



**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 (Act)**

Chamber Ref: FTS/HPC/CV/18/3093

Re: Property at 28D Highholm Street, Port Glasgow, PA14 5HL (“the Property”)

Parties:

Chesnutt Skeoch Ltd, 30 East Main Street, Darvel, KA17 0HP (“the Applicant”)

**Ms Skyler Jade June Watt, 0/2, 50 St Lawrence Street, Greenock, PA15 4ST
 (“the Respondent”)**

Tribunal Members:

Alan Strain (Legal Member) and David Wilson (Ordinary Member)

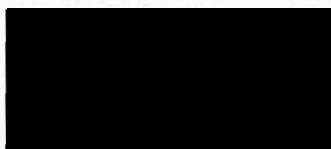
Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay to the Applicant the sum of £3,915.00

Background

This is an application in respect of a payment order for rent arrears, damages and repairs following termination of an assured tenancy under the Housing (Scotland) Act 1988 and Rule 70 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) (Regulations)*. The application is resisted by the Respondent. The Respondent is represented by the Legal Services Agency.

The application had called for a Case Management Discussion (CMD) on 22 January 2019. The Respondent’s representatives had lodged written submissions in advance of the CMD which sought to argue that the assured tenancy was void due to legal incapacity of the Respondent and also challenged liability and quantum of the repairs. The Respondent was said to have learning difficulties.



The Tribunal issued a Direction following the CMD which required the Respondent to provide a copy of the tenancy she had entered in to in respect of her current address and confirmation of what support she receives currently from any agencies or the local authority. Such documentation was to be provided by 19 February 2019.

By email of 28 March 2019 the Respondent's representatives forwarded a copy of the Respondent's current Scottish Secure Tenancy Agreement signed and dated by her on 22 February 2018.

By email of 3 May 2019 the Respondent's representatives forwarded Written Submissions and an Inventory of Productions which contained the following:

1. Redacted letter from Inverclyde Health and Social Care Worker dated 15 February 2019;
2. Redacted Clinical Psychology Report dated 28 November 2017;
3. Five Copy Cases Reports;
4. Precognition of Helen McHugh dated 3 May 2019.

The Submissions were on the following basis:

- (a) the assured tenancy was voidable due to facility and circumvention and that the assured tenancy should be reduced;
- (b) the Applicant had received payment in respect of the rent from the Department for Work and Pensions (**DWP**);
- (c) the Applicant had failed to mitigate loss;
- (d) the various invoices/receipts lodged by the Applicant failed to give sufficient specification of the matters that required repair; the Respondent was not liable for the damages and the amount sought was excessive.

In addition the Respondent's representatives sought the Tribunal's consent for the Respondent to give her evidence by telephone and not to have to attend or be present or listen to a particular witness if that witness gave evidence.

Given the detail of that request the Tribunal granted the Respondent's request in advance of the Hearing.

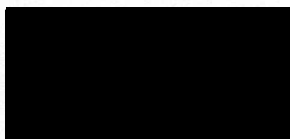
Hearing

The case called for a Hearing on 13 May 2019. The Applicant was represented by Mr Johnstone (Director of the Applicant). The Respondent attended by telephone and was represented by her solicitor, Mr Christman, at the Tribunal.

Preliminary Matters

(i) Respondent's attendance by telephone

Mr Johnstone objected to the Respondent giving evidence by telephone. He explained that the Applicant had not received notification of this request and would have objected on the basis that it was not known who was with the Respondent and what prompting or assistance she may be given.



After enquiry it was ascertained that the Respondent's support worker (Ms Aileen Dean) was in attendance with her but that she would not take any part in the proceedings.

The Tribunal adjourned to consider the objection. The Tribunal considered that it was in accordance with the overriding objective and the interests of justice to permit the Respondent to give her evidence in this way given the detail of the request. The Tribunal reconvened and advised the Parties accordingly.

(ii) Clarification of the issues

The Tribunal enquired whether the defence of lack of capacity to contract was being departed from by the Respondent.

The Respondent's representative confirmed that the evidence obtained did not support this submission and accordingly it was no longer being insisted upon. The Respondent was now going to advance an argument that the assured tenancy was voidable due to facility and circumvention and ought to be reduced.

The Tribunal noted this change in position.

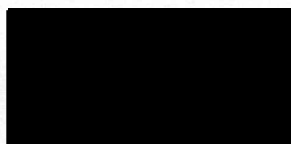
(iii) Jurisdiction

In light of the new argument that was being put forward by the Respondent to the effect that the assured tenancy should be reduced the Tribunal asked the Respondent's representative to address it on why he considered the Tribunal had jurisdiction to deal with an application for reduction of an assured tenancy and, if it did, on what basis the Tribunal could deal with such an application at this stage given that no application had been lodged by the Respondent to that effect. This was a matter that had been raised at the eleventh hour as a defence.

