



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) Act 2016

Chamber Ref: FTS/HPC/CV/20/0705

Re: Property at 138 Victoria Street, Stromness, KW16 3BU (“the Property”)

Parties:

Dr Timothy Kasoar, Miss Alice Bucker, Flat 6, 9 Garvald Street, Edinburgh, EH16 6FB (“the Applicants”)

Mr James Stronach, Mrs Cathy Stronach, 138 Victoria Street, Stromness, KW16 3BU (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Williams (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 26th February 2020 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants sought in their application payment of the sum of £116.20, being the balance of their tenancy deposit which the Respondents have not repaid to them after the termination of the lease agreement.

The Applicants provided with their application copies of an informal tenancy agreement, various e-mails between the parties, and various photographs of the Property.

The Respondents at present work abroad in Malaysia, which they informed the Tribunal has a poor postal system in the location where they currently reside. The Tribunal had arranged service by advertisement before the Respondents made contact with it by e-mail, and thereafter the notification, application, papers and guidance notes from the Tribunal were intimated to the Respondents by e-mail. The Respondents confirmed that the Property remains their home in Scotland.

A Case Management Discussion was held on 10th December 2020 by Tele-Conference. The Applicants participated, and were not represented. The First Respondent, James Stronach, participated, and was not represented. The First Respondent represented his wife, the Second Respondent.

The Applicants explained that they had paid the deposit of £300.00 to the Respondents at the commencement of the tenancy in early September 2019. They left the tenancy on 2nd February 2020, and shortly after the Respondents repaid the deposit under deduction of a disputed amount of £116.20.

The Applicants explained that they had incurred various expenditure on the Property for which the landlord was liable, but which the landlord refused to pay. In consequence, they had deducted those amounts from their final rental payment. In turn, the Respondents had then deducted that amount from the deposit.

The First Respondent confirmed that the Respondents disputed that they were responsible for certain expenditure which the Applicants contended they were liable. The Respondents did not accept that these expenditures were their responsibility, hence why they had deducted them from the deposit to recoup the amount withheld from the final rental payment.

Both parties were agreed on expenditure in dispute comprising £75.29 in respect of lightbulbs, £8.99 in respect of a wireless doorbell, £8.99 in respect of a double towel rail, £7.45 in respect of stove glass cleaner, and £3.49 in respect of digital optical cable. Those figures come to £104.21 in total.

Both parties accepted that there were clear and substantial factual disputes between them as to the circumstances surrounding this matter, which could only be determined by the Tribunal after hearing evidence, and for that reason the Tribunal set a Hearing.

The Hearing

A Hearing was held on 5th February 2021 by Tele-Conference. The Applicants participated, and were not represented. The First Respondent, James Stronach, participated, and was not represented. The First Respondent represented his wife, the Second Respondent.

The Tribunal heard evidence from both Applicants and from the First Respondent, which evidence was in short compass. Indeed, much of the factual evidence was not in dispute between the parties.

The parties were agreed upon the items of expenditure incurred by the Applicants totalling £104.21 as earlier noted at the preceding Case Management Discussion. The only issue between them was whether or not the Applicants are entitled to recover that expenditure from the Respondents, and if so, upon what legal basis.

The Applicants gave evidence that when they moved into the Property, there were approximately six to ten lightbulbs of the numerous light fittings in the Property which were not working. They purchased a total of twenty high-quality LED lightbulbs, some to replace the lightbulbs which did not work, with the rest to be kept as spares for subsequent replacement purposes.

The Applicants gave evidence that the existing wireless doorbell did not work. They considered that the cost of replacement batteries for that would likely exceed the cost of simply replacing the existing unit with a new one, which they did.

The Applicants gave evidence that there was nowhere for them to hang their towels in the upstairs bathroom, so they purchased a double towel rail to hang on the bathroom radiator.

The Applicants gave evidence that they purchased stove glass cleaner to clean the glass panel in the log-burning stove which was dirty, and digital optical cable to connect some speakers in the Property to the television set. The Applicants confirmed that the television was operational and had its own internal speakers which were functioning.

