



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/PR/21/0203

Re: Property at The Old Schoolhouse, Lochhill, Elgin, IV30 8LT (“the Property”)

Parties:

Miss Emma-Louise Davy, 10 Corries Way, Forres, Moray, IV36 2TS (“the Applicant”)

Mr Michael Woodcock Trustee of Inkersall Furbs, The Estate Office, Inkersall Farm, Bilsthorpe, Newart, Notts, NG22 8TL (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

1. The Applicant made an application for a Payment Order in the sum of £525 which she claims is an overpayment of rent made payable to the Respondent.
2. The Applicant also made an application for a Payment Order in respect of compensation which she claims was caused by the unsatisfactory state of the property which caused damage to her and her family’s personal belongings. The Applicant claims the sum of £2,065.79.
3. A Case Management Discussion took place on 23 April 2021 and 5 July 2021. Directions were made on 23 April 2021 and repeated on 5 July 2021 in the following terms:
 - a. Miss Davy is required to provide proof of the notice to quit that she and her joint tenant Mr Tweedie sent to the respondent.

- b. Miss Davy to provide authorisation from Mr Tweedie that he is agreeable to Miss Davy proceeding with this application on behalf of both of them.
 - c. Miss Davy to produce a copy of all correspondence/photographs to the Respondent alerting the Respondent to the unsatisfactory state of the property and damage caused to her own property/personal belongings as a result.
 - d. Miss Davy to produce a detailed and itemised schedule of all items claimed for, alongwith the amount claimed, photographs of each item, any receipts for the items, a record of when they were bought and what they would have been worth immediately before the damage occurred. Miss Davy is required to cross reference these items to any photographs and receipts produced. The schedule must make clear how Miss Davy arrives at the sum of £1500 in respect of damage or loss of property and must take into account fair wear and tear. (It is worth pointing out here that the Applicant raised the sum from £1,500 to £2,065,79 in her most recent submissions.)
4. The Applicant relies upon a bundle of documents representing 58 items. Unfortunately, the index has not been paginated. The Respondent relies upon a bundle of 5 items and 31 pages. We have carefully considered all of the documents, oral evidence and written submissions before reaching our decision.
 5. The hearing took place remotely on 27 August 2021. The Applicant was present and represented by Miss Hayward. Mr Woodcock appeared for the Respondent. We were satisfied that everyone could hear each other and be heard. Only one issue with connectivity arose when Mr Woodcock's signal dropped. We suspended the hearing until he re-joined and provided a recap in case he had missed any of the discussion. We were satisfied that the Applicant and Respondent had a fair opportunity to present their case.
 6. The application signed 28 January 2021, makes a claim under Regulation 80 of the Rent (Scotland) Act 1984. After a course of correspondence between a Casework Officer and the Applicant, the application was amended to a claim under Rule 111 of the Schedule to the First-tier for Scotland Housing and Property Chamber Rules of Procedure 2017.
 7. We have jurisdiction to deal with this application under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016.
 8. The burden of proof is on the Applicant and she has to prove her claim on the balance of probabilities.

OVERPAYMENT OF RENT

9. The Applicant seeks a Payment Order in the sum of £525 which she claims was withheld without her permission after she overpaid rent. In the most

recent amended written submission, emailed to the Tribunal on 23 August 2021, the Applicant stated that 'after reviewing rent paid, the Applicant now accepts that there was not an additional one months (*sic*) rent paid at the end of the tenancy. She now requests a refund of £50 for the dog deposit and seeks clarification on the additional £150 paid to the Respondent in January 2019.

10. It is important to note here that the application made does not relate to a £50 payment for the dog deposit or to an additional £150 paid to the Respondent in January 2019.
11. This is a new matter. The Applicant has not sought to amend her application and in any event, the Applicant failed to comply with Directions in time.
12. We had regard to the overriding objective of the First-tier Tribunal to deal with the proceedings justly. Dealing with the proceedings justly includes
 - (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
 - (b) seeking informality and flexibility in proceedings;
 - (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
 - (d) using the special expertise of the First-tier Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with the proper consideration of the issues.
13. Accordingly, we decided not to consider these issues as the application has been outstanding since 28 January 2021, has had 2 Case management Discussions and Directions were first issued in April 2021. Any application to amend at this late stage would have been refused.