The Tribunal asked the Respondent's representative to have regard to the Tribunal's jurisdiction which flows from section 16 of the Act and Rule 70 of the Regulations. In particular, the words "*actions arising from the following tenancies...*".

At this point the Respondent's representative sought to adjourn the Hearing to another date so he could consider the matter and take instruction. The Tribunal considered and rejected this request. The Tribunal was of the view that the argument had been put forward on the Respondent's behalf and that the legal basis of such a claim should have been considered before putting such a claim forward. Further, there would clearly be prejudice, delay and expense if the Hearing was adjourned to a later date. The Tribunal did not consider that it was in accordance with the overriding objective to adjourn and that the matter ought to be dealt with at the Hearing. The Tribunal afforded the Respondent's representative time to consider the position and then to address the Tribunal.

After a short adjournment the Tribunal reconvened and heard the Respondent's submissions to the effect that the Tribunal had jurisdiction under Rule 70 and that, whilst no authority could be identified for the proposition, his understanding was



there was Sheriff Court authority that the Tribunal should deal with fundamental issues raised without the need for a separate application.

The Tribunal adjourned to consider the submissions on these points. After considering the issues the Tribunal reconvened and informed the Parties:

1. The Tribunal did not have jurisdiction to deal with an action for reduction. The reason for this being that section 16 had transferred the jurisdiction of the Sheriff Court in respect of actions *arising from* assured tenancies to the Tribunal. The Tribunal did not consider that an action for reduction was an action arising from an assured tenancy under section 16 of the Act; and

2. Even if the Tribunal did have jurisdiction it could not deal with the claim as no application had been made on the Respondent's behalf under Rule 70 to do so.

The Tribunal informed the Parties that the claim to reduce the assured tenancy could not proceed. The Hearing would proceed on the basis of considering the following points:

- (a) the Applicant had received payment in respect of the rent from the Department for Work and Pensions;
- (b) the Applicant had failed to mitigate loss;
- (c) the various invoices/receipts lodged by the Applicant failed to give sufficient specification of the matters that required repair; the Respondent was not liable for the damages and the amount sought was excessive.

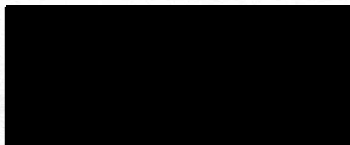
Evidence

The Tribunal had regard to the following documents:

- 1. Application dated 15 November 2018;
- 2. Assured Tenancy dated 18 November 2017;
- 3. AT5 date 18 November 2017;
- 4. Photographs taken by the Applicant's Mr Johnstone;
- 5. Statement of Rent Arrears;
- 6. Invoices dated 13 March, 23 March and 9 April all 2018;
- 7. Written Submissions dated 18 January 2019;
- 8. CMD Note and Direction dated 22 January 2019;
- 9. Scottish Secure Tenancy dated 22 February 2018;
- 10. Written Submissions dated 3 May 2019;
- 11. Redacted letter from Inverclyde Health and Social Care Worker dated 15 February 2019;
- 12. Redacted Clinical Psychology Report dated 28 November 2017;
- 13. Five Copy Cases Reports;
- 14. Precognition of Helen McHugh dated 3 May 2019.

(i) mitigation of loss

The Tribunal heard from Mr Johnstone on behalf of the Applicant. His evidence was that the Applicant had entered in to the assured tenancy with the Applicant on 18



November 2017. The tenancy was the period of a year expiring on 17 November 2018. The Respondent had left without giving notice and the Applicant had done what it could to relet the Property. It had appointed Jewel Homes to market it and Right Move. The market was not good and it had taken until February 2019 to get new tenants.

(ii) DWP

The Applicant had pursued the DWP in the Sheriff Court initially in respect of their failure to pay benefit in respect of rent (due under a Universal Credit Application made by the Respondent) to the Applicant. Payment had been made directly to the Respondent and not passed on to the Applicant. Further, the application for Universal Credit was superseded on the grounds that the Respondent had moved home and benefit was being paid in respect of her new tenancy.

Mr Johnstone stated that the Applicant had recovered the sum of £560 and costs. He stated that this was in respect of damages against the DWP for the losses they had occasioned the Applicant. He sought to argue this was distinct from rent and included loss of management time and so on.

(iii) Invoice for £75

In so far as the repairs were concerned the invoice/receipt for £75 (dated 13 March 2019) was in respect of the cost of replacing the lino in the kitchen damaged by the Respondent when her washing machine leaked.

