



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

Case Reference Number: FTS/HPC/CV/18/1172

Re : Property at 2/1, 27 High Street, Rothesay, Isle of Bute PA20 9AS ("the Property")

The Parties:-

Mrs Sandra Chantry, Flat 1/2 , 19 Argyle Street, Rothesay, Isle of Bute PA20 0AU

("the Applicant")

- (1) Mr Paul Anderson, 7 Wilkie House, Townhead, Rothesay, Isle of Bute PA20 9JH**
- (2) Mrs Katrina Anderson, 7 Wilkie House, Townhead, Rothesay, Isle of Bute PA20 9JH**

("the Respondents")

Tribunal Members:

David Bartos (legal member and chairperson)
Gerard Darroch (ordinary member)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the First Respondent shall pay to the Applicant the sum of Six thousand one hundred and forty Pounds and eighty-six Pence (£ 6140.86) Sterling.

The Tribunal refused the claim of the Applicant against the Second Respondent.

BACKGROUND

1. By lease dated 27 July 2015 the Applicant let the Property to the First Respondent. The rent was £ 250 per month payable in advance on the 14th day of each month. The let was furnished. The lease came to an end on 30 January 2018. Until that time the Second Respondent resided with the First Respondent in the Property. The Applicant seeks (1) payment of unpaid rent; (2) payment of council tax; (3) damages for the damage caused to and loss of some of the let moveables in breach of the lease; and (4) damages for non-removal of items from the Property at the end of the let, also in breach of the lease.
2. Alison J. Kelly, a legal member of the Tribunal with delegated powers of the Chamber President decided to refer the application for determination to the Tribunal. That decision was notified by e-mail and post to the Applicant and by sheriff officer to the Respondents, in a letter of the Tribunal's Casework Officer dated 1 October 2018. The notification of the decision to refer for determination included a copy of the application to the Tribunal and invited the parties to lodge written representations with the Tribunal by 16 October 2018. In the event neither party did so.
3. The date and time and place for a case management discussion of the application was notified to the Applicant and to the Respondents in the said letter of 1 October 2018. A case management discussion took place as advised on 18 October 2018 at 10.00 hrs at Gamble Halls, 44 Shore Road, Gourrock. The Applicant appeared at the discussion. There was no appearance by or on behalf of the Respondents. At the discussion the Tribunal noted the disputed issues, required the Applicant to lodge further supporting evidence for the compensation sought, the property damaged or lost and position regarding the council tax claim.
4. At the case management discussion the Tribunal continued the case to a full hearing on 7 December 2018 at the same time and venue. A copy of the note of the case management discussion was served on the Applicant by post on 19 October 2019 and on the Respondents by sheriff officer on 20 November 2018.
5. Due to inclement weather the Applicant was unable to attend the hearing at that date. It was therefore postponed and rescheduled to take place on Friday 11 January 2019 at 10.00 hrs at the same venue. The parties were notified of the fresh date and venue by letters from the Tribunal's Casework Officer dated 17 December 2018. These were served on the Respondents by sheriff officer on 19 December 2018.

Hearing

6. The hearing took place on the notified date, time and place at Gamble Halls, 44 Shore Road, Gourrock at 10.00 hrs on 11 January 2019. The Applicant appeared accompanied by a supporter Mrs Marion Venter. There was no appearance by or on behalf of the Respondents.

The Evidence

7. The evidence before the Tribunal consisted of:-

- The application form, covering letter dated 10 May 2018 from the Applicant, and note numbered D1 prepared by the Applicant
- Copy lease of the Property between the Applicant and the First Respondent dated 27 July 2015
- Copy printed text message from the Applicant to the First Respondent dated 23 November 2017
- Copy simple procedure claim form
- Copy invoice from Hannay Fraser & Co to the Applicant dated 28 February 2018
- Copy Argyll & Bute council statements of account of the Applicant for the Property
- Copy invoice from A&M Removals and House Clearances dated 12 April 2018
- photographs of the Property prior to July 2015
- photographs of the Property taken on 30 January 2018
- copy printout from Curry's website for Hotpoint washing machine
- copy printouts from IKEA website for chest of drawers, table and 4 chairs,
- copy Clydesdale Bank statements
- copy Bank of Scotland statements
- The oral evidence of the Applicant
- The oral evidence of Grace Baxter

8. The Applicant spoke about the various heads of her claim. Her evidence is summarised under the heads in question below. She spoke to the Respondents having changed the locks of the Property and not supplying her with keys for the new locks. She had required to have the locks changed on 30 January 2018 when she gained entry to the Property on the termination of the lease. She explained that she had taken photographs of the Property both before the lease and on 30 January 2018 when she re-entered the Property. The Tribunal found the Applicant credible in her oral evidence. She gave her evidence in a clear and straightforward fashion. The Tribunal accepted it for the purposes of its findings in fact.

