



**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/19/0067

Re: Property at 5 Baker Street, Aberdeen, AB25 1UQ (“the Property”)

Parties:

**Mrs Lynne Branthwaite, 8 The Links, Whitley Bay, North Tyneside, NE26 1PS
 (“the Applicant”)**

**Mr Stephen Bonner, Ms Karen Penelope Thomson, 73 Regent Walk, Aberdeen,
AB24 1SX (“the Respondent”)**

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment of £1,020.66 by the Respondents for rent arrears accrued and cleaning costs and payment of interest at the rate of 4.75% per annum from the date of the decision.

Background:

The application was made on 5 January 2019 by the Applicant. The application asked for a payment order to be made for the sum of £1,284.66 for unpaid rent, £175 cleaning costs and £86.40 for investigation cost for a leak and that 8% interest per annum should be awarded. Attached to the application were the Tenancy Agreement, Copy AT5, Tenant Statement showing rent arrears, estimate for cleaning services, invoice from ACE dated 11 December 2017, correspondence with the letting agents Norwood Aberdeen and 3 letters from Norwood Aberdeen to the Respondents regarding the rent arrears.

The application was updated on 29 January 2019 with an actual invoice regarding cleaning of the property from KM Services dated 30 December 2018 for an amount of £209.

The Application was further amended showing the correct Rule under which the application was made as Rule 70 rather than Rule 11 of the Rules of Procedure on 7 February 2019. Notification of the acceptance of the application was issued on 22 February 2019 and on 24 February 2019 the Applicant advised the Tribunal that payment of the deposit of £450 had been received and thus the amount required to be reduced by that sum. A copy of the release documentation was submitted.

A Case Management Discussion (CMD) was scheduled for 23 April 2019 and both parties advised of the date, time and venue.

On 1 April 2019 the application and related documentation together with a notification of the Case Management Discussion (CMD) details and documentation were served on the Respondents by Sheriff Officers.

The Respondents were advised that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

On 9 April 2019 the Respondents requested a postponement of the CMD. This was refused by the Tribunal on 11 April 2019. On 12 April 2019 the Respondents asked if this refusal could be appealed. They were advised by the Tribunal that this was not the case and that the CMD would be going ahead on 23 April 2019 as previously scheduled. No other representations and no representations regarding the material issues of the application were received from the Respondents.

The documents are referred to for their terms and held to be incorporated herein.

The Case Management Discussion

The Applicant attended in person with Mr Stephenson as supporter. The Respondents did not attend. The Legal Member checked at the start of the hearing whether any further representations had been received by the Tribunal or whether any indication regarding attendance of the CMD had been received from the Respondents and was advised that nothing further had been received.

The Legal Member discussed with the Applicant whether and if so why she considered that the cleaning invoice and ACE invoice were chargeable in full to the Respondents given the wording of the Tenancy Agreement and the Applicant agreed that the ACE invoice and the elements for light bulbs and window cleaning in the KM Services invoice would not be insisted upon as these may have been wear and tear rather than matters caused which would have to be paid for by the Respondents.

The Applicant explained that the Respondents had moved out and had left the property in a condition that required cleaning prior to it being in a state to be re-let.

Findings in Fact:

- 1. The parties entered into a Short Assured Tenancy for the property with a start date of 3 July 2017 (Clause 1) and a monthly rent of £450 payable in advance (Clause 1 and Clause 4).**
- 2. As per the rent statement lodged by the Applicant, at the time the application was made the arrears were £1,284.66**

3. No rent was paid after 6 August 2018 to the date of the end of the tenancy on 29 November 2018.
4. As per the deposit return receipt the amount of £450 was used towards part payment of the rent arrears in February 2019.
5. The Tenancy Agreement contains an interest provision at the rate of 4% per annum above the base rate of the Royal Bank of Scotland plc or its successors.
6. The base rate of the Royal Bank of Scotland plc is currently 0.75%.
7. In terms of Clause 11 of the Lease the tenants are responsible to “keep the Property in a clean, tidy and ventilated condition”.
8. The property was returned by the Respondents in a condition that required cleaning.
9. The cost for cleaning is reflected in the invoice for cleaning of the property and oven at a sum of £136 for 8 hours cleaning and £50 for cleaning the oven.

Reasons for Decision

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties’ dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondents were aware that the CMD would be going ahead on the day. They did not attend or send representation. The Respondents were aware that the Tribunal could make a decision on the day. The Respondents were given the opportunity to lodge written representations by 18 April 2019. The Respondent did not submit any representations with regard to the material matters of the application. In particular nothing was lodged to dispute either the rent arrears, cleaning costs or interest demand. There was no formal opposition lodged to the order being granted. The Tribunal did not consider that there was any need for a hearing as the facts of the case were thus not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The Applicant's amendments to the sum sought after discussion with the Legal Member resulted in a reduction of the sum sought and thus did not require to be intimated to the Respondents.

The Tribunal considers that the amount due by the Respondents to the Applicant consists of £1,284.66 rent arrears less deposit allocated towards rent arrears of £450 = £834.66 plus cleaning costs of £186 making a total of £1,020.66.

In terms of Rule 41 A the Tribunal may include interest when making an order for payment at the rate stated in the relevant tenancy agreement. This was stated as 4% over the interest base rate of The Royal Bank of Scotland Plc at the time, which is currently 0.75%. Thus the Tribunal makes an order for interest to be paid at the contractual rate of 4.75% per annum from the date of the order.

Decision

The Tribunal grants an order for payment of the sum of £1020.66 and interest thereon from the date of the order at the rate of 4.75% per annum.

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.

P. Hennig-McFatrige

Legal Member/Chair

23. 4. 19

Date