



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/23/0049

Re: Property at 14 Dornoch Way, West Craigs, Blantyre, South Lanarkshire, G72 0GR (“the Property”)

Parties:

Mr David Carter, 1st Floor Left, 60 Union Grove, Aberdeen, AB10 6RX (“the Applicant”)

Miss Haryet Wairimu, Mrs Mary Wambui, Mr Felix Maina, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £5135.32 be granted in favour of the Applicant from the Respondent.

Background

1. This was a Hearing in respect of an application by the Applicant dated 6th January 2023 for an order for payment in respect of rent arrears and cost to repair damage to the Property, against the Respondents. The Applicant was originally seeking the sum of £6,362.36.
2. The following documents were lodged with the application -
 - A copy of the Tenancy Agreement dated 19th August 2019
 - Copy rent statement showing rent due as of 19th July 2022
 - Various estimates and invoices from tradesmen for work done to the Property
 - Copy letter from tracing agents confirming no trace for Mrs Wambui and Mr Maina.

3. At the first CMD the application had been served by service by advertisement on all parties as, attempts at serving the application on the first named respondent Ms Wairimu the guarantor in the lease had failed with Sheriff Officers reporting she had left the address given in the lease and her current whereabouts were unknown. All Respondents were served this application by service by advertisement from 27th March 2023 and this hearing has also been served by notice of advertisement as well as emails being sent to Ms Wairimu and Ms Wambui.
4. *“As per the Applicant’s Form F paper apart, the sums sought were:*

*Outstanding arrears, which are at present **£5,512.33**.*

Dilapidations to the property, minus the deposit of £1,900 already allocated to damage to the property:

- a) *£250 for floor and carpet cleaning throughout the Property;*
- b) *£450 for new carpets;*
- c) *£105 for repairs to the kitchen heat alarm;*
- d) *£612.99 for clearing out damaged furniture and possessions left by the Second and Third Respondents;*
- e) *£672 for repairs to utility room ceiling resulting from a leak unreported by the Second and Third Respondents; and*
- f) *£340 for wall cleaning prior to painting; and*
- g) *£320 for applying additional stain block to walls stained by make-up and fake tan.*

*which total **£849.99**.*

*The total balance outstanding from the Respondents is **£6,362.32**. The Applicant seeks a payment order in the sum of **£6,362.32** with interest at 3% above base rate from the date of decision”*

5. Prior to the first CMD the guarantor Ms Wairimu had contacted the Tribunal and wanted to know what this application was regarding. On 25th June 2023 the Tribunal received an email with lengthy written submissions including various attachments and photographs from the Second Named Respondent, Ms Mary Wambui one of the tenants. A CMD was then held on 5th July at which both the guarantor and Ms Wambui were present eventually and made representations.
6. Ms Wambui submitted in her representations that she believed it had been agreed that the deposit would be claimed and was paid in respect of rent arrears. Ms Matthew for the Applicant indicated that she could not comment on this until she had the opportunity to see the Respondents submissions and to take her client’s instructions.
7. Ms Wairimu confirmed that she was the guarantor in the lease of the Property to her mother Ms Wambui. She confirmed she had been contacted about the rent arrears, and could confirm that the last letter she could find while on the call was dated 24th January 2022. She further explained that she had visited the Property during the tenancy around 3 or 4 times and felt that there were various repair issues with the Property that were highlighted during the

tenancy and not fixed while her mother was a tenant. She mentioned in particular issues with the toilet continually running, a ceiling hanging down, heating not working, and a radiator leaking. She also confirmed that at the end of the tenancy they could not get access to the garage to remove items left there because it had been locked and they had no access. She advised that the letting agent kept saying they needed to contact the landlord.