9. Mrs Baxter was a friend of the Applicant. She had worked as a home help for about 19 years and had experience of seeing properties in various states of condition. She spoke to the giving of a letter on behalf of the Applicant to the Second Respondent at her place of work at the Factory Shop and to her conversation with the Second Respondent on that occasion. This was in January 2018. She also spoke to the condition of the Property on 30 January 2018.

10. The Tribunal found Mrs Baxter the Applicant credible in her oral evidence. She gave her evidence in a clear and straightforward fashion. The Tribunal accepted it for the purposes of its findings in fact.

Findings of Fact

11. Having considered all the evidence, the Tribunal found the following facts to be established:-

- (a) The Property is a one bedroom flat in Rothesay, Isle of Bute. It comprises a living room, a bedroom, dining kitchen and bathroom. The Applicant is the owner of the Property.
- (b) By lease dated 27 July 2015 the Applicant granted a tenancy of the Property to the First Respondent. The tenancy was furnished. It included a washing machine, kitchen table and four chairs, a chest of drawers in the bedroom, a double bed with bedding, curtains in the bedroom, and carpets in the living room, hallway and bedroom. The First Respondent took entry on the date of entry being 1 August 2015 with the Second Respondent. The lease was for 6 months. It relocated tacitly (re-leased automatically) from the beginning of February 2016 and thereafter until 30 January 2018. It terminated on 30 January 2018. The Respondents had moved out from the Property before that date.
- (c) The unpaid rent and council tax are as set out below;
- (d) The condition of the moveables let with the Property to the First Respondent and the Property itself at the commencement and at the end of the lease was as set out in the evidence of the Applicant and Mrs Baxter noted below.

Reasons for Decision

12. The Tribunal required to decide :

- (1) whether the First Respondent had failed to pay rent when due and if so the quantum of unpaid rent;
- (2) whether the First Respondent had failed to pay council when due and if so the quantum of unpaid council tax;
- (3) whether the First Respondent or Second Respondent had failed to return certain moveable items let with the Property in the same clean state and condition as let;
- (4) what loss, if any, the Applicant had sustained as a result of any such failure;
- (5) whether the First Respondent or Second Respondent had failed to remove their items from the Property and returned the keys
- (6) what loss, if any, the Applicant had sustained as a result any failure to remove or to return the keys

Rent

13. The First Respondent was due to pay rent in advance at the rate of £ 250 per month payable on the 14th day of each month. The Tribunal was satisfied that he had failed to pay any rent due on 14th February, March, April, May, June, November and December 2017 (in respect of the period to 30 January 2018).

He had paid £ 150 towards the rent in October 2017. This left 7 full months of rent unpaid together with £ 100 from October unpaid totalling £ 1850. Accordingly the Tribunal ordered the payment of that amount.

Council Tax

14. The Applicant claimed that the First Respondent was due to pay council tax in respect of the Property. The lease provided in clause 2.2 that the Tenant "will . . . pay all charges in respect of any electric . . . services . . . and Council Tax. . . that might be charged . . . during the Term."
15. The Applicant told the Tribunal that at the outset of the lease she had agreed with the Respondents that they would inform the council as to their taking over of the Property for the purposes of council tax. She had assumed that they had done so. At the end of the lease she had contacted the council to advise them of her resumption of possession of the Property. She was then informed that in fact the Respondents had never registered their name with the council and that she had remained liable for the council tax as owner. The council also provided the Applicant with statements of account showing that she had paid the council tax for the Property by direct debit since the outset of the lease.
16. The Applicant explained that she owned a number of properties and had assumed that the deductions of direct debit were for her other properties. Upon questioning from the Tribunal she admitted that the direct debit deductions on the Clydesdale Bank and Bank of Scotland statements which she had lodged were in fact for these other properties. She told that Tribunal that she had another account with the TSB and that the direct debit must have come from that account.
17. The Tribunal accepted the Applicant's evidence as to payment, supported as it was by the council's statements. The total payments of council made in respect of the duration of the lease amounted to £ 2643.86. In terms of clause 2.2 of the lease the First Respondent had a duty to pay that tax. In those circumstances the Tribunal ordered the payment of that amount.

