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/18/2645

Re: Property at 25C Dee Street, Aberdeen, AB11 6AW ("the Property")

Parties:

John Brown LTD, The Crossways, 33 Charlotte Street, Helensburgh, G84 7SE ("the Applicant")

Ms Deborah Collie, New Century House, 27A Dee Street, Aberdeen, AB11 6AW ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of the sum of £2,328.42 should be granted.

Procedural Background:

The Applicants are seeking an order for payment of rent arrears and other items as detailed in their application. The application in terms of Rule 70 (Civil Proceedings) was lodged on 4 October 2018 and the sum outstanding stated as £2,875.45. A statement of claim, Tenancy Agreement, Variation of Tenancy Agreement and Bank statements showing rental income were lodged with the application. On A rent statement was submitted with the application.

The Tribunal first fixed a Case Management Discussion (CMD) for 26 November 2018. Prior to the CMD the Respondent's then Representative Mr Findlay lodged answers. At the CMD various points to be determined by a hearing were identified. The Note on a Case Management Discussion of 26 November 2018 is referred to for its terms and held to be incorporated herein. Following the CMD the Applicants lodged Responses to the Answers on 10 December 2018 and lodged an Inventory of production with the Tribunal and Mr Findlay on 3 January 2019. This is referred to for

its terms and the inventory is held to be incorporated herein. Mr Findlay advised the Tribunal on 8 January 2019 that he was not formally representing the Respondent and that all correspondence should be sent to her. All correspondence received was then sent to the Respondent on 11 January 2019.

At the hearing, of which parties had been advised in the CMD note and orally at the CMD, Mr Hepburn Secretary of the Company and Mrs Hepburn Director of the Company John Brown Ltd attended and were legally represented by Friends Legal solicitor Rachel Thomson. The Respondent also attended. She advised that on the Thursday prior to the hearing she had had a meeting with her solicitor and at that meeting it had come to light that due to limitations of the Legal Aid in place none of the documents she had given her solicitor had been lodged with the Tribunal. There was no opposition to her lodging the documents she had brought with her and these were copied to the panel and the Applicants. The Applicants also lodged documents at the hearing which they had emailed to the Tribunal on 14 January 2019 but apparently not processed prior to the hearing. There was no opposition to the letters of 11.1.19 and 20 April 2018 by Ledingham Chalmers, and their email to the Respondent of 26 April 2018 to be lodged. All the documents lodged at the hearing were taken into account by the Tribunal. An inventory of the Respondent's documents is appended to this decision.

The Hearing:

Regarding rent arrears:
Mr Hepburn gave evidence that the Applicant had not received written notice that the Respondent wished to end the tenancy until the email on 10 April 2018. He stated at previous meetings with the Respondent she had given the impression that she wished to remain in the property and continue the tenancy. He and his wife had been reluctant to issue a further Variation to the tenancy contract as there were rent arrears. He denied having received an email on 20 March 2018 stating the Respondent wished to terminate the tenancy. He referred to documents 19,20,21, 33, 24 of the bundle and the original tenancy agreement as well as the latest Deed of Variation of 21 March 2017. Mrs Hepburn confirmed this information.

The Respondent gave evidence that due to the ongoing problems with flooding and the flooding event in March 2018 she could not stay in the property, had no bedroom and did not feel she could live in the property. She referred to the emails in her productions relating to the water damage and the receipts showing that her old mattress had to be uplifted and a new one purchased due to the damage caused. She further stated that she had raised with Mr and Mrs Hepburn on repeated occasions since September 2017 the question on what steps she would need to take to end the tenancy. She felt she had not been listened to and finally contacted Ledingham Chalmers about this who advised her of the need for written notice which she then gave on 10 April 2018. She confirmed that no other email contained an explicit written notice that she wished to end the tenancy. She also stated that she considered she had no right or obligation to live in the property after April 2018 as the last extension of the tenancy ended on 24 March 2018. In her solicitor's answers it was stated that the tenancy was ended by her giving written notice on 20 March 2018 for 24 April 2018.

Both parties in their pleadings had agreed that the parties had entered into a Short Assured Tenancy commencing 25 March 2009 for the property as per the lodged Tenancy Agreement and Deed of Variation with a rental figure of £1200 per month payable on the 1st of each month.

