

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 (1)(c) of the Housing (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/17/0559

Re: Property at 26A New Street, Stevenston, KA20 3HF ("the Property")

Parties:

Europe & Jersey Estates Ltd, 30 East Main Street, Darvel, KA17 0HP ("the Applicant")

Mr Darragh Liddy, Mrs Audrey Black, 147 Hayocks Road, Stevenston, KA20 4DW ("the Respondent")

Tribunal Members:

Graham Harding (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant was entitled to payment by the Respondent the sum of £4145.94.

Background

1. By application dated 21/12/17 the Applicant applied to the Tribunal for an order for payment from the Respondent in respect of alleged rent arrears of £4145.94. The Applicant also sought interest and expenses.
2. By Notice of Acceptance dated 3 January 2018 a legal member of the Tribunal with delegated powers accepted the application.
3. A Case Management Discussion was held at the North West Kilmarnock Area Centre on 2 May 2018. It was attended by both parties. A full hearing was assigned to take place on 12 June 2018.
4. Prior to the hearing both parties lodged written submissions and documents to be considered by the tribunal.

The Hearing

5. The hearing took place at the North West Kilmarnock Area Centre, Western Road, Kilmarnock on 12 June 2018. The Applicants were represented by Mr Kenneth Johnstone who had one witness Mr John McGrory. The Respondents were represented by the first Respondent Mr Darragh Liddy. The second Respondent Miss Audrey Black did not attend.
6. Mr Johnstone submitted on behalf of the Applicants that the Respondents Short Assured Tenancy commenced on 17 October 2016 and was for a period of 12 months. According to Mr Johnstone he took the Respondents through the terms of the lease prior to its commencement and pointed out to them the monthly rent, the duration and the deposit.
7. Mr Johnstone said that the Respondents had been introduced to him by another tenant Mr John McGrory who was the partner of Miss Black's mother.
8. Mr Johnstone spoke of receiving complaints from Miss Black that the property was cold. He went to inspect it but found it to be hot and under ventilated. He was later told that a door had been damaged and arranged for it to be repaired. He said that he subsequently received a barrage of calls and messages from Miss Black regarding dampness. Mr Johnstone said he again inspected the property and concluded the problem was caused by condensation through lack of opening windows and overheating. Mr Johnstone explained that he was a qualified Chartered Surveyor and was able to distinguish between condensation and damp.
9. Mr Johnstone said he became aware the Respondents had moved out of the property about the end of January. He thought probably the 27th but it could have been a few days earlier.
10. According to Mr Johnstone after he found the property had been abandoned he spent about a month re-decorating and replacing carpets before putting it back on the market but it took until November to find a suitable tenant. There had been three potential tenants interested but one did not wish the property and the other two had not been suitable. He said he would have preferred to have let the property sooner as even if he obtained an order for payment from the Respondent he was not confident about recovering the sums from them.
11. According to Mr Johnstone the only cash payment he received from the Respondents was £325.00 which had initially been intended as a deposit but had by agreement been used towards the first month's rent. Thereafter the only other payments received were from Universal Credit being two payments of £425.01 and one of £79.04. This left a balance due in respect of the term of the lease of £4145.94.