(iv) Invoice for £150

The invoice/receipt /dated 23 March 2019 was for removal of debris and cleaning in the sum of £150. Mr Johnstone explained the Property was left in a state, there was rubbish lying around that required removal and the Property needed a lot of cleaning. He referred to some photos showing for example a table that required removal and other debris.

(v) Invoice for £225

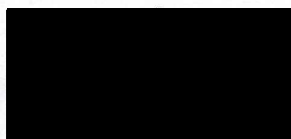
This invoice/receipt was in respect of repairing damage to the Property and redecoration. Mr Johnstone explained that the Respondent had drilled many holes in the walls which had required filling and redecoration. There were also scuff marks on many of the walls which required redecoration.

Mr Johnstone was cross examined by the Respondent's representative.

The Respondent then gave her evidence which was to the effect that the Property had been left clean and tidy and there was no furniture left behind. She accepted that holes had been made in the walls by her former partner.

Submissions

Applicant



The Applicant sought payment of the rent arrears in full along with payment of the invoices. The monies received from the DWP were not for rent and should not be deducted.

The Applicant had made every attempt to let the Property but had been unable to do so until February 2019.

The invoices/repairs were necessary due to the state the Property had been left in by the Respondent and the sum sued for was reasonable.

Respondent

The Respondent's representative adhered to the written submissions and argued that the monies from the DWP should be deducted from any award.

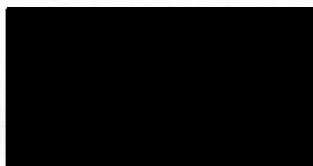
The Applicant had failed to establish on the balance of probabilities that the damage had been caused by the Respondent and what work/repairs it had actually carried out given the lack of detail in the invoices/receipts.

The Applicant had failed to mitigate its loss. There had been no marketing agreement produced or any emails with prospective tenants.

Findings in Fact

In so far as material the Tribunal made the following findings in fact:

1. The Parties entered in to an assured tenancy on 18 November 2017;
2. The tenancy was for a fixed period to 17 November 2018;
3. The monthly rent was £350;
4. No rent had been paid by the Respondent during the tenancy;
5. The Respondent vacated the Property in February 2018 without notice;
6. The Applicant appointed marketing agents (Jewel Homes) immediately following the Respondent's departure;
7. The Property was let to new tenants on 19 February 2019;
8. The Applicant paid for redecoration, cleaning, repairs and materials following the Respondent's departure in the total amount of £450;
9. The Respondent had left moveable property and debris in the Property;
10. The Respondent had damaged the Property by affixing screws on the walls throughout and by a leak from her washing machine which damaged the lino;
11. The Respondent left the Property in an unclean and untidy state;
12. The Applicant received the sum of £560 in respect of damages from DWP from court proceedings against DWP due to their failure to pay Universal Credit to the Applicant in respect of the Respondent's tenancy;
13. The Applicant took all reasonable steps to mitigate loss;
14. The Applicant sustained betterment in the redecoration of the Property to the extent of £25;
15. The sums sought by the Applicant in respect of repairs and damage were reasonable under deduction of £25 betterment.



Decision

The Tribunal carefully considered the evidence before it. The Tribunal found that Mr Johnstone had presented as a credible and reliable witness. He presented his evidence in a straight forward and professional manner. Where his evidence conflicted with that of the Respondent the Tribunal preferred his evidence.

The Respondent accepted the assured tenancy had been entered in to, she had left in February 2018, had not paid rent and that there had been damage to the walls. The Tribunal did not accept her evidence that the Property had been left in a clean and tidy state or that she had not left any furniture in it.

The Tribunal considered and accepted that the Applicant had taken all reasonable steps to mitigate its loss by the appointment of marketing agents. It was unfortunate that no new tenants had been forthcoming until February 2019 but this was not due to any lack of effort on the part of the Applicant.

The Tribunal accordingly found that the entirety of the rent was due as the Applicant's measure of loss. This amounted to £4,200.

The Tribunal considered that the monies recovered from DWP in the court action at the instance of the Applicant could only be in respect of the failure to pay benefit in respect of the Respondent's liability for rent to the Applicant and that this should be deducted from any monies awarded by this Tribunal to the Applicant. The Tribunal accordingly deduct the sum of £560 from the monies due to the Applicant.

The Tribunal found that the monies spent in respect of the 3 invoices/receipts were reasonable and incurred entirely as a consequence of the actings of the Respondent whilst a tenant.

The Tribunal did consider and find that the Applicant sustained a degree of betterment as a consequence of the redecoration of the Property. The Tribunal reduced the amount recoverable by £25 accordingly.

The total amount due in respect of the invoices/receipts was £425.

In total, the Tribunal make an award of £3,915.00.

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.



Legal Member/Chair

17 May 2019

Date