



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

Chamber Ref: FTS/HPC/CV/19/1281

Re: Property at 76a Main Street, Prestwick, KA9 1PA (“the Property”)

Parties:

Elleray Property Limited, Elleray, Lochwinnoch Road, Kilmacolm, PA13 4DZ (“the Applicants”)

Mr Michael McInally and Mr Ross McRoberts, formerly of 76a Main Street, Prestwick, KA9 1PA and whose current whereabouts are unknown (“the Respondents”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondents)

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment in relation to rent arrears and other costs arising from a private residential tenancy.
2. The application contained:-
 - a copy of the tenancy agreement,

- rental statement
 - check in report
 - check out report
 - quote for cleaning
 - quote for painting
3. Mr Toner and Ms Hedren from Rentolease appeared on behalf of the Applicants. There was no appearance by the Respondents.
 4. Notice of the Hearing had been made on the Respondents by way of service by advertisement. As I was satisfied that this mode of service had taken place, I was prepared to proceed with today's hearing in the absence of the Respondents.

Hearing

5. The Applicants' agents referred me to the papers which had been lodged in support of the application, including the tenancy agreement, rent account, quotes and check in and check out reports. This application related to unpaid rent due in terms of that agreement, cleaning costs and some repair and painting work.
6. The Respondents had failed to make regular rental payments for the months of November and December 2018 and January 2019. The Applicant's agents had contacted them about the arrears; however they had been unsuccessful in getting them to repay these arrears. They advised that there had been no further payments since November 2018 and the current arrears were still £900. The Applicants' agents provided a rent account and advised that clause 8 of the tenancy agreement sets out that rent of £300 is due each month.
7. The Applicants' agents advised that after they had moved out of the property they had also written to the Respondents' solicitors to advise that they were seeking repayment of the rent arrears, and also costs for cleaning and redecoration works.
8. In relation to the cleaning costs they referred me to clause 17 of the tenancy agreement, which provides that the "*the tenant agrees to take reasonable care of the Let Property ...*" They submitted that this includes keeping the property clean. They referred me to the check in and check out reports. The check out report set out the items which needed to be cleaned including that the carpets needed cleaning, the bathroom needed cleaning, and that there was dog mess and other rubbish on the roof. He referred to the quote submitted in support of the costs to address these matters. The quote totalled £150.
9. In relation to the painting and repair costs, they referred me to clause 17 of the tenancy agreement again, that the "*the tenant agrees to take reasonable care of the Let Property ...*" They submitted that the obligations set out in this clause covered not making holes in walls and damaging woodwork. They

submitted that this and the cleaning items were more than fair wear and tear. The quote was to repair the hole in the wall, and the repaint the woodwork. They referred to the check out report, particularly the window where access could be taken to the roof, and the woodwork there was shown to be scuffed where the dog must have been getting on to the roof. They also referred to the check out report at page 40 showing the hole in the wall. The quote submitted in support of the costs sought for these works totalled £110.

Findings in Fact

10. The Tribunal found the following facts to be established:
11. A tenancy agreement was entered into between the Applicants and the Respondents for the property and existed between the parties. It was entered into on 19 March 2018.
12. Clause 8 in the tenancy agreement provided that monthly rent was £300 and the rent payment date was 19th of each month. Clause 8 of the tenancy agreement provided that monthly rent was due in advance.
13. The rental statement showed amounts due each month, amounts received, and rent outstanding.
14. The rental statement showed total rent arrears outstanding as at 19 January 2019 being £900.
15. There had been no further payments towards the rent since 1 November 2018.
16. Clause 17 in the tenancy agreement provides that the tenant agrees to take reasonable care of the let property, including keeping the property clean.
17. The carpets were stained and required cleaning and stain removal when Respondents left the property.
18. The roof had dog excrement and rubbish on it when Respondents left the property.
19. The bathroom was dirty when the when Respondents left the property.
20. There was a hole in the wall when the Respondents left the property
21. There was paint chipped from the woodwork when the Respondents left the property.

Reasons for Decision

22. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies.

23. As this tenancy is a private residential tenancy I am content that I have jurisdiction to deal with this case. There was no response or appearance from the Respondents but service had taken place of today's hearing.

24. The tenancy agreement created obligations between the parties, one of those obligations was to pay rent, and the Respondents have failed to do so. There was submitted a rental statement showing the arrears due and additional information provided today by the Applicant's agent was that there had been no further payments towards the rent arrears since the beginning of November 2018.

25. The tenancy agreement created obligations to take reasonable care of the property. The check in and check out reports showed that there had been certain areas where the Respondents had not taken reasonable care of the property, namely the carpets, bathroom, roof, wood work and damage to one wall. Invoices were submitted in support of the claim for compensation. I consider that there had been a breach of the tenancy agreement in relation to clause 17.

26. On the basis of the evidence submitted and having regard to all papers submitted including the application, I consider that I should make an order for the sum sued for.

Decision

I grant an order in favour of the Applicants for the sum of ONE THOUSAND ONE HUNDRED AND SIXTY POUNDS (£1,160.00) STERLING against the Respondents.

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

12. 8. 19

Date