COMPENSATION FOR LOSS OR DAMAGE TO PROPERTY

14. The Applicant seeks a Payment Order for compensation relating to a previous application, reference ending 0076, for damage to property arising from the state of the property due to damp and mould, non-airtight windows and doors, and infestation of rats and mice. Her application lacked specification. No copy of the application under reference ending 0076 has been produced. The application failed to specify the amount sought or provide any details of the property that was damaged, the extent of the damage, and the age and condition of the property prior to damage. Directions were issued in April 2021 and July 2021 directing the Applicant to provide a sufficiency of information to give the Respondent fair notice of her claim and to allow him an opportunity to respond.
15. In the amended submission, sent in on 20 August 2021 electronically and not in compliance with Directions, the Applicant makes a claim for damage to various items in the sum of £2,065.79. She has produced some receipts/bank statements to show purchase and photographs of what appears to be mould

and of holes in the walls which she claims caused or contributed to an infestation of vermin and damage to property (see productions 16-45; 50-51.)

16. The Applicant's Representative submitted that the Applicant notified the Respondent of an issue with vermin at the property by text message dated 28 December 2018 (Production 16). In or around November 2019, the Applicant contacted Active Control Environmental Services who attended at the property and provided tamperproof bait boxes, rodenticide warning labels and searched for dead pests. The part headed 'Treatment Report' is illegible, both in paper copy and on the copy sent electronically to the tribunal [42].
17. The Respondent informed the Tribunal that during the tenancy, the Respondent carried out any repairs required within a reasonable timescale. He denies that there was a rodent infestation. He accepts that the Applicant notified him in 2018 that there was an issue with mice at the property. It was assessed that there might have been one or two mice. The Applicant was advised to use a trap or bait but refused. She was not prepared to use bait because her dog might eat the dead mice. There was never anything other than a tiny number of droppings. There was no evidence of rat infestation.
18. The Applicant was not living in a hygienic way. He has let the property since 1990 and none of the previous tenants have complained of vermin infestation. The property is more than 100 years old and in an area where it is not unusual for mice to enter during autumn. This can be easily resolved by putting bait down. After a year of not taking any action to prevent the problem escalating, the Applicant arranged for Active Control Environmental Services to attend the property. Bait was put down and the issue was swiftly resolved.
19. The Applicant claims that mice were coming in through holes in the property. He arranged to send someone out to investigate. It was established that the Applicant had plumbed in the washing machine and put holes in the floor. The mice may have gained entry there. She was given £100 as a gesture of goodwill, and not as an admission of liability, which was reduced from her rent payment.
20. During a half yearly inspection it was noted that the plastic vent cap on top of the oil tank was missing. The inspector believed that the Applicant had removed the vent cap when she made a fictitious claim that someone had stolen oil from the tank. He suspects that the vent cap was removed by the Applicant when trying to establish the reason why the oil had disappeared. The tank was inspected and was found to be in good working order. Those who attended at the property on his behalf placed a piece of slate over the top of the vent to cover it for 24 hours until a replacement was fitted.
21. During the half yearly inspection, his contractor noticed that there was a damp patch on the ceiling. The Applicant failed to report this. He arranged for an inspection of the roof where it was noted that there were two slates missing. These were fixed to the roof around two days later. There is nothing unusual about slates being missing on a property of that age. He took reasonable care

to arrange regular inspections and took action as quickly as he could and within a reasonable timescale.