8. Ms Wairimu's position on the claims by the Applicant for reimbursement for damage he avers was caused by the tenant were as follows:-
 - a. Costs of cleaning floors and carpet and replacing carpet – Ms Wairimu stated the carpets did not need ripping out.
 - b. Cost of repairing kitchen heat alarm – Ms Wairimu advised that she thought it had been reported as faulty.
 - c. Cost of clearing out of furniture and possessions – Ms Wairimu indicated that the \property had been let furnished and apart from possessions her mother could not get to in the garage because it was locked she was not aware of other possessions that should have been removed.
 - d. Cost of repairs to the utility room ceiling – Ms Wairimu indicated the ceiling had been hazardous and this had been on the list of repairs needing attention for some time.
 - e. Cost of cleaning walls prior to painting – Ms Wairimu denied that the walls needed cleaning and indicated her mother did not wear fake tan/make up which was suggested that was on the wall.
9. Ms Wambui confirmed that in respect of the claim for rent arrears she had thought there was an agreement, confirmed by the letting agent, that the deposit would be put towards the rent arrears and on this basis she had agreed to it being released. She also indicated that there were arrears but that there had always been problems with the Property and under questions agreed that she wished to claim a reduction in rent, or abatement, for these issues.
10. In respect of the Applicant's claim for damages she responded as follows to each claim:-
 - f. Costs of cleaning floors and carpet and replacing carpet – Ms Wambui stated the carpets were dated and had been since the tenancy began. She denied she was liable for any costs of cleaning or replacement.
 - g. Cost of repairing kitchen heat alarm – Ms Wambui indicated that the alarm had constantly gone off and she had reported it and an engineer had looked at it and disabled it. Cost denied.
 - h. Cost of clearing out of furniture and possessions – Ms Wambui advised that she had sent a letter to Clyde Letting asking for access to the garage because she wasn't allowed to get into it to clear it. She alleged she has lost possessions that belonged to her because she was not allowed into it. She also advised that she put back some broken beds into the Property as they were in the Property at the start of the lease and had only been stored in the garage. She denied she was responsible for the cost of any clearing.
 - i. Cost of repairs to the utility room ceiling – Ms Wambui advised that there had been a leak through the master bedroom, that it was reported promptly although no-one could come immediately and so

water had leaked into the utility room. She denied she had nor reported the leak or was responsible for the repair.

- j. Cost of cleaning walls prior to painting – Ms Wambui denied that there were stains on the wall that needed cleaning.

11. The Tribunal asked for the following to be clarified prior to the next CMD

- a. The Applicant should provide any response to the written submissions from the Respondent. In particular the Applicant should advise if he accepts the deposit was reclaimed for rent arrears or not given the Second named respondents submissions.
- b. The Applicant should provide any further response regarding the claims of damage.
- c. The Second Named Respondent Ms Wambui has indicated she wishes to claim a reduction or abatement of rent due to alleged issues with the Property during her tenancy. She requires to clarify what reduction of rent she is seeking, how much per month, for which and how many months, and to confirm what issues she is seeking the reduction for.

12. The Tribunal noted the matter would be proceeding to a hearing.

13. The Second named respondent Ms Wambui sent in a written response dated 11th August 2023 advising that she reported the leak that led to water in the ceiling of the washing area and also lodged a number of copies of issues sent to the letting agent Clyde Property which she advised were requests for repairs. These included bathroom basin loose in lower visitor bathroom; radiator valve not working and rusty; alarm constantly going off; flush pipe leaking at cistern; floorboards loose; fridge not working and washing machine rusty; microwave rusty inside; kitchen drawers broken; leg broken on bed; sink needing resealed; light not working, kitchen wooden plate fallen off; dirty and missing ceiling light wires; the Respondent alleged that while clearing out of the property the garage doors became locked and she could not access the garage to remove additional property. She advised that she tried to contact the agent but they said they needed to contact the landlord and would come back to her but did not. She advised that she did not fight the claim for the deposit because it was in respect of rent arrears. Ms Wambui indicated that due to the number of outstanding repairs she felt an abatement of rent should be due and suggested only £500 should be paid for rent from January 2022.

14. The Applicant lodged written submissions in response to the Tribunal's direction dated 5th July 2023 denying that the beds were broken or unusable and advising the tenants had been asked how and when the beds had become unusable. He advised that he had bought a new microwave when the Respondent claimed the other one was rusty, which was found in its box at the end of the tenancy. He advised the Respondents had failed to notify of a claim for the damage to the ceiling in the utility room. He averred the washing machine was in good order and worked despite rust forming and it was PAT tested. He accepted that the deposit claimed of £1900 had been put towards the rent and not the dilapidations. He finally advised that additional belongings had been left in the Property by the tenants which was listed on the check-out inventory and in addition some furniture was marked and chipped and had to be thrown out as well.

15. At the 3rd CMD only the applicant's representative attended and the Tribunal advised that in view of the dispute between the parties regarding the sums due a hearing would be held.