12. Mr Johnstone said that the original shortfall between the Universal Credit payments and the rent due was supposed to be paid by the Respondents and he was aware they had an online banking facility.
13. Mr John McGrory said that he attended with Mr Johnstone at the Respondents property on one occasion to look at the damp. Mr Johnstone removed the mould that was growing on the wall behind a bed with a cloth and some disinfectant. Mr Johnstone had told him it was caused by condensation.
14. Mr McGrory could not recall the exact day the Respondents had vacated the property but thought it was a Monday towards the end of January 2017.
15. Mr McGrory denied ever receiving cash from the Respondents to give to Mr Johnstone. He had only become aware of this suggestion after the Case Management Discussion and had spoken to Miss Black who had told him that she had never said she had given him any money. He said he was not on good terms with Mr Liddy who had assaulted him last year.
16. Mr Liddy spoke of an incident when three boys had come to his door and forced their way in and assaulted him. This had resulted in the property being damaged.
17. According to Mr Liddy apart from the £325.00 paid in cash at the commencement of the lease the only other cash payment made was for £96.00 paid to a Robert Hamilton to give to Mr Johnstone. Mr Liddy confirmed he did not get a receipt for this money and that was his fault.
18. Mr Liddy produced correspondence from Universal Credit that showed three payments in total being paid to the Applicants, two for £425.01 and one for £79.04. He was unable to produce any vouching for a further payment he thought had been made.
19. Mr Liddy said that his younger son suffered from asthma and that the conditions in the property were such that he had been told if he did not move that social services would take the child into care. He gave that and the cost of heating the property as the main reason for terminating the tenancy early.
20. He explained that as he had not turned up for a job centre meeting he had been sanctioned and that had resulted in his benefits being reduced in January 2017.
21. According to Mr Liddy he had met with Mr Johnstone to explain that he and Miss Black could no longer stay in the property and had told him they were leaving. Mr Liddy said he thought Mr Johnstone was fine about it. Mr Johnstone denied having such a conversation and did not agree to the Respondent terminating their tenancy.

22. Mr Johnstone sought an order for payment for the sum due of £4145.94 which only related to unpaid rent and not to any other claims he may have had in respect of the property.. He acknowledged that he would not be entitled to interest on that amount but was looking for expenses as he had incurred tracing agents fees in locating the Respondents whereabouts.

Findings in Fact

23. The parties entered into a Short Assured Tenancy Agreement that was due to last from 17 October 2016 until 16 October 2017.
24. The Respondents left the property on or about 23 January 2017. they were not entitled to terminate the tenancy in terms of their agreement.
25. The Applicants attempted to re-let the property towards the end of February 2017. It took them until 30 November 2017 to find a new tenant.
26. The Respondents were aware that they had entered into a short assured tenancy for a 12 month period. They had previously been council tenants and had no prior experience of the obligations of being a private tenant.
27. The Applicants took reasonable steps to mitigate their loss by trying to let the property after it had been re-decorated and re-carpeted.
28. The Respondents child suffered from asthma. It is not known if the living conditions in the property exacerbated his condition.
29. The Respondents obtained support from social services towards their electricity costs and food
30. It is not known if the heating costs in the property were excessive.
31. The mould growth in the property was likely to have been caused by lack of ventilation given that the property was built in 2008.
32. The Rent paid by or on behalf of the Respondents throughout the period of the lease amounted to £1254.06. The amount due was £5400.00. The balance unpaid is £4145.94

Reasons for Decision

33. The Applicants representative and his witness Mr McGrory presented as being both credible and reliable and their evidence was to be preferred to that of Mr Liddy who was unable to produce much by way of documentary evidence to support his case.
34. Whilst Mr Liddy and Miss Black no doubt had their own reasons for vacating the property in so doing they left themselves open to a claim for breach of contract by the Applicants. If the Respondents had genuine concerns about

the condition of the property there would have been avenues open to them to follow to address their concerns rather than taking the law into their own hands and acting as they did.

35. The Tribunal was not convinced that the Respondents had made any further cash in hand payments to others to give to the Applicants and found the evidence in this regard less than compelling.
36. The documents from Universal Credit submitted by the Respondents supported the Applicants position with regards to the sums paid on the Respondents behalf.
37. The Tribunal was concerned at the length of time it took the Applicants to find another tenant for the property but ultimately were satisfied that they had done what they could to try to mitigate their loss. The tribunal was therefore of the view that the Respondents should be held liable for the whole amount of the rent due in terms of the agreement between the parties.
38. The Tribunal did not consider that there was anything in respect of the Respondents conduct of the case that would justify an award of expenses against them.

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.

G Harding

Legal Member/Chair

12 June 2018

Date

