

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/19/0596

Re: Property at 420 Hyndford Road, Lanark, ML11 9SQ (“the Property”)

Parties:

Mr Colin Adams, Mrs Lorraine Adams, 55 Beauly Crescent, Wishaw, ML2 8EG (“the Applicant”)

Mr Steven Shannon, 420 Hyndford Road, Lanark ML11 8SQ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted and made an Order for Payment by the Respondent to the Applicant of the sum of £12,000.

Background

By application, dated 20 February 2019, the Applicant sought an Order for Payment in respect of arrears of rent. The amount sought was £6,000 with any further sums due as at the date of the Order. The Applicant also sought payment of a further sum of £22,850 for repairs to the garage of the Property and recovery of all costs to repair or restore the loft space.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties commencing on 1 June 2014 at a rent of £1,000 per month and, if not brought to an end on 31 March 2017, continuing on a monthly basis until ended by either Party “subject to interpretation clauses 21 and 22”. Clause 21 stated that it had been expressly and irrevocably agreed between the Parties that a verbal agreement had been reached for the purchase of the Property by the Respondent to the value of £318,000, this being an option that the Respondent could exercise at any time. Clause 22 provided that it was agreed that the Respondent would make a payment of £1,704 per calendar month direct to the Applicant’s mortgage company for the duration of the Agreement and that, in the event that the Agreement was

brought to an end by the Applicant or agents acting on behalf of Leeds Building Society, the "overpayments of £704" per calendar month would be repaid to the Respondent on a cumulative basis for all payments made from the date of commencement of the tenancy. Clause 22 also stated that the Agreement could not be terminated by the Applicant until all sums due under Clause 22 were fulfilled in full.

The Applicant also provided the Tribunal with a Rent Statement showing arrears as at February 2019 of £6,000.

A Case Management Discussion was held on 15 April 2019. On 12 April 2019, the Tribunal had received written representations from the Respondent, who contended that, during the original lease, Leeds Building Society had raised proceedings against the Applicant to repossess the Property. It had been agreed at a hearing that a new lease agreement would be acceptable to the lenders, with the Respondent making monthly payments of £1,704 directly to them. The Respondent said that his rent had been paid as and when it was due, and the Applicant had entered into an agreement with Leeds Building Society to clear any arrears that accrued over and above the payments being made by the Respondent. The Respondent had made 51 payments of £1,704 as agreed and, when the Applicant had served a Notice to Quit, the Respondent had made a formal demand for repayment of the overpayments of £35,904. As at April 2019, this figure had reduced to £27,904 as, from September 2018 to April 2019, the Respondent had withheld £1,000 per month. The Respondent's view was that the Applicant was in breach of Clauses 21 and 22 of the Tenancy Agreement, but the Respondent had advised the Applicant that he was content to leave the Property on receipt of the overdue balance being made. No payment had been made by the Applicant, so the Respondent had advised the Applicant that all future monthly payments due under the lease would be deducted from the overpayment balance.

At the Case Management Discussion on 15 April 2019, the Tribunal decided to fix a formal Hearing, as there were a number of factual matters which required to be addressed. The Applicant then provided an updated Rent Statement showing arrears of £10,000 to June 2019.

The Hearing scheduled for 11 June 2019 was adjourned to 25 June 2019 and on that date, it was, at the request of the Respondent Mr Shannon, further adjourned to 5 August 2019, to ensure the attendance of the Respondent Miss Sweeney, whose evidence Mr Shannon regarded as of critical importance.

Prior to the Hearing, the Respondent sought a "pre-hearing" on the legitimacy of the joint lease, as the Applicant was challenging the document on the basis of the date on which it was signed and witnessed. The Tribunal refused that request on the ground that the Tribunal would allow the Parties to address the issue at the Hearing, the date of which was imminent.

The Hearing

The Hearing took place at George House, 126 George Street, Edinburgh on 5 August 2019. The Applicant was present and was represented by Ms Tracey Campbell-Hynd of TCH Law, Hamilton. The Respondent, Mr Shannon was present. The Respondent, Miss Sweeney, was in the building but was unable to be present at the Hearing as she had young children with her. Accordingly, she participated by means of a telephone conference facility.

The Respondent, Mr Shannon, asked the Tribunal to dismiss the case as, under Clause 22 of the tenancy agreement, the Applicant could not seek to terminate the tenancy until any and all sums due to the Respondent were fully repaid. He contended that it was established that there was an amount of £35,904 owed by the Applicant. He understood that the Applicant was seeking to challenge the legitimacy of the tenancy agreement, but even if such a challenge were successful, the Applicant had acted on the faith of the agreement by accepting £704 per month more than the monthly rent. The Respondent's Motion to dismiss was opposed by the Applicant on the basis that the Respondent's position was incorrect. There was nothing to preclude the proceedings going ahead. The Tribunal agreed with the Applicant's view that the proceedings should go ahead and the Motion to dismiss was refused.