Return of furniture from storage:

Mr Hepburn gave evidence that in terms of the tenancy agreement a concession had initially been made for the Respondent to store specific items in professional storage. He mentioned that this was with Shore Porters and ultimately with Simply Store. He thought it had only been agreed that two sofas could be stored. It had become apparent that many other items including bedroom furniture had been removed. He asked the Respondent for a list of items stored and received a letter on 9.9.13 form the Respondent detailing what was in storage. He contacted Simply Store and was advised by them in 2013 that there were arrears regarding stored items and he was concerned they would sell his furniture in order to obtain the fees for storage. He emailed them in July 2013 to advise them what was his and that this must not be sold. Subsequent amendments to the tenancy showed the updated position. He stated at the hearing that in 2015 he was concerned regarding rent arrears and out of concern for his belongings suggested he would uplift the items. He stated that collected his items from Simply Store and then stored them in his house. Production 11 details what was uplifted. When the tenancy ended he took all small items back in his own car but required to hire a van and a man for the larger items, the invoices were in the productions, and considers these costs should be born by the Respondent who had saved considerable storage costs since he had taken the items back in 2015.

Mrs Hepburn agreed with this.

The Respondent gave evidence that she had made it clear before entering into the tenancy that she required to store larger items as she had her own furniture. This was agreed. The tenancy agreement did not mention sofas but in the amended clause 16 referred to furniture. The problems with storage fees had arisen in the context of another container she had contracted for storage for and not for the container with the Applicant's furniture. Apart from the list she had provided all other smaller items had been stored in her flat in the loft and not put in storage. She had received an email dated 30 August 2018 which was in the productions lodge by her which states that Mr Hepburn was thinking of giving the items to his daughter who had recently moved. She had then arranged for the stored items to be taken out of storage and had taken smaller items she did not need to a meeting with Mr Hepburn at the storage facility and he had then uplifted all items in the inventory receipt production 11 of the Applicants and taken them away on 20 November 2015. None of the Applicant's items remained in storage after that. Because this was to be used for his daughter she considered her liability for storage and return at an end.

Gas and Electricity cost of £30:

Mr Hepburn referred to the productions 46 of the bundle showing electricity purchase of £20 on 6 May 2018 and Gas purchase of £10 on 6 May 2018. He stated it was necessary to purchase this as the tenant had only left pennies on the pre-payment meters in the flat at that point and the gas and electricity was required to ensure that the light on a time and other appliances would be functioning until the end of the tenancy on 24 May 2018. He referred to clause 7 of the tenancy agreement.

Mrs Hepburn agreed

The Respondent stated that she thought the tenancy would end in April and had even topped up the meters sufficiently in April to ensure that e.g. painting work as remedial work after the flood damage could be carried out. She was no longer living in the premises at that point and considers her liability for utilities had ended in April.

Regarding claim for instalment of pre payment meters:
Mr Hepburn referred to the tenancy agreement and stated that the tenant was not allowed to make changes to the property without consent. It had become apparent that the Respondent had installed pre-payment meters without authorisation from the landlord and that he had contacted SSE on 18 April 2018 after a meeting with the Respondent and been advised they could change the meters back free of charge on 14 May and 6 June 2018. He had found out about the change on 18 April 2018. He considers he had to be personally present for this and thus incurred 320 miles of driving to attend on that day which he is charging in terms of the HMRC rate at £0.45 per mile. If Ledingham Chalmers had been asked for permission for the change they would have contacted him about this.
The Respondent stated that she had obtained permission to change the meter in 2010 from Ledingham Chalmers but was unable to access the correspondence as this was on her previous employers email account at Shell. She would not have done this without permission. The reason for the change was that the pre-payment meters would work out much cheaper for her. The person she had obtained permission from, a Christine Pickle, was now retired. The Respondent also stated she had arranged on 29 March 2018 with SSE to have the meters re-instated on 20 April 2018 but Mr Hepburn had not agreed to this as the contracts would then have been in his name after the change. She had then cancelled the appointment.

Regarding key replacement, gym card replacement, parking permit replacement:
Mr Hepburn stated that he had been under the impression the Respondent only had one set of keys. These were never returned. He was concerned that the Respondent stated in the answers that there were two sets of keys. He referred to the productions of the receipts for having new keys cut on page 43 of the bundle, the cost to have the gym card replaced on page 44 of the bundle and explained that the gym card had been issued to the Respondent with no cost to her. He was unable to provide details regarding any parking permit. He stated all the items had not been returned.
The Respondent stated that she had left the keys on the kitchen table on when the painter attended on 28 April 2018 as she was not returning to the property thereafter. She had asked the painter if he needed the visitor's pass and he did not so she left that also on the kitchen table. She stated she has no keys now. She stated the letter she lodged from Ledingham Chalmers to her dated 31 March 2009 with the gym passes included a carbon copy receipt for the £10 she paid for them which she no longer has.
In the answers from the Respondent's solicitors it was stated that one set of keys was returned to Ledingham Chalmers and a second set given to the painter.