16. Intimation of the hearing was sent to all parties on and was advertised on the Tribunal website.

The Hearing

1. The hearing proceeded today by WebEx and Ms Alexandra Wooley attended as the legal representative for the Applicant, Mr David Carter the applicant attended and Ms Jayne Barr from Clyde Property as a witness. Ms Wooley had lodged 2 witness statements from Mr Carter and Ms Barr prior to the hearing. None of the Respondents attended the video hearing and neither the first or second Respondent who had received email invitations to attend a test of the WebEx system to ensure it would work on their devices had responded to that invitation. The Tribunal was satisfied that due intimation of the hearing had been made and the hearing should continue in the absence of the Respondents.
2. The Tribunal invited Ms Wooley to confirm what her client was seeking and to lead her first witness. Ms Wooley advised that she had instructions first of all to confirm the Applicant wished to amend his claim to reduce the sums sought. She advised that the Applicant no longer wished to seek reimbursement for 3 items he had previously been seeking namely
 - a. Cost of the new kitchen alarm - £105
 - b. The cost of new carpets purchased - £450
 - c. The cost of repair to the utility ceiling. £612.99
3. She advised that with the omission of these items the revised claim was for a claim of £1522.99 for dilapidations or costs incurred as a result of the tenants' use of the property and £3,612.33 for rent arrears making a total of £5135.32 claimed. The Tribunal indicated that as this was a request to reduce the sum sought this amendment would be acceptable and noted the claim was amended accordingly.
4. Ms Wooley then asked Mr Carter to confirm he adopted his written statement which he confirmed he did.
5. Under questions from the Tribunal Mr Carter confirmed the following:-
 - a. That arrears of rent had built up during 2021 with Clyde Property having to actively pursue payment, some payments being made which brought the rent account back to zero but from September 2021 there were no payments until 2022 and there continued to be underpayments resulting in final balance at the end of the tenancy which was 19th July 2022 of £5512.33. As the tenancy deposit of £1900 had been successfully claimed for rent arrears the balance due he advised was £3,612.32.
 - b. When asked if the tenants had ever claimed an abatement for any repairs being required he said they had not. That they had always indicated they would try and pay it and there were to his knowledge no outstanding repairs when they left. He advised that he had asked Clyde

Property to serve notice for them to leave and they had left in July 2022.

- c. When asked if the Property had ever not been wind and watertight he advised it had always been wind and watertight and the heating was working. He advised that he had no indication they were claiming abatement until this case.
 - d. With regard to the remaining claim for damages or dilapidations Mr Carter advised that the condition of the carpets and flooring in the property when he saw it after the tenants had left was a lot worse than when it was let and he submitted was more than fair wear and tear. He referred to the check-out reports. He said the state of the Property was atrocious with mould in pots and pans and oil and fat stains on the carpets and lots of marks on tiles. He said this went beyond fair wear and tear and the tenants were responsible.
 - e. With respect to the items removed and the receipt from British Heart Foundation for removing items of £612. He explained that he does not live near the property and did not get other quotes but that there were a lot of items to be removed including a piano, bookcases and other large items. In addition he advised he had never had an explanation of how or why the beds he had provided were broken, one he advised looked like it had been dismantled and some joints broken as a result. He submitted the cost was appropriate. Under detailed questions from the Tribunal he advised that he had never been contacted by the tenants looking to pick up items and had not received any request for them to do so from Clyde Property. He advised that 3 months went past before he cleared the Property so that gave the tenants lots of time to ask to remove their belongings. He advised that after 6 months they had asked for some property back but that was much later and the belongings had been removed.
 - f. With regard to the claim about the wall cleaning he advised that the decorator he had used said the marks were very stubborn and took a lot of time to clear much more than would normally be expected. He wasn't sure what they were but mentioned lipstick and said the stains were greasy in some cases and needed cleaning and a lot of painting.
6. Ms Jayne Barr then joined the call from Clyde Property and explained that she was a team leader at the check-out department. She confirmed that she had not done the check-out herself but referred to the hand written check out notes and the typed notes prepared by 2 colleagues and advised that in her opinion she thought the claim for cleaning of carpets by the landlord was justified with regard to the comments made about the flooring and carpets on the check-out report. She referred to the check -out report noting some flooring was scuffed or dirty and stained, and some carpets being heavily marked. Overall her view was this was excessive and the tenant should be liable for cleaning of the floors.
 7. With regard to the state of walls she also commented that she did not know the tenants but from the check-out report noted that there was a lot of notes that the walls were marked such as grubby marks, marked and chipped or multiple marks.
 8. With regard to the removal of items Ms Barr pointed to the list at the end of the check-out report where it is noted "additional items" and advised this is a

list of items that should not be in the Property and had to be removed. She advised the tenants were sent a copy of this. She did not have a record of whether they asked to come back as she said the landlord took over at the end of the tenancy, however indicated that Clyde would always try and get goods removed before the deposit was claimed to avoid further claims. The list of items noted on the check-out report includes mirrors, canvas, wood shelving units, curtains, lamps, office chair, shelving unit, 2 metal tables, bookcase and lamp, in the garage piano Christmas tree, bedding sets.