The Applicants confirmed that they left these items in the Property when they left. They advised the Tribunal that as the Respondents lived abroad, they did not contact them to report the defective items which they required to replace, and instead simply themselves bought replacements.

The Applicants' position was that the Respondents were legally responsible for the expenditures for which they claim in this application in terms of section 13(1)(d) and (e) of the *Housing (Scotland) Act 2006* ("the Act"). They confirmed that this was the only legal basis which they relied upon, as the informal tenancy agreement between the parties made no contractual provisions in that regard.

The Applicants submitted that the Property only met the repairing standard imposed by section 12 of the Act on the Respondents if any fixtures, fittings and appliances provided by the landlord under the tenancy were in a reasonable state of repair and in proper working order and any furnishings provided by the landlord under the tenancy were capable of being used safely for the purpose for which they are designed.

The Applicants submitted that the expenditure for which they claimed related to replacement of fixtures and fittings which were not in proper working order, and furnishings which were not capable of being used safely.

In response, the First Respondent gave evidence that initially, the parties had commenced the tenancy on good personal terms, but that the personal relationship had deteriorated over time resulting in the termination of the tenancy.

The First Respondent confirmed that all of the lightbulbs were, so far as he was aware, in proper working order at the start of the tenancy. In any event, these were consumable items which it would be the responsibility of the tenant to replace.

The First Respondent gave evidence that he was not aware that the wireless doorbell did not work, as it was customary in the area where the Property is located for callers to it to simply shout up to those inside or tap the door.

Similarly, the stove glass cleaner was a consumable item the cost of which would be borne by the tenant.

The purchase of the towel rail and digital optical cable were purchases which the Applicants made for their own benefit as a matter of personal choice, and were not items for which the landlord had any responsibility.

For these reasons, the Respondents did not accept that they bore any liability for the expenditure claimed by the Applicants in this application.

Statement of Reasons

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

“First-tier Tribunal's jurisdiction

- (1) In relation to civil proceedings arising from a private residential tenancy—
 - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
 - (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The sole question in dispute and upon which the Tribunal must reach a decision, is whether the Respondents are liable to the Applicants for the expenditure claimed.

That question can be answered shortly. The Tribunal does not consider that the Respondents were in breach of the repairing standard in the various ways alleged by the Applicants for the following reasons.

Section 14 of the Act provides:

“14 Landlord's duty to repair and maintain

- (1) The landlord in a tenancy must ensure that the house meets the repairing standard—

- (a) at the start of the tenancy, and
- (b) at all times during the tenancy.
- (2) The duty imposed by subsection (1) includes a duty to make good any damage caused by carrying out any work for the purposes of complying with the duty in that subsection.
- (3) The duty imposed by subsection (1)(b) applies only where—
 - (a) the tenant notifies the landlord, or
 - (b) the landlord otherwise becomes aware, that work requires to be carried out for the purposes of complying with it.
- (4) The landlord complies with the duty imposed by subsection (1)(b) only if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required.”

Any duty of the Respondents’ with respect to the repairing standard during the tenancy applies only where the tenant notifies the landlord or the landlord otherwise becomes aware that work requires to be carried out to comply with it.

As the Applicants accept that they did not inform the Respondents of the various issues, and did not dispute that the Respondents were not aware of them, they cannot claim in respect of expenditures claimed during the tenancy.

Further, the Tribunal did not consider that the various expenditures claimed fell within the definitions contained in sections 13(1)(d) and (e) of the Act. The Tribunal concluded that these purchases made by the Applicants were either of the nature of items of their own choosing and for their own comfort, or were consumables purchased by the Applicants for the upkeep of the Property and for which the Respondent would not be responsible as landlord.

The Tribunal did not consider that the purchase of these items was required in order to allow the Property to meet the repairing standard at the commencement of or during the tenancy.

For these reasons, the Tribunal decided that the sums claimed by the Applicants were not recoverable by them from the Respondents in terms of the Act, and dismissed the application.

Decision

In these circumstances, the Tribunal will dismiss this application.

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

5th February 2021

Legal Member/Chair

Date