22. The Applicant complains that someone who attended at the property, banged on the roof and took no further action. This in fact was the contractor reailing the slates back onto the roof. This demonstrates the level of criticism that the Applicant makes against the Respondent for no good reason.
23. The Applicant claims that there was mould in the property. Patches of black mould can be seen in the photographs, but this was due to a lack of ventilation. It is a small two bedroomed property with a bathroom, living room with a kitchenette area. The Applicant put a washing machine into the kitchenette area. She has two young children. He believes that the Applicant did not open the windows to properly ventilate the property causing mould.
24. The Applicant claims that a number of visits were made by an Environmental Health Officer. The Applicant has never provided the Respondent with notice that an Environmental Health Officer was coming to the property or of any issue that was ongoing. He does not accept the Applicant's assertion that she has been unable to recover a report from the Environmental Health Officer because of data protection rules. He does not accept that an Environmental Health Officer who attended at the home and found it in a state of disrepair would not have done anything about it. He would have a duty to serve a notice. He has never received any such notice.
25. The Applicant reported holes in the wall. He sent someone round to inspect. They discovered some holes in the plasterboard studding made by the Applicant when fitting the washing machine. There were no holes on the external walls. These were dealt with immediately. The property has always been wind and watertight. He takes his responsibility seriously as a landlord and carries out inspections twice yearly. Any repairs were carried out quickly and in a reasonable time frame.
26. The Applicant at various times has made different claims for different items of property and different amounts. She has not provided any evidence that the bedside cabinets and chest of drawers have been destroyed. The amount she claims increases overtime and the Applicant has failed to provide an explanation why that is.
27. The Applicant claims £129.99 for damage to a lawnmower but her earlier list claimed that the lawnmower cost £89. She claims that the lawnmower was damaged when excess cement was used to block up a hole. It is unreasonable and incredible to hold out that either a mouse or excess cement caused the damage as claimed.
28. The Applicant claims for damage to a collection of 80 books @ £12.99. She has produced a photograph of a box which looks as if there are magazines therein which are not damaged. There is a couple of mice droppings at the bottom of the box but this was caused by the Applicant by her failure to put

down bait when advised to do so. There is no evidence that any of these items were damaged.

ANALYSIS AND CONCLUSION

29. Having considered all of the evidence individually and in the round, we are not satisfied that the Applicant has made good her claim on the balance of probabilities. The Applicant has failed to provide a report to show that the property was damp. We accept the Respondent's position that the mould was caused by lack of ventilation probably because the Applicant failed to open the windows.
30. We find that the property had a minor issue with mice in 2018 and that the Respondent correctly informed the Applicant to apply bait to resolve the issue. We note that there is little correspondence from the Applicant to the Respondent for around a year between 2018 and 2019 and there is little indication that this was an ongoing problem. The fact that the infestation was resolved as soon as bait was put down demonstrates that this was a minor issue that could have been dealt with swiftly. Accordingly, the Applicant is not entitled to compensation for any claim damage due to vermin infestation. There is no evidence that the property was infested by rats.
31. In relation to the holes in the wall, we find that the Respondent took all reasonable steps to inspect the property and make good any faults therein. We find that the Applicant was responsible for any holes to the property around the washing machine and in the bathroom, and that the mice gained entry that way. We accept that there are holes shown in the photographs produced by the Applicant, but we also accept the Respondent's position that these relate to the outbuildings and not to the dwelling. Accordingly, we are satisfied that the Applicant is not entitled to compensation for loss of property arising from holes.
32. Even if we are wrong, we are not satisfied that the Applicant has demonstrated that her property has been damaged and we do not accept the amounts claimed. She has not provided the cost of replacement after fair wear and tear. She has failed to provide any details as to the condition of the items prior to the damage. The Applicant has not provided photographic evidence or any other proof that the claimed items have been damaged beyond repair or damaged at all. It is inconceivable that mice or mould would have damaged, for example, 2 chests of drawers and 2 bedside tables, a slow cooker, books, dolls and a travel cot. Accordingly, her claim must fail.

DECISION

The Applicant's claim for a Payment Order is refused.

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.

Lesley-Anne Mulholland

Legal Member/Chair

27 August 2021