



**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/22/2641

Re: Property at 24 Roman Camp Cottages, Broxburn, EH52 5PJ (“the Property”)

Parties:

Miss Nicola King, c/o 92 Ivanhoe Rise, Dedridge, Livingston, EH54 6HZ (“the Applicant”)

Amanda Leask, Mr Tobias Leask, Chisholm Stone House, Struy, Beaully, IV4 7JS (“the Respondents”)

Tribunal Members:

Richard Mill (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously refused the application and accordingly dismissed it

Introduction

This application is under Rule 70 and Section 16 of the Housing (Scotland) Act 2014. The applicant seeks a payment order to recover the initial deposit paid by her upon entering the property.

The deposit paid by the applicant in the sum of £535.50 was not protected. The tribunal has already found the respondents failed to adhere to their obligations under the Tenancy Deposit Schemes (Scotland) Regulations 2011 in case referenced FTS/HPC/PR/22/2640. An order against them in the sum of £1,606.50 was made on 10 January 2023 representing three times the amount of the tenancy deposit.

Procedural history

Two earlier hearings have taken place. A CMD took place on 13 October 2022 and an earlier full hearing took place on 10 January 2023. The latter hearing was adjourned as further essential documents to be relied upon by the respondents had not been produced.

The tribunal has issued a number of directions to effectively case manage the application. A number of submissions and other documentation is relied upon by both parties beyond the initial application bundle.

The hearing 24 March 2023

The hearing took place by teleconference at 10.00am. The applicant represented her own interests and was accompanied by a supporter. The respondents were represented by the second named respondent Mr Leask.

The tribunal utilised its inquisitorial function and explored all relevant matters with both parties. They were also afforded every fair opportunity to provide further evidence and make concluding submissions.

The tribunal reserved its decision.

Findings and Reasons

1. The property is 24 Roman Camp Cottages, Broxburn EH52 5PJ.
2. The applicant is the former tenant. The respondents are the former unregistered landlords. The parties entered into a short assured tenancy agreement in respect of the property which commenced on 13 June 2016.
3. The applicant paid a deposit of £535.50. This was paid to the respondents' lettings agent Lawlets Limited and then passed to them personally. It was not lodged with an approved tenancy deposit scheme. The respondents failed in their obligations under the 2011 regulations.
4. The tenancy came to an end on 10 May 2022 when the applicant vacated the property.
5. The respondents' defence to the application is based upon their assertion that the condition of the property as at the date of the applicant's vacation of it, was in a serious state of disrepair. Their position is that the condition did not simply reflect normal wear and tear which would be seen over the duration of the tenancy which subsisted for some 6 years. The respondents had submitted a detailed list of the items of disrepair relied upon which totalled 37 items. Photographs of some elements of the disrepair were supplied. Photographs of the property said to have been taken at the commencement of the lease by

Lawlets Limited showing the condition then were also lodged for comparative purposes.

6. The tribunal found the photographic evidence of the condition of the property, both at the commencement of the applicant's occupation and at the end of her occupation, to be a credible and reliable reflection of the state of the property at each point in time. These photographs were not challenged by the applicant although she did note that all 'after' photos had equivalent 'before' photos and this made it difficult to make direct comparisons in respect of some matters.
7. The tribunal found that many of the items of complaint relied upon by the respondents would be reasonably classed as normal wear and tear seen over a 6 year period of occupation by a tenant adhering by their obligations under the lease. The condition of the property at the start of the lease was generally poor anyway.
8. The tribunal found however on a balance of probabilities that not all items of disrepair complained of would fall under wear and tear and that there were a number of discrete matters of repair complained of by the respondents which the applicant is responsible for.
9. The written lease between the parties which the applicant executed on 13 June 2016 contains a number of contractual provisions of relevance:
 - Section 5.5 specifies "The tenant will be responsible for the cost of repairs where the need for them is attributable to his fault or negligence, that of any person residing with him, or any guest of his. The landlord may invoice you at the termination of the tenancy for payment."
 - Section 6.2 specifies "To keep the interior of the property and the contents in at least as good and clean condition and repair as they were at the commencement of the tenancy with fair wear and tear accepted, and to keep the property reasonably aired and warmed."
 - Section 6.5 specifies "To keep the gardens (if any), driveways, pathways, lawns, hedges and rockeries as neat, tidy and properly tended as they were at the start of the tenancy and not to remove any trees or plants."
 - Section 6.6 specifies "To replace all broken glass and doors and windows damaged during the tenancy where the damage has been caused by the tenant, a member of the tenant's family or their guests."

10. One of the matters complained of by the respondents is the condition of the walls within the property as at the time that the applicant vacated. The walls were described as having some unknown substance running down them which required to be removed and this had also caused difficulty in respect of necessary redecoration. Paint would not stick and additional full and thorough cleaning had to be carried out first, although it was noted that the applicant had made some attempts at cleaning. The applicant confirmed in her own evidence that whatever the background cause, she was responsible for necessary redecoration of the walls of the property. She estimated that her responsibility to make good the condition of the walls would be restricted to some £80-£100 to cover the cost of the paint. The tribunal found that this estimate is a gross underestimate of the costs in having the walls of the property prepared and redecorated on a commercial basis which would add considerable costs of labour to that of the materials.
11. The applicant also conceded in her evidence that the garden areas of the property had not been tended to by her adequately. This is evidently established by the clear photographic evidence produced by the respondents which was unchallenged by the applicant. She also ultimately accepted clearly in her evidence that the necessary costs to remedy the garden areas would cost several hundreds of pounds.
12. The respondents position is that the Rayburn stove in the property had been misused by the applicant. It was submitted that inappropriate fuel had been used. This had caused a number of problems. The Rayburn unit itself had become 'choked'. The respondents believe that this had also caused unnecessary smoke to fill the house which was the likely source of the poor condition of the walls within the property. The applicant disputed any misuse of the Rayburn but, on a balance of probabilities, having weighed up both parties positions on this, the tribunal found that it was more likely than not that the applicant was directly responsible for the poor condition of the Rayburn. It was noted that the applicant did say that had made efforts to inform herself on how to use and look after the Rayburn. Much time and effort was undertaken by the respondent himself to remedy this. The costs to do so on a commercial basis would likely run into hundreds of pounds.
13. The tribunal found that the applicant is responsible for the costs of redecorating as specified, the costs of remedying the overgrown garden and responsible for the rectification of the Raeburn. The costs of all of this combined would far exceed her deposit paid in the sum of £535.50. In the circumstances the entirety of the deposit is justifiably withheld by the respondents and the applicant is not entitled to the return of any part of it.

14. The applicant made reference to the fairness of the entire situation. She referred to the general poor condition of the property at the time that she moved in. The tribunal did not find that she had a good basis for complaint in this regard. There is a history to matters here in that the applicant's uncle had previously let the property. The applicant was keen to occupy it herself and was aware that the property was in a poor condition at the time that she took up occupation of it. Nonetheless, the tribunal also found that the respondents were not professional or diligent landlords. The tribunal has already made clear findings in that regard in the other application made by the applicant under the Tenancy Deposit Schemes Regulations. The applicant made a number of complaints regarding the landlords' neglect and submitted that she had required to instruct contractors at her own cost though there was no quantification of these costs provided. She conceded that no documentary evidence had been produced to evidence this in the form of invoices and the like and accepted that this should not fall as part of the tribunal's consideration in 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.

Richard Mill

24 March 2023

Legal Member/Chair

Date