The Applicant's solicitor told the Tribunal that the Applicant's position was that the Order for Payment should be granted.

Summary of Oral Evidence

Ms Campbell-Hynd called as her first witness, the Applicant, Mr Colin Adams.

Mr Adams told the Tribunal that he had purchased a plot of land and built the Property around 2010. He was an electrical contractor, and this was the third house that he had built. He was *au fait* with regulations regarding electrical installation. He had originally intended to sell the completed house, but due to the economic recession, had decided to rent it out instead. There had been one set of tenants prior to the Respondent. The Applicant had lived in the Property for a few months after that, then had decided to re-let it. The original lease had been drafted by the Applicant's estate agents and the present Agreement had been signed on 26 May 2014 and was the tenancy Agreement now in place. The Respondent had made an amendment to insert Clause 22. The Applicant had been unable to make full repayments of the mortgage at that time, the monthly figure being £1,704, as the rental did not cover them. The Applicant had fallen into mortgage arrears and had felt pressured into signing the new lease, as amended by the Respondent. It had been signed in the back of the Respondent Mr Shannon's car, outside Lanark Sheriff Court. There had been no mention of a replacement lease prior to the encounter outside the sheriff court. The new rental covered the mortgage payments.

The Applicant had been alerted by a friend to the fact that there was a mess outside the garage of the Property. The Respondent had been contacted and it was then that the Applicant found out that there had been a fire in the garage in January or February 2018. The Respondent had never told the Applicant about this and the Applicant had not found out about it until some 5/6 months after the fire. Mr Adams was of the view that, as most of the roof had been destroyed, the damage would have worsened in the intervening weather. The matter was now with the Applicant's insurers.

Ms Campbell-Hynd referred Mr Adams to a Scottish Fire and Rescue Service Incident Report, lodged with the application, regarding an incident on 17 February 2018 and, in particular to page 6 of the Report, which stated that the most likely cause of the fire was "Faulty leads to equipment or appliance". Mr Adams confirmed that no such appliance had been provided by the Applicant, but that he understood that the Respondent had connected extension leads from the house to the garage, as he had been working on cars and a bus.

Mr Adams was then referred to a letter which formed part of the Respondent's Productions. It was a copy of a letter from Burgoynes, consulting scientists and engineers, to the Respondent, Mr Shannon, dated 3 January 2019 and Mr Adams stated that it suggested that they, too, had had difficulty in contacting the Respondent to inspect the Property as part of their remit to investigate the cause and circumstances of the fire on behalf of the Applicant's insurers.

The Respondent then cross-examined Mr Adams. The Respondent put it to Mr Adams that the fire might have been caused by defective electrical installation when the Property was built, Mr Adams having carried out the electrical installation. This was vigorously refuted by Mr Adams.

In further examination by his solicitor, Mr Adams confirmed that he had not at any time been asked by Scottish Fire and Rescue Service or the loss adjusters any questions regarding the electrical installation at the Property.

Ms Campbell-Hynd then called Mrs Lorraine Adams as a witness. As a Party, she had heard the evidence given by her husband and she told the Tribunal that there was nothing in his evidence about which she had concerns. She stated that the first time she had seen the Property during the tenancy had been on the Tuesday prior to the hearing. She and her husband had continued with the lease because of their financial position at the time. She had known nothing about the fire in the garage until she had received a telephone call from the Council about the rubbish lying outside the Property in June 2018. She had then gone to the Property and that had been when Mr Shannon had told her about the fire. He had indicated at the time that he had already let them know by solicitor's letter but was unable to name the solicitor concerned. None of the rubbish belonged to the Applicant.

Mrs Adams also stated that the alterations to the Property included putting in a staircase where there had been a cupboard, moving a doorway and converting the attic into two bedrooms. This had all been done without the consent of the Applicant, including putting lighting and power into the loft. She said that the Property did not look remotely like the house was before they had let it to the Respondent. Redecoration had been carried out without consent and there was a mural on the wall of one of the bedrooms.

Mrs Adams was then referred to one of the Productions which showed the Property as the operational address for a business and told the Tribunal that there was evidence that a bus conversion had been going on at the Property at some point.

In cross-examination, Mr Shannon referred Mrs Adams to one of the Respondent's Productions, which he said was a signed approval by Mr Adams dated 1 December 2012 to the extension into the existing attic space of the Property. Mrs Adams said that the signature on that document was nothing like that on the lease document.

Re-examined by Ms Campbell-Hynd, Mrs Adams confirmed her view that her husband's signature on the purported consent document was totally different from that on the lease. She believed the signature on the former document to have been forged. It would not have been the Applicant's intention in 2012 to allow any conversion or alteration works.