9. Mr Carter reaffirmed that after the end of the tenancy he was still dealing with Clyde property and borrowing the keys to get into the house. He also advised it is now relet.

Findings in Fact

1. The parties entered into a lease of the Property in the form of a Private Residential tenancy which commenced on 19th August 2019.
2. The Rent due in terms of the lease is £950 per calendar month payable in advance
3. The tenants had left the property by 19th July 2022.
4. Items belonging to the tenants were left in the Property at the end of the tenancy.
5. These items were removed by the Applicant using British Heart Foundation at a cost of £612.99.
6. The rent outstanding at 19th July 2022 was £5512.33.
7. The tenancy deposit was claimed by the Applicant and applied to the rent leaving a balance due of rent arrears of £3612.33.
8. Carpets and flooring needed cleaning at the end of the tenancy and were cleaned at a cost of £250.
9. Further cleaning of the walls was needed due to damage staining and stain block required to be applied at a cost of £340 and £320 respectively.

• Reasons for Decision

10. The parties have entered into a lease where the second and third Respondents have leased the property from the Applicant and have agreed to pay £950 per month in rent. This was confirmed in the details of the tenancy agreement lodged with the Application and confirmed by the applicant. The first named respondent is the guarantor and has undertaken to meet the "payment of rent and any other obligations" under the Tenancy agreement that the tenant is liable for.
11. The Respondents have failed to pay the full rent due. The rent statement lodge by the Applicant shows the sum of £5,512.33 as due by the Respondents at the end of the tenancy on 19th July 2022. The first and second Respondents when they attended the second CMD did not deny rent was due but averred that repairs were needed and the rent should be abated. They were called upon to specify what repairs they were relying on to claim abatement or damages but have not specified what was outstanding to date. They have alleged and Ms Wambui has lodged evidence to support there

were various issues with the Property but none of these shows or suggests the Property was not wind and water tight or that there were any major repairs required that would justify an abatement of rent. Nor is there any suggestions they raised this when living in the Property. For these reasons the Tribunal accepts the written and oral evidence of the applicant that rent is due and owing and has not been paid by the tenants or the guarantor in the sum of £3612.33 after deduction of the tenancy deposit.

12. The Tribunal found the Applicant to be credible in his evidence that the Property was generally not clean or clear at the end of the tenancy. The Tribunal accepted the evidence of the Applicant, which was supported by the check out reports made by an employee of the letting agent who compared the end of the tenancy with its condition at the start of the tenancy and found that the carpets, although some were dated, were dirty and marked at the end of the tenancy and Ms Barr confirmed this went beyond normal wear and tear. The Tribunal noted that the check-out report states on several occasions the floors are marked and stained and the walls were grubby. In the check-out report that has hand written comments the works that are suggested as the tenants responsibility is a deep clean and removal of additional items, return of missing items and reimbursement for damage.
13. The Tribunal accepted after hearing from the Applicant, Ms Barr and considering the written evidence that the carpets and flooring did require cleaning, and that this had taken place given the receipt received from Mirror Shine dated 11th November 2022. The cost of this was £250. In addition the Tribunal accepted that the walls were particularly stained and accepted the comments from the Applicant who advised the decorator had needed to do further cleaning and applying stain block to the affected areas. This was supported by the check-out evidence and the invoice from the decorator who clearly stated that stain blocked affected areas. Finally the Tribunal accepted from the list of additional items left at the Property that these had to be cleared by the Applicant. Although the Respondents had indicated they had sought the return of the items in the garage, there were other items left in the house and the Applicant stated categorically he had not received any request for these items and had waited 3 months before clearing the Property. On balance the Tribunal accepted that the items were left and the Applicant had not received a request for their return until after the items had been removed. The Tribunal therefore accepted that the revised amount claimed was due by the tenants to the Applicant.
14. The Tribunal has taken account of the written representations even though the Respondents did not attend the hearing and finds it fair and appropriate to make an order for payment for the sum of £5,135.32 which is made up of rent arrears of £3612.33 and cost of clearing and cleaning in the sum of £1522.99. The Applicant sought interest at the rate of 3% above base rate. The tribunal considered that in the absence of a contractual rate of interest agreed between the parties but given the current cost of borrowing an interest rate of 4% would be appropriate.

- Decision

An order of payment of £5,135.32 with interest at 4% is made in favour of the Applicant.

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.

Legal Member/Chair:



Date: 28th November 2023