



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) 2016 Act**

**Chamber Ref: FTS/HPC/CV/19/2370**

**Re: Property at 24 Burnhall Road, Wishaw, ML2 8DG (“the Property”)**

**Parties:**

**Ms Susie Clark, 4 Wyatt Way, Chad, Somerset, TA20 1EG (“the Applicant”)**

**Mr Gary Martin, whose present whereabouts are unknown (“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 was 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 appeared to be a Short Assured Tenancy of the Property by the Applicant to the Respondent and his wife Kelsie Martin commencing on 23 February 2018.
- 2) In response to a request for information, the Applicant's representative confirmed that the application was not being raised against Kelsie Martin as she was not believed to be currently in employment.
- 3) As explained further below, during the case management discussion (“CMD”) it was clear that tenancy was in the wrong form and that, due to the date of commencement, it could only be a Private Residential Tenancy (“PRT”). I

allowed an amendment of the application for it to proceed further in terms of rule 111, namely an order for payment in respect of a PRT.

- 4) The application was dated 27 July 2019 and lodged with the Tribunal shortly thereafter. The application was accompanied by a rent statement, photographs, invoices, and text messages as vouching. The lease for the tenancy accompanied the application and detailed a rental payment of £650 payable in advance on the 23<sup>rd</sup> of each month. The lease confirmed that the tenants were jointly and severally liable and thus the application could competently be sought against the Respondent solely.
- 5) The application expressly sought an order for £1,440 for rent arrears and £2,495.50 in damages (though the latter figure appears to have a small typographical error) made up as follows:
  - a) £1,440 for unpaid rent;
  - b) £270 for changing of locks;
  - c) £360 for painting;
  - d) £1,349.50 for replacement carpets;
  - e) £386 for replacement of a bath; and
  - f) £140 for cleaning.

### **The Hearing**

- 6) On 20 November 2019, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Glasgow Tribunals Centre, I was addressed by the Applicant’s letting agent, Ian Pittams of Premier Property Letting & Management of Hamilton. There was no appearance by the Respondent.
- 7) Service by Advertisement had been sought by the Applicant in the application. It had been granted and undertaken. A Certificate of Service by Advertisement was prepared by the Tribunal’s clerk and provided to me.
- 8) As of 10:07, 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.
- 9) The Applicant’s representative confirmed that the orders were still sought and I took the Applicant’s representative through the claims in the application, seeking clarification and further submissions.
- 10) Regarding the lease itself, the Applicant’s representative explained that he had taken over management of the Property in November 2018 having bought a business from a previous letting agent. He accepted that the previous letting agent had failed to provide the correct lease and accepted the lease was actually a PRT. I allowed an amendment of the application and transfer to rule 111.

- 11) In regard to the rent arrears sought of £1,440, I clarified with the Applicant's representative as to how this sum was reached. The application and supporting papers set out that it was an unpaid balance of £490 for the rent due on 23 April 2018 with the additional of missed rent payments of 23 October and 23 November 2018 (each of £650), less a deposit recovered of £350. The Applicant's representative confirmed this arithmetic.
- 12) In regard to the claim for £270 for changing of locks, the Applicant's representative described that he had visited the Property over a number of days in late December 2018. The Property appeared abandoned, with lights off, post accumulating, and no apparent heating on. He held no spare set of keys. Around this time he was attempting to agree obtaining keys and confirmation that the Property with the Respondent. (Undated texts referring to surrender of keys was produced in the application papers.) On a visit of 20 December 2018 he heard water running, apparently in the upstairs bathroom. He was concerned of a burst pipe and took advice from his representative organisation who advised that he could take emergency access given the apparent abandonment of the Property and risk of burst pipe. He did so, with the assistance of a locksmith. The application included an invoice from Moclocks & Son Ltd of Hamilton for £270 (£225 plus VAT) dated 20 December 2018.
- 13) The Applicant's representative explained that, having taking access, he found that tenants had left the Property with cold tap running in the bath but there were no burst pipes. The Applicant's representative stated that it was unusual to require to change locks, as most tenants will surrender all their keys but the tenants had failed to do so in this case..
- 14) In regard to the claim for £360 for painting, the application contained photographs of damaged walls and ripped wall paper. It also referred to water ingress regarding the bath replacement (referred to further below). The application provided an invoice from a painter (Ivo Sokolov) for £360 dated 7 January 2019. The Applicant's representative confirmed that the painter repaired some of the walls and the damage in the kitchen from water ingress but that the Applicant and her family did painting themselves during the festive period in 2018/2019. The Applicant did not seek costs of the materials she had herself used.
- 15) In regard to the claim for £1,349.50 for replacement carpets, the Applicant's representative explained that all the carpets had been removed. Some of the photographs showed bare floorboards in the rooms. The Applicant's representative candidly admitted that, due to the poor record keeping of the previous letting agent, he was unaware of the condition or age of the carpets at the commencement of the Tenancy. The application papers included an invoice from West Cross Carpets of Wishaw dated 23 December 2018 for supply of carpet, underlay, and door bars for three rooms, plus fitting. This totalled £1,349.50. The carpets were all £9.50 per square metre.
- 16) In regard to the claim for £386 for replacement of a bath, the Applicant's representative explained that on taking access on 20 December 2018 he found