Findings in Fact based on the documentary evidence and the oral evidence of the Applicant at the hearing:

1. The Applicants and the Respondents entered into a Short Assured Tenancy commencing on 25 March 2009 with an initial end date of 24 March 2010

which would if not terminated would continue from month to month until terminated on the 25th day of any month by either party giving to the other one month's notice in writing prior to the said date of termination.

2. The rent for the property from 25 March 2017 onwards was £1,200 per month.
3. On 22 April 2015 the Respondent accepted a variation proposed on behalf of the Applicant to vary the payment date for rent to the first day of the month.
4. The Respondent sent an email on 10 April 2018 stating she wished to terminate the tenancy.
5. The tenancy ended on 24 May 2018.
6. The deposit of £1,100 was released to the Applicant following the termination of the tenancy.
7. The Respondent was entitled to remove various items of furniture into storage and various items were uplifted from storage by the Applicant on 20 November 2018 and taken into his custody.
8. On 30 August 2018 the Applicant had sent an email to the Respondent indicting that the items may be used for his daughter.
9. On 6 May 2018 only pennies were left on the gas and electricity accounts for the property.
10. The Applicant purchased £20 worth of electricity and £10 worth of gas on 6 May 2018.
11. The Respondent had changed the existing gas and electricity meters to pre payment meters in 2010 without written consent.
12. The change back to normal meters was free of charge from SSE.
13. The Respondent was aware that the meters would have to be reinstated to the original meter type.
14. She had tried to arrange for this to be done by SSE on 20 April 2018.
15. The Applicant had not agreed to the change on that date.
16. The lease document of 2009 gives the landlord address as c/o Ledingham Chalmers in Aberdeen.
17. In April 2018 Ledingham Chalmers were involved in the end of tenancy process.
18. The Respondent had received one set of keys and two gym passes in March 2009.
19. No keys were returned to Ledingham Chalmers at the end of the tenancy.
20. The painter carrying out work in the property in April 2018 had obtained the keys he used from Ledingham Chalmers.
21. No gym passes had been received by the Applicant at the end of the tenancy.
22. The replacement cost for the gym pass was £15 as per the receipt lodged.
23. The replacement cost for the keys was £54.42 as per the receipts lodged.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and Respondent and the evidence given at the hearing by Mr and Mrs Hepburn and the Respondent.

Regarding claim for rent arrears of £3,329.00:

The Tribunal was satisfied that no formal written notice had been given by the Respondent to the Applicants as required in terms of clause Second of the tenancy agreement until 10 April 2018. Although the Respondent stated she had raised the

matter previously this had not been done in writing and she confirmed that the email of 20 March 2018 she had previously referred to was not lodged and in any event did not given formal written notice. In terms of the tenancy agreement the notice was thus given on 10 April 2018 and due to the requirement in clause Second of one month's notice to the 24th of the month the tenancy termination date was thus 24 May 2018. The parties had agreed on the email exchange of 21 and 22 April 2018 to vary the payment date for rent to the first of the month. It was admitted in answer 4 lodged on behalf of the Respondent that two months rent were due for March 2018 and April 2018. The Tribunal thus is satisfied that arrears of £3,329.00 for the months of March, April and 24 days pro rata for May 2018 have accrued.
Both parties agree that the deposit of £1,100 was paid out in full to the Applicant and that thus any sum of arrears would be reduced by the deposit. Thus the outstanding sum for arrears less the deposit payment is £2,229.00.

Regarding claim for return of stored furniture of £394.50:
The Tribunal considers that the claim for the van fees and other outlays for returning the Applicant's furniture previously stored by the Respondent fails. The Tribunal considers the email of 30 August 2018 clearly indicates that the Applicant had suggested that the items be taken out of storage and removed by the Applicant. The Applicant removed the items on 20 November 2018 and took them away. The tenancy agreement originally contained a clause in clause Sixteenth obliging the Respondent to return the items from storage one month prior to the tenancy ending. However number 3 of Deed of Variation of 21 March 2017 explicitly confirms that the landlord has taken possession of these items. The Tribunal considers that the obligation in terms of clause Sixteenth ended with the landlord taking possession of the items and thus taking on responsibility for these. As they were no longer in storage clause Sixteenth no longer applied.