The Respondent, Mr Shannon, then gave evidence on his own behalf.

In relation to the attic conversion, he told the Tribunal that Mr Adams had been happy to show him the attic and referred the Tribunal to the document dated 1 December 2012 to which he had referred Mrs Adams in cross-examination. He added that when it had become clear that the Applicant was unhappy with what he had done, he had stopped the work in the attic.

Mr Shannon told the Tribunal that the garage fire had occurred on a Saturday morning. He had tried to tell the Applicant that afternoon but could not get through. He had, however, told the Applicant the following day. He said that no technical evidence had been provided by the Applicant as to the cause of the fire and that he was not party to any discussions the Applicant had had with the loss adjusters. Most of the rubbish at the Property was fire damaged and the loss adjusters had asked the Respondent not to move it pending the outcome of their investigations. There were no flammable liquids in the garage.

With regard to the attic conversion, Mr Shannon said that he had understood that planning permission had been granted and that a neighbour had the plans. Mr Shannon had a copy of them. He had told the Applicant that he would be commencing the attic work in accordance with the plans. Ms Campbell-Hynd put it to him that there were no plans. When cross-examined about the fire, Mr Shannon said that he had got through to the Applicant on the day after the fire and had then awaited further contact from Mr and Mrs Adams. He had tried numerous times by telephone to find out what was happening, but nothing had happened until he was contacted by the loss adjusters on 3 January 2019. The fire had been on 17 February 2018.

Ms Lisa Sweeney then gave evidence for the Respondent by means of a telephone conference call. Her evidence, however, was limited to the concurrent Hearing on a separate application for an Order for Possession.

Summing-up

Ms Campbell-Hynd told the Tribunal that the Applicant was looking for the Order sought in the application. The Respondent had carried out alterations without authority. Even if it could be argued that they had been carried out with the Applicant's authority, they had been carried out unlawfully and, as the Applicant had only very recently been able to ascertain (at the Right of Entry Inspection in the presence of a member of the Tribunal), did not appear to have been carried out competently. The Respondent Mr Shannon's business website confirmed it traded from the Property.

The cause of the garage fire was under investigation. There was no evidence that the Applicant had been at fault, but the Respondent Mr Shannon had been the last person to work in the garage. The Fire Service report suggested that appliances had been the cause and it was not beyond belief that the Respondent might have overloaded a domestic supply. She noted that it had not been intimated to the Applicant for some months.

Mr Shannon told the Tribunal that no structural or engineers' reports had been provided to support allegations of damage to the Property.

The parties then left the Hearing and the Tribunal considered all the evidence before it.

Reasons for Decision

The Tribunal noted that it appears that no conclusion has been reached by the loss adjusters as to the cause of the garage fire or whether they believe that blame can be attributed to either Party. Should they make a finding of blame, it will be for the Parties to consider what further proceedings, if any, are appropriate, but the Tribunal cannot speculate on the outcome of the loss adjusters' investigations, so cannot

make an Order for Payment against the Respondent in respect of this head of claim. It is also possible that the insurance claim may be met by the insurers.

In relation to the loft conversion, the Tribunal heard competing evidence from the Parties, but the Respondent Mr Shannon admitted that he had not obtained a building warrant for the work carried out. The Tribunal did not accept Mr Shannon's statement that he had copies of plans held by a neighbour for the conversion of the attic of the Property. The Tribunal had not, however, been provided with any reports, specification of works or quantification of the cost involved in any remedial work should the Applicant's position be vindicated. The Tribunal was not qualified to determine whether the signature on the document provided by the Respondent purporting to authorise the attic conversion was genuine. The Tribunal's view was, therefore, that, if agreement was not reached, this issue would have to be the subject of separate proceedings.

Having considered all the evidence before it, the Tribunal decided to make an Order for Payment, but only in respect of the arrears of rent. The Respondent had admitted in written and oral evidence that he had restricted payments from September 2018 to £740, which represented the payments he was making in terms of the contract between the Parties over and above the rent of £1,000 per month. Accordingly, the Tribunal held that no rent payments had been made since August 2018 and that an Order for payment in the sum of £12,000 should be made. The Tribunal accepted that there are significant financial issues between the Parties that remain unresolved, particularly regarding the monthly payments of £704 that the Respondent has been making in terms of Clause 22 of the Tenancy Agreement, but these will have to form part of separate proceedings, if agreement cannot be reached between the Parties. The Respondent chose to withhold £1,000 per month in order to reduce what he saw as sums due by the Applicant to the Respondent under Clause 22 of the Tenancy Agreement, but the consequence of his actions was that he was not paying the monthly rent.

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

5 August 2019

Date