a hole high up the side of a bath in the upstairs bathroom. This hole had been poorly covered over with self-adhesive tape. The application papers included a photograph which appeared to show this. The Applicant's representative explained that this hole had allowed water ingress into the kitchen and that, on taking advice from a plumber, he accepted the advice that only a full replacement of the bath was appropriate (as any attempted fix of the hole risked future failure and further water ingress). The Applicant's representative confirmed that neither the hole nor water ingress had been reported by the tenants prior to vacating the Property. The application included an invoice for £386 from McCare Plumbing & Heating Ltd dated 25 January 2019 for replacement of the bath.

- 17) On questioning from myself, the Applicant's representative accepted that accidents can occur and candidly confirmed that, with a well-performing tenant, he may discuss with the landlord whether the full cost of the repair should be recharged to a tenant from an accidental damage. In the circumstances of the Respondent's poor level of care for the Property, and the lack of information as to how the hole had been formed, the Applicant's representative thought the tenant should bear the whole cost of replacing a bath in this case.
- 18) In regard to the claim for £140 for cleaning, the photographs provided included a number of significant dirty remaining in the kitchen and the Applicant's representative portrayed the Property as having been generally left in a poor and dirty condition. The application included an invoice for £139.50 from Claire's Cleaning Services of Motherwell dated 21 January 2019 for "9hrs Cleaning".
- 19) The application did not seek interest on the arrears under any contractual provision. No motion seeking expenses was made.

### **Findings in Fact**

- 20) On 23 February 2018, the Applicant let the Property to the Respondent and Kellie Martin ("the tenants") by lease with a start date of 23 February 2018 ("the Tenancy").
- 21) Properly construed under law the Tenancy is a Private Residential Tenancy and the terms of the Tenancy, where compatible with the provisions of the Private Housing (Tenancies) (Scotland) Act 2016, are the terms of the Tenancy.
- 22) The Tenancy provided for joint and several liability of the tenants within the final section headed "INTERPRETATION".
- 23) Under the Tenancy, in terms of clause 5, the tenants were to make payment of £650 per month in rent to the Applicant in advance, being a payment by the 23<sup>rd</sup> of each month to cover the month to follow.

