Housing and Property Chamber
First-tier Tribunal for Scotland

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/18/0727

Re: Property at 8A Orbiston Drive, Clydebank, G81 5DR ("the Property")

Parties:

A & M Properties(Glasgow) Ltd, 27 Dowanhill Street, Glasgow, G11 5QR ("the Applicant")

Mr John Monaghan, Mrs Julie Monaghan, 84 Kirton Avenue, Glasgow, G13 3AB; 84 Kirton Avenue, Glasgow, G13 3AB ("the Respondent")

Tribunal Members:

Neil Kinnear (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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

Background

This is an application for a payment order dated 27th March 2018 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought payment of arrears in rental payments of £1,924.80 in relation to the Property from the Respondents, and provided with its application copies of the short assured tenancy agreement, forms AT5, rent arrears statement, various correspondence and e-mails between the parties, inventory, list of damages and costs, and photographs taken of the property.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Hearing

A hearing was held on 15th October 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared represented by one of its Directors, Mrs Halsey. The First Respondent appeared, but was not represented. He indicated that he wished to represent himself. The Second Respondent, who is married to the First Respondent, did not appear, and the First Respondent indicated that the Second Respondent wanted him to appear on her behalf.

The Applicant and the First Respondent both gave evidence. The Tribunal found them both to be credible and reliable witnesses. They both gave their evidence in a clear and straightforward manner, and the Tribunal accepted the evidence which they both gave.

From a preliminary discussion between the Tribunal and the parties undertaken before the parties gave evidence, the parties both helpfully clarified the areas in dispute, which greatly focused the issues upon which they disagreed. The dispute ultimately concerned the quantification of the claim by the Applicant, and not the principle of whether it was entitled to payment in principle upon the various grounds it relied upon.

The Applicant in preparing for the hearing had re-calculated the amount of its claim to a total of £1,704.79.

Mrs Halsey gave evidence in support of that figure with reference to the papers and photographs which she had lodged. As much of what she stated was accepted by the First Respondent in his evidence, there is little purpose in us repeating at length all that Mrs Halsey said.

In summary, the evidence she gave was that the sum sought was calculated in the following way:

1) The Respondents were in rental arrears of £1,223.84. In terms of the tenancy agreement, the Respondents were obliged to give notice of their intention to quit the premises at least one month in advance of the *ish* of 21st November 2017. They in fact left the premises on 4th August 2017, after giving approximately one week's notice of their impending departure date.

   As a result, in terms of the tenancy agreement, the Respondents remained liable for the rental until the landlord located a replacement tenant, and that new tenant commenced occupation of the premises. Mrs Halsey gave evidence that the Applicant located a replacement tenant, who commenced occupation of the premises on 8th September 2018.

The Applicant provided a rent arrears calculation to 8th September 2018 disclosing rental arrears of £1,223.84 calculated on the above basis. The First Respondent accepted this amount was due after hearing Mrs Halsey's evidence explaining how it was calculated under reference to the tenancy agreement, and the Tribunal was also satisfied with this evidence.

2) In addition to the rental arrears, the Applicant sought payment of other damages and costs arising under the tenancy agreement which totalled £1,155.96.

Mrs Halsey gave evidence relating to all of these, most of which the First Respondent again accepted after hearing Mrs Halsey's explanations relating to those, save in respect of five items to which we shall return.

The items which the First Respondent accepted were due by the Respondents to the Applicant in terms of the tenancy agreement were carpet cleaning charges at £60 (receipt provided); property cleaning services at £130 (receipt provided); cost of bicarbonate of soda used to eliminate dog odours from carpeting at £30.99 (receipt provided); three visits by the Applicants' staff to apply the bicarbonate of soda at £90 (no receipt provided); and administration charges relating to the finding of a replacement tenant on the part of the Applicant at £150.00 (no receipt provided).

There were three items which the First Respondent accepted the Respondents were liable for under the tenancy agreement, but where he disputed the amount claimed. These items were as follows.

Firstly re-decorating charges for re-painting the Property. Mrs Halsey gave evidence that many of the rooms required re-painting due to numerous deep scrapes, scuffs and drawings (made by the Respondents' young children) on the walls. She explained that this work needed to be done swiftly in order to prepare the Property for viewings by prospective new tenants. The Applicant provided a receipt from a decorating firm disclosing charges in this respect of £439.97.

The First Respondent accepted that the work was required, and that the Respondents were responsible for the cost of those, but contended that the charge was excessive and that a reasonable figure for this work would have been £220.00. He gave evidence that he was a joiner and involved in the construction trade, giving him knowledge of what reasonable rates for this work might be.

Secondly, the Applicant sought £45.00 in respect of supplying and fitting of a replacement toilet seat in the downstairs bathroom. The First Respondent felt that this was normal wear and tear for which the Respondents should not be liable, but that if they were a charge of £20.00 would be a reasonable figure for this.

