus £10 in addition. He did not pay instalments of rent due in the 4 months October 2018 to January 2019.
- (h) The Applicant issued a notice to leave the Property to the Respondent on or about 17 December 2018. By text the Respondent informed her that he would be moving out of the Property on 1 February 2019. He left the Property between 1 February and 4 February 2019. The new tenancy ended on or between those dates.
- (i) When the Applicant sought to enter the Property on or about 4 February 2019 she discovered that her keys did not unlock the front door. She had been unaware that the lock had been changed since her let to Mrs McDonald. No-one had supplied her with a replacement key. She instructed a locksmith to unlock the door. The locksmith unlocked the front door and installed a new lock. The cost of this is set out below.
- (j) The Applicant discovered that a number of items that had been in the Property in April 2015 were missing. These were the oven door, a washing machine, both of which were about 7 years old, and a door between the lounge and the hall. One section of curved shower door also missing
- (k) On entering the Property the Applicant discovered also that:
- a deep kitchen drawer had been damaged. Its rails were damaged and its front had been broken off;
 - the wall in the lounge had a television bracket attached to it with a hole in the plaster board;
 - one wall in each of the bedrooms and the lounge had been painted;
 - the sliding door from the lounge to the kitchen had come off its rail and had a broken surface in four areas.
- None of this had been present at the start of the tenancy with Mrs McDonald in April 2015.
- (l) The Applicant obtained payment of the deposit from the deposit-holding scheme. She allocated it to the October 2018 rent instalment together with the £10 credit from the previous months. This left £60 unpaid from the October 2018 rent instalment
- (m) The condition of the Property, including the letting of a washing machine to Mrs McDonald in April 2017 and the condition of the Property at the end of the lease to the Respondent was as set out in the evidence of the Applicant noted below.

Reasons for Decision

17. The Tribunal required to decide :

- (1) The terms of the tenancy between the parties and in particular the rent payable and the moveable items covered by the tenancy;
- (2) Whether the Respondent had failed to pay rent when due in the period October 2018 to February 2019; and if so the quantum of unpaid rent;
- (3) Whether the Respondent had left the Property in a state of repair that accorded with his obligations under the tenancy agreement;
- (4) If the Respondent had failed to comply with his obligations under the tenancy agreement, the extent of costs incurred by the Applicant in carrying out the necessary repairs caused by such failure or failures;
- (5) whether the terms of the tenancy involved the letting to the Respondent of a washing machine, keys, and an internal door between the lounge and hallway;
- (6) whether in the circumstances the Applicant is entitled to an order for payment and if so for how much.

Terms of tenancy and Rent

18. The terms of the tenancy were not in dispute. Under it the Respondent was due to pay rent in advance at the rate of £370 per month payable on the 5th day of each month. The Tribunal together with the Applicant examined her bank statements to identify the payments that the Respondent had made. It was satisfied that he had failed to pay any rent due on 5th October, November and December 2018 and January 2019 (in respect of the period to 4 February 2019). Even though some of the rent due in earlier months had been paid late, it had nevertheless been paid.
19. The Applicant applied an overpayment of £10 to the payment due in October together with the whole of the £300 deposit that she had obtained from the deposit-holding scheme. That left £60 due in respect of the October 2018 instalment plus the whole of the instalments due in November, December, and January. This totalled £1170.

Oven, kitchen drawer, walls – failure to take reasonable care

20. The fixtures of the Property included a built-in oven, and a built-in set of drawers in a fitted kitchen including a deep lower drawer.
21. The tenancy agreement provided in clause 16 that the Tenant :
 - “agrees to take reasonable care of the Let Property and any common parts, and in particular agrees to take all reasonable steps to :
 - not interfere with door closer mechanisms.”
 It was in any event an implied common law duty of the Respondent as tenant to take due care for the let Property.
22. With regard to the oven the Applicant relied on a photograph numbered 5B. This had been taken in April or May 2017 prior to the original tenancy to Mrs McDonald. It showed an oven door below a black worktop. She had no evidence as to the state of the oven at the beginning of the Respondent's tenancy. She had not carried out any inspection of the Property in between the

two tenancies. Indeed she did not visit the Property from April/May 2017 until February 2019. There was no record of condition of the Property as referred to in clause 4 of the Respondent's tenancy.

23. The Applicant submitted that the oven had been let to Mrs McDonald in the condition shown in photo 5B and had been taken from Mr McDonald in the condition shown in photo 3 with a missing door and a white sealant showing around the edges of the open oven shelving. However she could not say whether it was the Respondent who had breached his tenancy or Mrs McDonald who had breached her tenancy.
24. The oven had been replaced by Sandy Leith of Montrose Project Management as part of his general works covered by his invoice of 11 June 2019. That had a global cost of labour and materials of £1555.95. The Applicant explained that she had allocated £150 out of that sum towards the oven.
25. The Tribunal found that it had no evidence to allow it to infer that it was the Respondent who had failed to take reasonable care for the oven and therefore breached clause 16. In those circumstances it was unable to find that the Respondent had failed to comply with clause 16.

