



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) 2016

Chamber Ref: FTS/HPC/CV/19/2341

Re: Property at 100 Glencairn Street, Stevenston, Ayrshire, KA20 3BT (“the Property”)

Parties:

Mr Alan Bowker, 6 Sorbie Road, Ardrossan, Ayrshire, KA22 8AQ (“the Applicant”)

Ms Annmarie Monaghan, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatriidge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £2,328 should be granted in favour of the Applicant.

Background

The Applicant applied for an order for payment of £2,419 for outstanding rent for the property and payment for repairs and cleaning in terms of S 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act).

A first Case Management Discussion (CMD) was held on 27 September 2019 by conference call at which the Respondent did not attend. The relevant CMD note is referred to for its terms and held to be incorporated herein.

It sets out the documents the Applicant was requested to produce in order to deal with the matter.

Further documents were lodged by the Applicant by email dated 25 November 2019.

A further CMD was fixed for 29 November 2019 at 14.00 and both parties were notified of this. Service by advertisement on 28 October 2019 was confirmed for the Respondent. The Applicant sent an email on 1 November 2019 to confirm that he would be taking part in the CMD by conference call but also advising that he would be in Cambodia at the time of the CMD and there might be problems regarding communication equipment.

The Tribunal is thus satisfied that the Respondent and Applicant had due notice of the application, the amendment and the notification of the CMD details. These included the statement that the tribunal may make a decision at a CMD.

No representations were received from the Respondent.

The Applicant did not dial into the conference call on 29 November 2019.

In his representations of 25 November 2019 the Applicant had advised that the estimates and letter regarding cleaning of the property showed an amount of approximately £600 rather than the £700 initially claimed in the application and stated "I am happy to have my claim considered to be £600 in order to progress the case".

The tribunal considered the following documentary evidence:

1. The application
2. Tenancy Agreement commencing 24.2.18 for the property
3. Bank statement 26.1.18 to 23.7.19 showing payments from the Respondent to the Applicant of a total amount of £4,000 made between these dates.
4. Notice to leave copy dated 24.1.19
5. email of Applicant to Respondent dated 8.5.19 advising of repair costs of £700
6. email to Tribunal from Applicant dated 21.8.19 providing information regarding the damage to the property
7. Photographs of the property after end of tenancy
8. Photographs of the property at the start of the tenancy
9. email of Applicant dated 25.11.19 with further particulars
10. email to Applicant 9.11.19 re cleaning works
11. Estimate 22.11.19 Argyle Carpets and Flooring Ltd
12. Estimate Macdecor

The documents are referred to for their terms and held to be incorporated herein.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement for the property commencing on 24 February 2019
2. Rent of £375 per calendar month was payable as stated in the tenancy agreement.
3. Additional payments of £25 per month were agreed until the deposit sum of £375 would be made up

4. The Applicant lodged the full deposit sum on behalf of the Respondent with a relevant scheme. The full sum was repaid to him on request after the end of the tenancy.
5. 9 payments of £400 each were made by the Respondent between 23 February 2018 and 6 December 2018.
6. Payments then stopped.
7. The Respondent left the tenancy, which came to the attention of the Applicant on 3 May 2019.
8. The Notice to Leave issued to the Respondent by the Applicant on 24 January 2019 had been superseded by the agreement between the parties that the Respondent would pay off the arrears.
9. Only one further payment of £400 was received after this agreement on 25 March 2019
10. Damage to the carpet consists of a burn mark in the shape of an iron.
11. The carpet was new at the time when the tenancy started.
12. Damage to the walls consists of holes drilled in various locations and marks on the walls as shown in the photographs
13. The property was not left in a clean state at the end of the tenancy.
14. The property was re-let on 1 June 2019
15. The cost for the carpet replacement as per the estimate provided is £184
16. The cost for repairing damage to the walls is £125 as per the estimate provided
17. The cost for cleaning the property was £300 as per the email to the Applicant dated 9 November 2019 provided

Reasons for decision

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

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- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
- (i) correcting; or
 - (ii) reviewing on a point of law,
- a decision made by the First-tier Tribunal.
- (2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent has not made any representations and did not attend the CMD. The facts of the case are not disputed. There was no opposition to the order being granted. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Applicant did not participate in the second CMD by conference call but had provided sufficient information, evidence and explanation for an order to be granted in his favour. The emails of 1 November 2019 and 25 November 2019 made it clear that the Applicant is still insisting on his claim. The Tribunal considers that the lack of participation on 29 November 2019 is highly likely due to problems accessing communication facilities while travelling in Cambodia. The Tribunal considered that in light of the Applicant's representations of 25 November 2019 there would be no merit in fixing a further CMD and that it had sufficient evidence to grant the order.

