



**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/18/0674

Re: Property at 131 Craigs Road, Dumfries (“the Property”)

Parties:

Mr David Benjamin, 46 Burnt Ash Lane, Bromley, BR1 4DH (“the Applicant”)

Miss Sara Mattox, Flat 5, 5 Barnraws, Dumfries, DG1 2JG (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears and a further sum in damages. The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent dated 10 May 2017.
2. The application was dated 13 March 2018 and lodged with the Tribunal shortly thereafter. The application was accompanied by a short report by AHR Crossan & Co, surveyors, dated 30 January 2018 and an invoice from Keith Wells Joiners Ltd dated 3 February 2018 for £400 plus VAT (£480 in total). There was no rental statement with application. The lease for the said tenancy also accompanied the application and detailed a rental payment of £525 per month, payable on the 26th of each month. The application expressly sought an order for £2,100, being said to be four

months' rent arrears but it further referred to the joiner's invoice for £480 and reasons for recovery of those costs in damages.

The Hearing

3. On 14 June 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Lochvale House, Dumfries, I was addressed by Ms Thom, the Applicant's letting agent. There was no appearance by the Respondent and my clerk confirmed that no contact had been received from or on behalf of the Respondent since the scheduling of the CMD. Ms Thom confirmed that she did not expect an appearance from the Respondent.
4. As of 10:05, there being no appearance or contact from the Respondent, I was satisfied to consider the application in full at the CMD in the absence of the Respondent.
5. The Applicant's agent addressed me on the breakdown of the rent arrears, saying that they were for the payments due on 26 November and 26 December 2017 and 26 January and 26 February 2018, totalling £2,100. She confirmed that she was seeking recovery of the joiner's invoice of £480 in addition as damages.
6. The Applicant's agent submitted that it was appropriate for the Applicant to recover the costs of the joiner's invoice as work was required to the Property to attend to mould arising from inadequate ventilation. She submitted that in the five years she had managed the property, there had been no problems with mould or condensation until the Respondent's occupancy. The Applicant's agent gave oral submissions as follows:
 1. Having not been provided access to inspect the property for some time, the Applicant's agent emailed the Respondent in or around January 2018 asking if all was well.
 2. The Respondent responded to say that there was a problem with damp. At the same time, the Respondent contacted the local authority on the same issue.
 3. The Applicant's agent was then afforded an opportunity to inspect the Property. She described the Property as a top floor flat in which the Respondent had failed to open windows to provide natural ventilation. The Respondent had also been smoking heavily with evidence of this being the smell and overflowing ashtrays. The Applicant's agent was satisfied from a visual inspection that it was not damp but condensation forming due to the lack of ventilation. The Applicant's agent advised the Respondent to open windows.
 4. Further to the inspection, the Applicant's agent nonetheless instructed AHR Crossan and Co of Dumfries, a firm of surveyors, to inspect the Property. They reported on 30 January 2018 that the "heavy condensation" was "a result of the lifestyle habits of the current tenants" and "reasonable steps to reduce humidity within the building shell have not been exercised". They also reported that "smoke alarms

have been removed by the tenants” and that there was a “build up of nicotine staining on the Kitchen ceiling and [a] heavy smell of tobacco in the main Bedroom” (all *sic*).

5. The Applicant’s agent thereafter instructed Keith Wells Joiners Ltd to attend and in their invoice of 3 February 2018 they reported cleaning “affected areas with fungicidal wash” and that they “paint[ed] areas with stain block”. The joiners also commented that “mould will return if tenant does not take appropriate steps to prevent it”. The joiners invoiced £400 plus VAT to the Applicant’s agent.
7. The Applicant’s agent referred me to the lease as evidence that the Respondent’s actions being in breach of the lease provisions and the joiner’s invoice therefore being recoverable as damages from the Respondent.
8. The Applicant’s agent confirmed that the Respondent left the Property voluntarily, after expiry of a Notice to Quit, in or around April 2018. The Applicant’s agent confirm that, though further works had been carried out after repossession, no further claim for the costs of such works was sought.
9. The application did not seek interest on the arrears and the Applicant’s agent confirmed no order for interest was being made. The Applicant’s agent confirmed no order in respect of expenses was to be made.

Findings in Fact

10. On 10 May 2017, the Applicant let the Property to the Respondent by lease (stating it was a Short Assured Tenancy) with a start date of 26 May 2017 and an end date of 27 November 2017 to continue month to month thereafter (“the Tenancy”).
11. Under the Tenancy, the Respondent was to make payment of £525 per month in rent to the Applicant on the 26th of each month.
12. As of 13 March 2018, there was unpaid rent of £2,100 due by the Respondent to the Applicant in terms of the Tenancy, being unpaid rent due on 26 November 2017, 26 December 2017, 26 January 2018 and 26 February 2018.
13. On 13 March 2018, the Applicant raised proceedings for an order for payment of rent arrears of £2,100 and made further reference to the damages arising from the condition the Respondent had kept the Property.
14. On 24 May 2018, Sheriff Officer’s acting for the Tribunal served intimation of the CMD upon with Respondent with a copy of the application and supporting papers and correspondence.

15. The Respondent provided no evidence of payment of any part of the said unpaid rent of £2,100.
16. The terms of the Tenancy included:
 1. Clause 10.4: "The Tenant agrees to take reasonable care of the accommodation and any common parts, and in particular agrees to take all reasonable steps to (i) keep the accommodation adequately ventilated and repaired... [and] (vii) not interfere with the smoke detectors, heat detectors or the fire alarm system"; and
 2. Clause 10.11: "Smoking is not permitted within the property".
17. The Respondent smoked, or allowed others to smoke, within the Property. The Respondent failed to take reasonable care of the accommodation and keep it adequately ventilated. The Respondent removed smoke detectors from the Property. Through these actions, the Respondent was in breach of the terms of the Tenancy.
18. Further to the Respondent's breaches of the Tenancy, the Respondent's actions caused a build up of condensation which led to staining from mould. Staining due to tobacco smoke was also caused.
19. Through the Respondent's said breaches of the Tenancy, the Applicant incurred costs of contractors mitigating the effect of condensation and staining in the amount of £480 (inclusive of VAT).
20. The costs of £480 were reasonably incurred by the Applicant and form the Applicant's reasonable loss and damage arising from the Respondent's breach of contract.

Reasons for Decision

21. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the submissions provided by the Applicant's agent at the CMD, that rent arrears of £2,100 were outstanding as at the date of the CMD and that the damages of £480 were recoverable.
22. The application having been raised for £2,100 of arrears and with further reference to the joiner's invoice, all of which was included within the papers intimated to the Respondent, I was satisfied that the necessary level of evidence for such civil proceedings had been provided. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum sought of £2,580 against the Respondent.

Decision

In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment

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.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

J Conn

Legal Member/Chair

Date

14 June 2018