Regarding claim for gas and electricity for £30:
The Tribunal accepted that the Respondent is liable for the £20 electricity and £10 gas purchased on 6.5.2018 by the Applicant as the Tribunal accepts that in terms of clause Seventh of the tenancy agreement the tenant is liable for the gas and electricity payments and believed the evidence of Mr and Mrs Hepburn that only pennies were left on the meters at that point. The evidence of the Respondent was that she had topped up the meters and considered the tenancy would end on 24 April 2018. It is thus logical that she would not have made sufficient payments to cover the period to 24 May 2018. As the Tribunal found that the tenancy did not end until 24 May 2018 the cost of the purchases on 6 May 2018 have to be born by the Respondent as both parties agree that some use of utilities was necessarily ongoing to the end of the tenancy although the Respondent may no longer have lived in the property. The Respondent thus has to pay the £30 claimed.

Regarding claim for prepayment meter change to normal meter on 6 June 2018 for £144.00:
The Applicant provided no vouching for any expenses claimed in this regard. Mr Hepburn and the legal representative for the Applicant stated that the claim of £144.00 was a reasonable calculation of the costs of travelling to the premises from Mr Hepburn's home of some 320 miles at the HMRC acknowledged rate of £0.45 per mile to attend the property when the meters were changed back. It was argued that this was due as damages to the Applicant for breach of contract by the Respondent

as the meters were changed without permission. The Respondent states that she obtained prior permission from Ledingham Chalmers for the change of meter. She also stated she had arranged for the original meter type to be re-instated in April 2018. This was not done as Mr Hepburn did not agree to the contract then being changed into the Applicant's name, which the Respondent stated would have had to be the case if the change had been done in April. It is agreed that the reinstatement of the meters to the original type of meter was carried out by SSE free of charge. The Tribunal did not find that there was sufficient evidence to find that prior permission for the meter change had been obtained. However, even if the Tribunal considers that the change of the meter in 2010 may have been a breach of contract in terms of clause Sixteenth (a), the Tribunal does not accept that the Applicant can claim damages of £144 for the travel to the premises on the basis of this. First of all the Tribunal considers that the Applicant had a duty to minimise any loss. The Applicant had the opportunity at the meeting on 18 April 2018 to consent to the meters being changed in April free of charge. Secondly the Applicant clearly had local agents managing the property for him at the stage the Respondent moved out. He could have arranged for someone local to attend on his behalf. Thirdly, the Tribunal considers that cost claimed would not be a recoverable loss for a breach of contract in terms of the principle of remoteness of loss as expressed in Hadley v Baxendale (1854) 9 Ex.341 which stated "*where two parties made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach should be such as may fairly and reasonably be considered either arising naturally , i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it*". At the time of the change of the meter the tenancy agreement stated the landlord's address as care of Ledingham Chalmers in Aberdeen. At the end of the tenancy again the Applicant was using local agents. It would not have been foreseeable for the Respondent that a change of the meters, which is what the Applicant argues constitutes the breach, would result in an agent of the landlord travelling 320 miles to the property. The actual foreseeable cost arising out of a change of the meters was £0, as the change was carried out free of charge.

Regarding claim for £81 for replacement of keys, gym card and parking permit:
The Tribunal accepted that the Respondent had received at least one set of keys from the Applicant at the start of the tenancy and that the keys were not handed to Ledingham Chalmers or the painter by the Respondent and the termination of the tenancy. The Respondent's answers stated that she had handed a set of keys to Ledingham Chalmers and one to the painter. At the hearing her evidence was that she left two sets of keys in the property when she left. The Tribunal considered this as contradicting statements. The productions lodged on the day by the Applicant confirm that Ledingham Chalmers state they have not received keys from the Respondent and the email lodged in production from the painter confirms he uplifted keys and returned keys to Ledingham Chalmers and did not receive keys from the Respondent. The documentary evidence provided by the Appellant in this regard corroborates his evidence that he had provided the keys to Ledingham Chalmers and not received any keys back and the Tribunal attached considerable weight to the email evidence from Ledingham Chalmers in their correspondence in this regard as clearly they follow a protocol in regard to keys being returned. The Tribunal thus