Kitchen drawer

26. The Applicant explained that the runner of the deep drawer in the fitted kitchen unit had been found broken and the front of the drawer was lying on top of the kitchen worktop. She referred to her photo 3, taken on her re-entry.
27. She was able to obtain a better replacement drawer. This was covered by Sandy Leith's global invoice, but she did not have a figure allocated to it. She had no evidence as to its state at the start of either tenancy. Again she was unable to point to it having been damaged in either the one or the other tenancy.
28. For the same reasons as for the oven claim, the Tribunal rejected the claim for the kitchen drawer. In any event there was no evidence as to the replacement costs for the drawer.

Internal kitchen door

29. The Applicant explained that she had found the sliding door between the kitchen and the living room had been damaged with what she described as 'punch marks' as shown in photograph 8B. Its runner had also become partly detached from the wall and she referred to photograph 8C. Both photographs had been taken on her re-entry. That cost was contained within the global Sandy Leith invoice.
30. For the same reasons as for the oven claim, the Tribunal rejected the claim for in respect of the internal kitchen door.

Walls

31. The Applicant told the Tribunal that the whole Property had been repainted in 2016 before the previous tenants had moved in. The Property was a two bedroomed flat with a lounge, galley kitchen and a bathroom. On regaining the Property from the Respondent the lounge wall had been found by her with a fitting of a bracket for holding a television screen together with a hole in the plasterboard in the middle of the bracket. This was shown on photo 6. It had not been there in April/May 2017. She had not been asked for permission to put in the bracket.
32. Either the Respondent or Mrs McDonald had also painted one of the walls in both of the bedrooms and the living room a different colour, again without her permission. The bigger bedroom and one of the walls in the lounge also had holes with wall plugs which had been created without permission.
33. The costs for remedial works were also covered by the Sandy Leith invoice from which she had estimated a cost of £700.
34. The Applicant relied not merely on a breach of clause 16 but also of clause 26 which provided that the Tenant :
 - “agrees not to make any alteration to the Let Property, its fixtures or fittings, nor to carry out any internal or external decoration without the prior written consent of the Landlord.”.
35. However the flaw in her claim for the oven affected her claim for this wall damage also. For the same reasons the Tribunal rejected the claim in respect of the walls.

Keys and lock

36. The Applicant told the Tribunal that on it appearing from the outside that the Respondent had left the Property as he had indicated, she went to the Property with a set of keys that she had retained from when she had let the Property to Mrs McDonald. Neither Mrs McDonald nor the Respondent had returned any keys to her. To her shock and surprise she had been unable to unlock the front door with her own set of keys. She had required to instruct a locksmith to attend to allow the door to be unlocked and then the lock changed with a new set of keys. The invoice from the locksmith Lock & Roll for £120 had been paid by 20 February 2019.
37. The Applicant informed the Tribunal that no inventory had been prepared for the tenancy to the Respondent. That tenancy was essentially, in her view, a paper exercise. She was therefore unable to confirm whether the Respondent had been supplied with the keys which she had supplied to his wife in 2017. It was unclear when the locks had been changed or who had changed them.
38. The Applicant founded on the Respondent not handing back the keys as part of the “Let Property” which she had let to him or alternatively that the

Respondent had breached clause 26, possibly when the Police had attended at the Property.

39. The difficulty which the Tribunal had was that it was unclear whether the locks had been changed and new keys procured during the tenancy with Mrs McDonald or the Respondent. No inventory had been taken at the creation of the Respondent's tenancy that would have included handing over a set of keys. Given that the Tribunal was unable to establish that the keys in question were part of the "Let Property" let to the Respondent or that the Respondent had changed the locks, the Tribunal was unable to find that the Respondent had breached the tenancy agreement.

Washing machine

40. The Applicant explained that she had let the Property to the Respondent's wife with a washing machine from about 2010. On recovering the Property she found that it had disappeared.
41. The Tribunal found that while the machine had been removed, there was no evidence to show that this had happened during the course of the first or the new tenancy. No inventory had been prepared by the Applicant at the start of the latter tenancy with the Respondent. In these circumstances the Tribunal was unable to find any failure by the Respondent in not handing back the washing machine to the Applicant. It therefore made no award of damages for the washing machine.
42. Had it done so, the Tribunal would have been satisfied with the estimated value of the lost machine of £200 bearing in mind the new Bosch machine bought by the Applicant before her recovery of the Property cost £319.

Shower Screen

43. The Applicant spoke to having let the Property to Mrs McDonald with a shower with a sliding shower screen that had two sliding parts. On having re-entered the Property one of these sliding parts were missing. She relied on a breach by the Respondent of clauses 16 and 26.
44. The Tribunal accepted the Applicant's evidence. However the difficulty of establishing that the shower screen went missing during the Respondent's tenancy that caused the rejection of the oven, drawer, washing machine and complaints applied here also. Accordingly the Tribunal rejected this claim.

Missing door

45. The Applicant spoke to having let to Mrs McDonald with a door from the lounge to the hall. On having re-entered the Property this was missing. Her claim was made on the same basis as that for the shower screen.
46. The Tribunal accepted the Applicant's evidence. However for the same reasons as for the other items, the Tribunal was constrained to reject her claim.

Outcome

47. The Tribunal found that the Respondent was liable to pay to the Applicant £1170 in respect of unpaid rent but no damages in respect of the other matters claimed for.

48. The decision of the Tribunal was unanimous. It was as set out above.

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 this decision was sent to them.

David Bartos

Legal Member/Chair

14 November 2019
Date
