

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/18/1573

Re: Property at 39c Brook Street, Broughty Ferry, DD5 1DN (“the Property”)

Parties:

**Mr Bruce Graham Ralph, c/o Alan Masterton Solicitors, 12-14 Maule Street,
Angus, DD5 4JN (“the Applicant”)**

Ms Claire Stewart, 1/R 60 Dundee Road, Dundee, DD5 1HY (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for civil proceedings in respect of rent said to be lawfully due in terms of a tenancy agreement between the Applicant and Respondent in respect of the property at 39c Brook Street, Broughty Ferry together with other costs said to be incurred by the Applicant when the Respondent vacated the property.

Discussion

The Application was accepted by the Tribunal as an application under Rule 111 but as it relates to a tenancy under the Housing (Scotland) Act 1988 it was treated at the case management discussion as an application under Rule 70 which relates to such cases under the 1988 Act.

The Applicant was represented at the Case Management Discussion by Miss Reekie of Alan Masterton solicitors. The Respondent was not present, and Miss Reekie moved that the Tribunal should proceed in the absence of the Respondent. The Tribunal had sight of an execution of service from a Sheriff Officer confirming that the application, supporting documents and correspondence with the date of the Case Management Discussion had been served on the Respondent and was therefore satisfied that it could proceed in the absence of the Respondent in terms of rule 29 of the Tribunal Rules.

The Tribunal had sight of the tenancy agreement, correspondence sent by the Applicant's Representative's firm, a schedule of rent, a letter from Safe Deposit Scotland and various photographs.

Miss Reekie was able to advise the Tribunal that the costs aside from rent said to be due by the Respondent were £68.87 to replace the lock at the property as the Respondent returned only one set of keys when she left, £60 for removal of property left behind when the Respondent left the property and £40 for cleaning. Miss Reekie advised the Tribunal that the £68.87 had been arrived at by taking the purchase price of a new lock for £14 together with the cost of fitting it at £54.87. The removal costs had been arrived at by using the services of a Mr Brown who often assisted the Applicant's representative in matters of this nature and covered £45 for removing items from within the property such as items of broken furniture which had been left behind and £15 for removal of items which had been left outside. The removal of property had been undertaken over 2 days and some of the garden furniture was in a rusted condition. The Respondent had not given a forwarding address when she left and as such Miss Reekie advised that the Applicant's representative could not give the Respondent the opportunity to collect these items as she had left no forwarding address and would not answer telephone calls they made.

The property disposed of included broken furniture, broken clocks and a broken suitcase. A piano was also left which Miss Reekie described as being in poor condition and out of tune. This was donated to charity.

The tenancy agreement contained a schedule with Key Agreement terms which set out that the tenant required to return all keys at the end of the tenancy and this had been signed by the Respondent. Miss Reekie advised that the Respondent had returned one set of keys which meant the locks had to be changed.

The tenancy agreement in terms of clause 7.1 indicated that cleaning costs could be deducted from the deposit.

Miss Reekie advised the Tribunal that the Applicant's view was that the removal costs were justified in relation to the tenant's requirement under the tenancy agreement to return the property in the condition set out in the inventory including to reinstate the property to the contents which were in place at the start of the agreement.

Miss Reekie advised the Tribunal that the Applicant was seeking three months unpaid rent until the stated end date of the tenancy on 25th January 2018. The Respondent had given verbal notice of leaving on 29th September 2017 and at some point between that date and 2nd October 2017 had put a written notice to quit under the door of the Applicant's Representative's office which they had not seen until that date. The issue arose as to whether the Respondent was liable for unpaid rent until the end of the tenancy agreement or for the two months after her written notice of leaving. Section 18.3 of the tenancy agreement indicated that the tenancy could be ended by the tenant giving the landlord a minimum of two months' notice to terminate the tenancy. Miss Reekie argued that this had to be read in conjunction with Clause 3 of the agreement which set out that the tenancy was for a year from 25th January 2017 to 25th January 2018. Miss Reekie accepted that clause 18.3 of the agreement was silent as to whether the notice to be given related to the stated end date of the tenancy or could cover any other date. The rest of clause 18 related to the power of the landlord to give notice to the tenant of possession being required under s 33 of the 1988 Act or termination of the tenancy because of some breach of the agreement by the tenant.

Having considered this matter I was not satisfied that the agreement allowed a claim for payment of rent until 25th January 2018 in these circumstances and it appears that clause 18.3 of the agreement should be given its plain English meaning which suggests that a tenant could give two months' notice at any time to end the tenancy without any restriction to the effect that it could only be ended as of 25th January 2018. In my view no other clause within the agreement suggested any qualification on that right of the tenant to terminate the agreement at any time on two months' written notice.

As it was not clear when the written notice was left by the Respondent with the Applicant's representative it appears appropriate to accept Miss Reekie's position that it was first seen on 2nd October 2017 when the Applicant's Representative opened for business. The Tribunal was of the view that the two months' notice ran from that date which meant that the Respondent was liable to pay rent up until 2nd December 2017. This date cut across a rent due date and meant that the Respondent was liable for two months rent due until 25th November together with an extra week until 2nd December giving a figure of £1450.

Miss Reekie advised the Tribunal that the Applicant had received the deposit amounting to £650 back from the Deposit Scheme in which it had been held.

Findings In Fact

The Respondent rented the property from the Applicant from 25th January 2017 until she terminated the agreement on or about 2nd October 2017 giving two months' notice of her intention to leave.

That rent is lawfully due in the sum of £1450 and has not been paid by the Respondent.

The Applicant required to change the locks as the Respondent did not return both sets of keys and is entitled to recover this cost of £68.87 in terms of the tenancy agreement.

The Applicant required to remove items left after the Respondent left the property in order to restore it to the condition it was in when the inventory was signed and this cost of £60 appears reasonable in the circumstances.

The Applicant required to have the property cleaned after the Departure of the Respondent at a cost of £40 which cost falls to be deducted from the deposit in terms of the tenancy agreement. This cost appears reasonable.

The remaining deposit returned to the Applicant of £610 after deduction of cleaning costs falls to be deducted from the sum lawfully due.

The sum lawfully due to the Applicant by the Respondent is £968.87.

Reasons for Decision

The Tribunal finds that rent and other sums as set out above are lawfully due to the Applicant by the Respondent.

Decision

The Tribunal makes a payment order in the sum of £968.87 in favour of the Applicant to be paid by the 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 the decision was sent to them.

V Bremner

Legal Member/Chair

7/12/18

Date