Moveable Items – failure return in clean state and original condition

18. The lease was of furnished premises. In those circumstances it involved a lease of heritable (immoveable property) and hire of the moveable furnishings. These included :
 - a washing machine
 - a kitchen table with four chairs
 - a chest of drawers for the bedroom
 - a double bed with bedding
 - curtains in the bedroom
 - carpets in the bedroom, hall and living room
 - linoleum/vinyl floor in the kitchen.
19. The lease provided in clause 2.4 that the Tenant :

“will yield up the Property with full vacant possession and all and any contents belonging to the Landlord at the end of the Term in the same clean state and condition they were in at the beginning of the Term (reasonable wear and tear and damage by insured risks excepted).”.

It was in any event an implied common law duty of the First Respondent as tenant to take due care for the hired moveables.

Washing machine

20. The Applicant explained that she had let the Property with a washing machine from about 2006. On recovering the Property she found that it had been moved into the centre of the kitchen area and replaced by a machine installed by the Respondents without her knowledge. She accepted that she had not tried to use the machine to assess its functioning. It seemed “obvious” to her that it did not work. Mrs Baxter explained that she had gone into the Property hours after the Applicant had obtained entry. She confirmed the location of the washing machine. To her it seemed “functional”.

21. The Tribunal found that while the machine had been moved, there was no evidence to show that it was in any worse condition than at the start of the lease fair wear and tear excepted. In these circumstances the Tribunal was unable to find any breach of the lease. It therefore made no award of damages for the washing machine.

Kitchen Table and Chairs

22. The Applicant spoke to having let the Property with a table and four chairs in the kitchen near the wall. On having re-entered the Property these were missing. She had not replaced them and her succeeding let was unfurnished. She estimated a replacement cost for these items of £ 90 based on the IKEA advertisement.

23. The Tribunal accepted the Applicant’s evidence. It found that the absence of the table and chairs amounted to a breach of clause 2.4 by the First Respondent. It also found that the figure of £ 90 was a reasonable estimate of the loss suffered by the Applicant as a result. It therefore awarded that as damages.

Chest of Drawers in Bedroom

24. The Applicant spoke to having let including a chest of drawers from IKEA in the bedroom. On re-entering the Property this had been moved to the kitchen. Its drawers were damaged and unusable. A photograph demonstrated that the drawers could not be closed. The chest of drawers had required to be disposed of. She had not replaced it and her succeeding let was unfurnished. She estimated a replacement cost of £ 100 based on an IKEA advertisement.

25. The Tribunal accepted the Applicant’s evidence. It found that the condition of the chest of drawers amounted to a breach of clause 2.4 by the First

Respondent. It also found that the figure of £ 100 was a reasonable estimate of the loss suffered by the Applicant as a result. It therefore awarded that as damages.

Bed and Bedding in Bedroom

26. The Applicant spoke to having left a double bed with mattress in the bedroom at the outset of the lease. She had supplied new pillows. On re-entering the room, she had found that the bed was piled with rubbish. There was an awful smell in the room. She had disposed of the bed and bedding including the pillows and mattress. She estimated that a replacement cost would be £ 200. Mrs Baxter said that in her 19 years of experience as a home help she had never come across such a filthy and cluttered flat. Rubbish was lying scattered throughout the flat. She couldn't see much of the bed as it was covered in rubbish.
27. The Tribunal accepted the evidence of both the Applicant and Mrs Baxter. It found that this amounted to a breach of clause 2.4. Given the smell in the room and rubbish there it was reasonable for the Applicant to dispose of the bed and related bedding. It also found that £ 200 was a reasonable estimate of the value of the damaged bed and bedding and awarded damages in that sum.

Curtains in Bedroom

28. The Applicant spoke to having let the bedroom with curtains. These had black and red horizontal stripes on a light colour. On recovering possession these were still there although they were partly hanging off their fixings. She wouldn't have kept them in any event. Mrs Baxter confirmed this and added that the curtain rail had been pulled away. No claim was however made for the curtain rail.
29. The Tribunal found that there was no evidence tending to show any deterioration in the condition of the curtains. It found no breach of clause 2.4 or indeed the common law duty and awarded no damages

Carpets and Linoleum

30. The Applicant spoke to having let the Property with carpets in the hall, bedroom and living room and wood-pattern linoleum or vinyl in the kitchen. It had been brand new at the time of letting. On recovering possession the carpets were dirty and the vinyl in the kitchen appeared bad. She had paid £ 797 for replacement carpets and linoleum. At the hearing, for the first time, she sought to lodge an invoice with a receipt in support of this.
31. Mrs Baxter said that the carpets had oil and drinks spilled on them. Much of the living room carpet was not visible due to rubbish. The bedroom carpet was "absolutely filthy". She did not think that the carpets were capable to being cleaned to reach an acceptable standard. In the kitchen the linoleum was sticky under foot. In addition it had been subjected to the move and

placement of the washing machine which affected it. It was covered in rubbish.