- 24) As of 23 December 2018, there was unpaid rent £1,790 being made up of an unpaid balance of £490 for the rent due on 23 April 2018, and missed rent payments of 23 October and 23 November 2018 (each of £650)
- 25) In terms of clause 6 of the Tenancy, the tenants paid a deposit of £350 at the commencement of the Tenancy which the Applicant has since recovered and applied against rent arrears.
- 26) The balance of rent arrears due as at the date of the CMD is £1,440.00.
- 27) On 27 July 2019, the Applicant raised proceedings against the Respondent for an order for payment of rent arrears of £1,440 and for further damages of £2,495.50 arising from non-payment of rent and the condition the tenants had left the Property.
- 28) On 17 October 2019 the Tribunal intimated the CMD upon the Respondent through Service by Advertisement.
- 29) The Respondent provided no evidence of payment of any part of the said unpaid rent of £1,440.
- 30) The terms of the Tenancy included at:
  - a. clause 7 a provision that: "The tenant agrees to replace or repair (or to pay the cost thereof, at the option of the landlord) any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted."
  - b. clause 14 a provision that: "The tenant agrees to take reasonable care of the accommodation..."
  - c. clause 15 a provision that: "The tenant agrees not to make any alteration to the accommodation, its fixtures or fittings..."
  - d. clause 26 a provision that: "The tenant undertakes to immediately notify the landlord (or any... agent...) of the need for any repair..."
  - e. clause 28 a provision that: "The tenant will be liable for the cost of repairs where the need for them is attributable to his fault of negligence, that or any person residing with him, or any guest of his."
- 31) The tenants failed to return keys before vacating the Property and vacated it leaving a tap running, being a breach of clause 14 of the Tenancy.
- 32) Through the tenants' said breach of the Tenancy, the Applicant reasonably incurred the cost of £270 for changing the locks and taking access so as to mitigate damage to the Property, being a sum due against the tenants under clauses 7, 14 and 28 of the Tenancy.

- 33) The tenants damaged, or allowed others to damage, the upstairs bath so that a hole formed in it, being a breach of clause 14 of the Tenancy.
- 34) The tenants failed to report a hole in the upstairs bath, and resulting water ingress in the kitchen, in breach of clause 26 of the Tenancy.
- 35) The tenants damaged, or allowed others to damage, the walls and wall surfaces, and allowed water ingress to occur in the kitchen, being a breach of clause 14 of the Tenancy.
- 36) Through the tenants' said breaches of the Tenancy, the Applicant reasonably incurred the cost of £360 for painting at the Property, being a sum due against the tenants under clauses 7, 14 and 28 of the Tenancy.
- 37) The tenants removed the carpets and underlay from the Property, in breach of clauses 14 and 15 of the Tenancy.
- 38) Through the tenants' said breaches of the Tenancy, the Applicant reasonably incurred the cost of £1,349.50 for replacing carpets and underlay at the Property, being a sum due against the tenants under clauses 7, 14 and 28 of the Tenancy.
- 39) Through the tenants' said breaches of the Tenancy stated at paragraph 32, the Applicant reasonably incurred the cost of £386.00 for replacing the bath, being a sum due against the tenants under clauses 7, 14, 26 and 28 of the Tenancy.
- 40) The tenants left the Property in a dirty condition, in breach of clause 14 of the Tenancy.
- 41) Through the tenants' said breach of the Tenancy, the Applicant reasonably incurred the cost of £139.50 in cleaning costs, being a sum due against the tenants under clause 14 of the Tenancy.

### **Reasons for Decision**

- 42) The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. I was satisfied, on the basis of the application and supporting papers, and the submissions provided by the Applicant's representative at the CMD, that:
  - a) Rent arrears of £1,440 were outstanding;
  - b) £270 had been reasonably incurred by the Applicant in changing the locks;
  - c) £360 had been reasonably incurred by the Applicant in painting the Property;
  - d) £1,349.50 had been reasonably incurred by the Applicant in replacing carpets at the Property;
  - e) £386 had been reasonably incurred by the Applicant in replacing the bath at the Property; and

- f) £139.50 had been reasonably incurred by the Applicant in for cleaning the Property.
- 43) These sums are jointly and severally liable by the tenants and the Applicant is entitled to seek an award against the Respondent alone.
- 44) As the application clearly set out the above sums (albeit with a small typographical error in the addition in the application form itself), which was supported by evidence 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 £3,945.00 against the Respondent.

### **Decision**

- 45) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £3,945.00 with interest at 8% running from today's date.

### **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.

# J Conn

Legal Member/Chair

20 November 2019

Date