



**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/19/2493

Re: Property at 228C Holburn Street, Aberdeen, AB10 6DB (“the Property”)

Parties:

Mr Craig Allan, 30 Berryhill Circle, Westhill, Aberdeenshire, AB32 6BE (“the Applicant”)

Mr Mohamed Mohamed, 46E Ashvale Place, Aberdeen, AB10 6QA (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £255.

Background

By application, received by the Tribunal on 8 August 2018, the Applicant sought an Order for Payment by the Respondent. The sum sought was £1,105 and comprised one month’s rent for the Property (£425) and reimbursement and redecoration costs incurred by the Applicant at the termination of the tenancy.

The application was accompanied by a document which purported to be a Short Assured Tenancy Agreement commencing on 10 September 2018, photographs showing the condition of the Property before the tenancy began and at the end of the tenancy and an Invoice for £680 in respect of washing down and decoration works, dated 22 January 2019. The Applicant contended that the lease had been for six months, but the Respondent had vacated the Property one month early. The Applicant had included that month’s rent in the application.

On 15 August 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 6 September 2019.

On 26 September 2019, the Respondent made written representations to the effect that the Property had not been clean at the start of the tenancy, that there had been mould at the time, especially in the bathroom, which kept growing, and that there had been many leftovers in the Property, including books and devices that were not working. There had been problems with the electricity and the Applicant had been advised to change the meter. He had told the Applicant, but that had not been done. He questioned whether the photographs provided by the Applicant had been taken at the time he had moved in to the Property and he also questioned the work that had been carried out, for example, the complete redecoration of the bathroom.

Case Management Discussion

A Case Management Discussion was held at the Credo Centre, John Street, Aberdeen, on the morning of 3 October 2019. The Applicant, Mrs Donna Allan was present. The Respondent was not present, having advised the Tribunal an hour beforehand that he was unable to travel from Glasgow as his wife was not feeling well.

A witness for the Respondent, Mr Ahmed Bashier, told the Tribunal that, at the beginning of the tenancy, he had helped the Respondent to move in to the Property. The Property had not been all that clean and he had seen some evidence of mould at the top of the wall in the corner of the bathroom. He did not recall seeing evidence of mould elsewhere. The Respondent had not really had any choice but to accept the Property, as he was paying £180 per day for hotel accommodation and the Applicant had agreed to reduce the rent from £475 to £425 per month. He had visited the Property twice after that and, on the second visit, the Respondent had told him that he had been spending £2-£2.50 per day on electricity and that he had been advised that the meter should be changed. On that visit, he had noticed mould on the wall of the passageway between the living room and the kitchen.

The Applicant told the Tribunal that she personally had cleaned the Property when the tenant prior to the Respondent had moved out. The Property had then been empty for a few months, as the rental market in Aberdeen was very poor. That was the reason for reducing the rent. She categorically denied that there had been any mould in the Property when the Respondent moved in. The Applicant had put in a meter in order that tenants could see and have control over the amount of electricity they used. She could not speculate on how many appliances the Respondent had, or how he was heating the Property. The Respondent had left the Property one month early and the Applicant was seeking rent for that period.

The Applicant stated that she had been disgusted at the state of the Property when the Respondent moved out. She would never rent the Property with mould in it. The Respondent was responsible for the mould, probably through inadequate heating and ventilation. It was evident throughout the Property, not just in the bathroom. There had been nothing in the Property at the start of the tenancy apart from the furniture that was provided.

Reasons for Decision

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision.

The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a Hearing.

The Tribunal decided, on the balance of probabilities, that any evidence of any mould at the outset of the tenancy had been minor and that the Respondent had been responsible for the mould problems which were apparent at the end of the tenancy. Accordingly, the Applicant had been entitled to carry out the washing down and redecoration as specified in the Invoice and to recover the cost of £680, as the issue could not be put down to fair wear and tear.

The Tribunal did not uphold the claim for one month's rent. The tenancy agreement bore to be a Short Assured Tenancy, but it was dated after 1 December 2017, the date on which all new tenancies became Private Residential Tenancies. Such tenancies cannot be for a fixed period and the Applicant was not, therefore, entitled to claim rent as sought in the application.

The Tribunal noted that the Applicant was holding a deposit of £425 in respect of the tenancy. This sum fell to be deducted from the amount due by the Respondent, so the amount to be inserted in the Order for payment was reduced to £255.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £255.

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.

George Clark

Legal Member/Chair

3 October 2019

Date