The Tribunal was satisfied that the tenancy ended on 31 May 2019. The Notice to Leave had been withdrawn after discussions between the Applicant and the Respondent prior to 25 March 2019, when a further rental payment was made. The tenancy thus did not come to an end in terms of S 50 of the 2016 Act as the Notice to Leave was no longer active when the Respondent left the property.

The Respondent did not give written notice to the landlord but had abandoned the property, which came to the attention of the Applicant on 2 May 2019. The Applicant was able to re-let the property on 1 June 2019. The statutory notice period for a notice of a tenant to a landlord in terms of S 49 (3) of the 2016 Act would be 28 days. In light of this I consider that the Applicant was entitled to consent to the ending of the tenancy, which the Respondent had factually proposed by abandoning the property on 2 May 2019 for the date of 1 June 2019 when the property was re-let and that there was an agreement between the parties that the tenancy ended on that day.

The Applicant was entitled to payments of rent of a total of 15 months at the rate of £375 amounting to £5,625 for the period of 24.2.18 to 31.5.19 and one week at the rate of 93.75 for the period of 25.5.19 to 31.5.19 were due. The bank statement shows that a total payments of £4,000 were made by the Respondent. This leaves a total shortfall of rent of 1,718.75.

The Tenancy agreement further contains clauses setting out that the tenant is

1. responsible for replacement or repair of any contents destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this

was caused wilfully or negligently by the Tenant, anyone living with the Tenant or an invited visitor to the Let Property (Contents and Condition item 5),

2. liable for the cost of repairs where the need for them is attributable to his or her fault or negligence (Payment for Repairs) and
3. has undertaken to ensure the Let Property and its fixtures and fittings are kept clean during the tenancy (Reasonable Care)

The Tribunal is satisfied that there was burn damage to the carpet, damage from affixing items to the walls and drilling holes into the walls as shown by the photographs. The damage shown in the photographs is not attributable to wear and tear and was caused either wilfully or negligently by the Respondent or someone for whose actions the Respondent would be held responsible. Although the Applicant only provided estimates and not paid invoices I consider that the Respondent is liable for the cost of these repairs and replacements and that the cost has been sufficiently evidenced by the estimates. I accept on the basis of the representations of the Applicant and the email detailing the cleaning works required and that the tenancy required extensive cleaning after the tenant moved out and that the Applicant is entitled to claim for the cleaning carried out. I accept the calculation for the cleaning work required of £300.

The cost of repair and cleaning of £700 was intimated to the Respondent by the Applicant in the email of 8 May 2019 and in the application and the amount was not disputed.

The Applicant has only provided documentary evidence for repair and cleaning costs of £609 as per the estimated submitted (£ 184 and £125) and the statement from his sister regarding the work required for cleaning (£300). On the basis of the wording of the tenancy agreement and the documents lodged I was satisfied that the amount of £609 is due to the Applicant. He stated in his representations of 25 November 2019 that he maintains his claim for £700 but that if necessary to have the matter dealt with he would settle for the amount actually stated in the estimates and email provided with these representations.

As the Applicant did not participate in the CMD on 29 November 2019 I was unable to discuss with him further claims regarding the other matters raised in the CMD note of 27 September 2019. I am however satisfied that the cost for repairs and cleaning as stated above are sufficiently detailed and evidenced to grant an order for these sums.

In total the amount due to the Applicant is thus £2,327.75.

The Tribunal grants the order for payment of the sum of £2,327.75 as rent lawfully due to the Applicant by the Respondent had not been paid and as the Respondent is liable to pay the cost of damage and cleaning for the property as set out above.

Decision

The Tribunal grants an order against the Respondent for payment of the sum of £2,327.75 to the Applicants.

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.

Petra Hennig-McFatrige

Legal Member/Chair

29. 11. 18

Date