Thirdly, the Applicant sought £70.00 in respect of supplying and fitting replacement locks to both the front and back doors, which were required as a

result of the Respondents losing one of the two keys provided to them. The First Respondent accepted that the Respondents had lost one set of keys, and that as a result the locks needed to be replaced for security reasons, but that a reasonable charge for this would be £50.00.

Finally, there were two items which the First Respondent did not accept as legitimate charges under the tenancy agreement. The first was a charge for garden maintenance at £40 (receipt provided, relating to grass cutting, garden tidying and removal of items left therein), and the second for replacement of three broken venetian blinds at £100.00 (no receipt provided as the tradesman who carried out the work failed to provide one despite reminders to do so, blinds damaged by plastic slats being snapped and broken).

With regard to the garden maintenance charges, the First Respondent felt that the grass was no longer than when the Respondents took entry, and accordingly that they had fulfilled their obligations to maintain the Property and leave the same in the same condition as when they took entry. He stated that the rubbish left in the garden had been left by other neighbours.

With regard to the blind replacement, the First Respondent accepted that three blinds had been broken during the Respondents' occupation of the Property. He felt that the blinds were of poor quality, and that these breakages counted as fair wear and tear.

3) Mrs Halsey gave evidence that from the sum sought in paragraph 2 above needed to be deducted the deposit paid by the Respondents of £675.01, which amount the Applicant had retained towards the costs narrated in paragraph 2 above.

Statement of Reasons

Section 16 of the Housing (Scotland) Act 2014 provides as follows:

"16. Regulated and assured tenancies etc.
(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2)But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments."

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental, damages and charges against a tenant (such as the Respondents) under a short assured tenancy such as this.

The Tribunal considered the disputed items narrated above and reached the following conclusions thereon:

1) In relation to the re-decorating charges, the Tribunal accepted that the charges paid by the Applicant, and for which a receipt was provided from a professional decorating firm, were reasonable in light of the evidence which both parties accepted of the work which was required, and we therefore accept the figure of £439.97 sought.

2) In relation to the supplying and fitting of a replacement toilet seat in the downstairs bathroom, the Tribunal accepted that in terms of clause 8 of the tenancy agreement the Respondents were obliged to leave the Property in the same condition as when they took entry, as contended by the Applicant. However, clause 4 of the tenancy agreement provides an obligation on the tenant to replace or repair any of the contents of the Property "fair wear and tear excepted". Further, clause 9 of the tenancy agreement provides that the landlord is obliged to keep in repair and proper working order certain items which include sanitary wear (in our view this would include a toilet seat).

   In our view, in the context of a family home for a family with young children, a toilet seat becoming loose off its mounting and needing replacement is "fair wear and tear", and is also an item which would fall under the landlord's repairing obligation. That being so, we will not allow that item of expenditure sought by the Applicant.

3) In relation to the supplying and fitting of replacement locks to both the front and back doors, the Tribunal accepted (as did the First Respondent) that this work was necessary and recoverable in terms of the tenancy agreement from the Respondents. However, in the absence of receipts, and standing that this work was carried out by the Applicant's own staff, we felt that a charge of £50 as suggested by the First Respondent would be a reasonable amount to allow in this respect.

4) In relation to the garden maintenance charges, the Tribunal accepted that it was reasonable for the Applicant to have the grass cut and the garden tidied, in circumstances where the First Respondent accepted he had not done so before leaving the Property. We further noted from the photographs that there were items left in the garden (whether these were left by the Respondents or by others as the First Respondent maintained), which required to be cleared. We felt that the charge of £40 sought by the Applicant in this regard was a reasonable amount to allow in this respect.

5) In relation to the blind replacement, the Tribunal accepted the uncontested evidence that the blinds had been broken by parts of the plastic slats being snapped off. We accept that this work was necessary, and did not accept that these breakages (in contrast to the broken toilet seat referred to above) would amount to "fair wear and tear". We felt that the charge of £100 sought by the Applicant in this regard was a reasonable amount to allow in this respect.

For the above reasons, the sum of £65.00 requires to be deducted from the total sum sought by the Applicant of £1,704.79. That produces a figure of £1,639.79, which is the sum the Tribunal considers is due by the Respondents to the Applicant in terms of the tenancy agreement, and we shall accordingly make an order for payment of that amount for the above-mentioned reasons.

The Tribunal notes that the Applicant's original application form sought contractual interest at the rate of 8% on the sums originally sought, but we were not invited at this hearing by the Applicant to apply such interest to the sum we found to be due after hearing the evidence, and accordingly we have not done so.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondents jointly and severally to the Applicant of the sum of £1,639.79.

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.

Neil Kinnear

15/10/18

Legal Member/Chair **Date**