finds that the cost for the replacement keys of £54.42 has to be reimbursed by the Respondent.
It was disputed whether the gym card was paid for by the Respondent or Applicant and whether this was returned. The Respondent provided a letter from Ledingham Chalmers that two gym cards were provided to her at the end of March 2009. She stated she had to pay for these. She did not lodge any evidence that she had been invoiced for these and the letter produced does not refer to any invoice or receipt. The Tribunal thus did not accept that the Respondent had paid for the card. The Tribunal believed Mr and Mrs Hepburn that they had not received the cards back. The Applicant had provided a receipt for the replacement card dated 13 June 2018 for £15. The Tribunal considers it unlikely this would have been purchased had the gym card been received back at the end of the tenancy. The Tribunal thus considers that this has to be reimbursed by the Respondent.
The Tribunal was not satisfied that the Applicant had proved that there had been any cost incurred with regard to a parking permit for the property. No vouching was provided. It was thus irrelevant whether this had been left in the property by the Respondent on leaving.

The Tribunal thus considers that the Applicant is successful in the claim of
£2,229.00 rent arrears less deposit used to clear arrears
£ 30.00 gas and electricity
£ 54.42 replacement key
£ 15.00 replacement gym card
Total £2,328.42

Decision:

The Tribunal grants an order for payment of the sum of £2,328.42.

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 Henning- McFatridge

16 January 2019

Legal Member/Chair **Date**

Appendix:

List of productions lodged by Respondent on 16 January 2019:

1. Email exchange 4 pages headed Re 25D Dee Street – Escape of Water 22/3/18
2. Email exchange 3 pages headed Re Urgent Serious Water Leak 25D with Robert Hepburn 18 and 19/3/18
3. Email to Andrew Baker 18/3/18
4. Email Robert Hepburn to Jessica Howe, Andrew Baker and D 19/3/18, 18/3/18, 22/9/17, 20/9/17 and 19.9.17 5 pages
5. Email exchange headed NCH 25 Dee Street, 21/7/17 5 pages
6. Email exchange headed Re Town & Country Refusal to Take Responsibility for Tenants in 25 D Dee Street 22/8/16, 20/8/16 and 19/8/16 5 pages
7. Email exchange headed MOST URGENT – Your Obtusive Tenants in 25D Dee Street, Aberdeen 19/8/16 2 pages
8. Email 12/8/16 headed 25D tenants
9. Email exchange headed Fwd:Problems from 25D Dee Street, Aberdeen 16/4/16, 11/4/16, 8/4/16 3 pages
10. Email 9/8/16 headed 25D tenants
11. Email 6/4/16 headed Water leaks into 25c Dee Street, Aberdeen
12. Email 28/2/16 headed (no subject)
13. Email exchange headed Re Urgent:water leaking into my flat – contact needed 3/2/16 2 pages
14. Email exchange headed RE:Deborah Collie mobile number 27/1/17 , 5/9/16 3 pages
15. Email headed RE: 25c Dee Street [IWOV-LIVE.FID104550] 19/1/11
16. Email from Aberdeen City Council 28/3/18
17. Argos Sales Card Voucher 17/4/18 £256.94
18. Argos Sales Card Voucher 12/4/18 £13.49
19. Email Robert Hepburn to D 30/8/2015
20. Email exchange Robert Hepburn and D 6.9.15, 4/9/15,7/9/15, 20/9/15 3 pages
21. Email exchange D and Robert Hepburn 27/9/15
22. Letter to Respondent from Robert Hepburn 12/9/17
23. Deed of Variation 21 March 2017
24. Letter Robert Hepburn to Respondent 28 September 2013
25. Simply Ship Inventory 20/11/15
26. Email Joy Ross 25/3/09
27. Storage Receipt 1/2/13
28. Simply Store Delivery/Collection Sheet 27/3/09
29. Email headed 25C Dee Street 11/3/09
30. Email Laura Paterson to Respondent 11/3/09
31. Source Inventory 25 March 2009 with handwritten amendments from Respondent 9 pages
32. Deborah Collie Rent Payment History at 25c Dee Street March 2012 to 12 July 2013
33. Letter from Respondent to The Crossways 9/9/13
34. Letter 31/3/09 to Laura Paterson to Respondent
35. Simply Store receipt 1/4/12
36. Tenancy Agreement 25 c Dee Street Aberdeen 25/3/09
37. Deed of Variation 25/3/17

P Henning- McFatridge