32. The Tribunal was satisfied that there had been a breach of clause 2.4 by the First Respondent in respect of the floor coverings. With regard to their replacement the Tribunal found that this was a reasonable consequence of their condition and the breach of the lease.
33. Given that the Applicant was required by rule 22 of the schedule to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 to lodge all documents (including invoices) no later than 7 days before the hearing, the Tribunal required to be satisfied that she had a reasonable excuse for the late lodging. Given that the need to lodge the receipts "prior to" the hearing had been stated in the note from the Case Management Discussion where the Applicant had been present and which she accepted that she had received the Tribunal found no reasonable excuse to be present and refused to allow the receipted invoice to be lodged.
34. However the Tribunal accepted the Applicant's oral evidence as to the cost of the new floor coverings and found this to be a reasonable estimate of her loss, awarding damages of £ 797.

Failure to clear premises and leave in clean condition

35. It was an implied duty of the tenant under the lease to clear the premises of his belongings when removing at the end of the lease. This was in addition to the express duty in clause 2.4.
36. The Applicant spoke to the presence of rubbish in all of the rooms on her re-entry, together with various other items of the Respondents scattered in the Property. All of these had required to be removed together with the Respondents' washing machine. She had hired Mr Ewing of A & M to remove these items together with her own damaged items and paid him £ 420 as per his invoice. She had also instructed a Mrs Howat to clean the Property but was not worried about claiming that cost.
37. Mrs Baxter spoke to rubbish lying all over the Property including lager can, wine bottles, milk bottles, and sundry items such as a motor-cycle helmet and a chain saw. The Applicant produced photographs showing large amounts of rubbish in every room on the floor, on worktops and other furniture.
38. The Tribunal found that in respect of the failure to clear the Property of rubbish and other items of the Respondents there had been a breach of both clause 2.4 and the common law duty of a tenant. This had caused the incurring of the removal costs of £ 420 for which the Tribunal awarded damages. No sum was awarded in respect of cleaning. There was no vouching of that cost and in any event cleaning following the removal of any tenant might reasonably be expected.

Decorating

39. The Applicant claimed damages of £ 600 in respect of decorating following the Respondents' departure. However she did not produce any receipt in support of this figure.
40. The Tribunal found that there was no evidence of any breach of the lease which had the result of causing the need to redecorate the Property. Accordingly it awarded no damages under this head.

Failure to return keys

41. It is an implied duty of a tenant to return the keys to the landlord at the end of the tenancy. This is in addition to the duty under clause 2.4.
42. The Applicant explained that the Respondents had changed the locks of the Property without supplying her with keys. She had required to pay £ 40 to Mr Dougie Craig to have the locks changed to gain re-entry at the end of the lease. Mrs Baxter told the Tribunal that when she had handed over the letter to the Second Respondent on behalf of the Applicant she had asked her for the keys on behalf of the Applicant. The Second Respondent had said that she would supply them but as far as she was aware this had not taken place.
43. The Tribunal accepted the evidence of the Applicant and Mrs Baxter. It found that there has been a breach of both clause 2.4. and the implied duty and that this had caused the cost of lock replacement. It awarded damages therefor of £ 40.

Lawyer's Fees

44. The Tribunal was invited by the Applicant to award damages for her bill of £ 192 to Messrs Hannay Fraser & Co, solicitors. That invoice was for services advising her in connection with rent arrears and the service of a notice to quit and statutory notice.
45. The Tribunal found that neither of these services had been caused by any breach of the lease. Accordingly no damages in respect of the bill were due.

Conclusion

46. The Tribunal found that the First Respondent was liable to pay to the Applicant (1) £ 1850 in respect of unpaid rent; (2) £ 2643.86 in respect of unpaid council tax; and (3) a total of £ 1647 in respect of damages (compensation) for losses caused by breaches of the lease.
47. The Tribunal found that the Second Respondent, not being a tenant under the lease, was not liable to the Applicant.
48. The decision of the Tribunal was unanimous.

Outcome

The First-tier Tribunal for Scotland (Housing and Property Chamber) orders the Respondent to pay to the Applicant the sum of **Six thousand one hundred and forty Pounds and eighty-six Pence (£ 6140.86) Sterling.**

The Tribunal refused the claim of the Applicant against the Second Respondent.

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 this decision was sent to them.

D.Bartos

Legal Member/Chair

11 January 2019
Date
