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/18/1754

Re: Property at 10 Old School Wynd, Ochiltree, KA18 2DA ("the Property")

Parties:

Mrs Carol Ross, c/o 2 Parkhouse Street, Ayr, KA7 2HH ("the Applicant")

Mr Jonathan Brown, 81 Cameron Drive, Auckinleck, KA18 2JF ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking an order for payment of £325 in damages occurred during an assured tenancy for the Property.

The application contained:-

- a copy of the Tenancy Agreement;
- inspection report dated 11 January 2018 carried out midway through the tenancy reporting no signs of damage
- check out inspection report dated 18 May 2018 showing signs of damage to the Property
- email dated 17.5.18 from the Respondent accepting that the damage was his fault

The Applicant was represented by Mr Lavelle, of Ayr Estate & Letting Agents. There was no appearance from the Respondent.

The Notice of the Hearing had been served on the Respondent by sheriff officers on 7 November 2018. As I was satisfied that the Respondent had been given formal notice of the today's case management discussion I was prepared to proceed with it in his absence.

The Hearing

There were two preliminary points I raised at the beginning of the hearing, the first was that the application was in the name of Alan Ross; however the tenancy agreement named the landlord as Carol Ross. The Agent advised that the application should have been made in the name of Carol Ross. He advised that Mr and Mrs Ross were spouses, they jointly owned the Property. Only Mrs Ross was the landlord for the Property. He advised that Mrs Ross was fully aware of today's proceeding and the Agent was authorised by her to manage the Property and to raise proceedings as necessary. Therefore he moved to amend the name of the Applicant to Carol Ross. I allowed this amendment. Having regard to the overriding objective as set out in Rule 2 of the Tribunal Rules 2017 I did not consider that any further procedure was necessary before allowing the amendment.

The second preliminary point raised was that the tenancy agreement named two different persons on the lease agreement, the Respondent and one other. The Agent advised me that the other person had been a joint tenant at the Property however he had left the Property before the tenancy had ended. He confirmed that the Applicant was only seeking an order against the Respondent.

The Agent advised that the Respondent had been given notice to leave the Property earlier this year due to issues with rent payments.

In 11 January 2018 while the Respondent was still residing in the Property an interim inspection report had been carried out at the Property and a report prepared which is lodged with the application. While some wear and tear issues were noted in the report there was no damage as such noted, all doors and walls were intact.

After the Respondent left the Property a checkout inspection report had been carried out for each room and it had identified a number of items of damage, namely holes in several doors, smashed glass in one door and holes in some walls. That report is lodged with the application.

The Agent had obtained a quote for the repairs to the Property from KA Property Maintenance and they had offered to replace the doors and repair the walls for £900.

The Agent had contacted the Respondent about this damage; there were several emails between the parties. The Respondent had accepted liability for the damage, and this was confirmed in an email he sent to the Agent. That email was lodged with the Application. The Respondent had agreed to pay the balance of 475. Being £900,

less the deposit of £425 which the Agent had recovered. The Respondent had offered to pay the balance in three instalments but had made one payment of £150 only.

The Agent advised that they had made several requests of the Respondent to pay the remaining balance however he had not done so.

The Agent advised that as at today's date the outstanding sum due is £325.00.

Findings in Fact

The Tribunal found the following facts to be established:

A tenancy agreement existed between the Applicant and the Respondent for the Property. It had been entered into on 30 and 31 August 2017.

The lease provides in Clause 6 that a deposit of £425 shall be paid to the Landlord, and further that this sum may be used at the end of the lease towards the costs of repairs to the subjects caused by the tenant.

Clause 24 provides that the tenant will be liable for the cost of repairs where the need for them is attributable to his fault or negligence or of others residing with or visiting him.

That in 11 January 2018 there was no evidence of holes in doors and walls in the Property, as evidenced by the inspection report of that date.

That in 18 May 2018 there were holes in doors; smashed glass in the lounge door; holes in the walls of the master bedroom and lounge, all as evidenced in photos in the inspection report of that date.

That the Respondent had vacated the Property in around May 2018.

That the deposit for the Property had been paid to the landlord at the end of the tenancy towards the costs of the repairs.

Reasons for Decision

Section 16 of the Housing (Scotland) Act 2014 provides that the Tribunal has jurisdiction in relation to actions arising following from a number of tenancies, including those arising under an assured tenancy within the meaning of section 12 of the Housing (Scotland) Act 1988.

As this tenancy is an assured tenancy I am content that I have jurisdiction to deal with this case.

There was no response or appearance from the Respondent but he had been made aware of today's hearing.

The tenancy agreement created obligations between the landlord and tenant, one of those obligations related to the tenant being responsible for the costs of repairs caused by damage occasioned by him or by persons residing with or visiting him.

There was clear evidence of damage to the subjects which does not appear to have been there in January 2018. It appears to me therefore that the Respondent is responsible for the cost of the repairs.

The Respondent appears to have admitted his responsibility.

The deposit was repaid to the Applicant for the part cost of the repairs. The Respondent has made one part payment towards the costs of repairs. There was however still £325 outstanding. I consider that the Respondent is liable for these costs having regards to the terms of the tenancy agreement and accordingly, on the basis of the evidence submitted, I consider that I am entitled to make an order for the sum sued for.

Decision

I grant an order in favour of the Applicant for THREE HUNDRED AND TWENTY FIVE POUNDS (£325.00) STERLING against the Respondent.

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.

Melanie Barbour

Legal Member/Chair

7.12.18

Date