



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: FTS/HPC/CV/19/0086

Re: Property at 3 Craigielea Mews, Aberdeen, AB15 7XZ (“the Property”)

Parties:

Mr William Boyle, Mrs Jill Boyle, 25418 Estes Lake Lane, Katy, Texas 77494, United States; C/O Margaret Duffus Leasing, 52 Bon Accord Street, Aberdeen, AB11 6EL (“the Applicants”)

Mr Bruce Hosie, Mrs Emma-Jane Hosie, 9 Rubislaw View, Aberdeen, AB15 4DD (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member), Melanie Booth (Ordinary Member) and Helen Barclay (Ordinary Member [Reviewer])

BACKGROUND

1. By lease dated 17th March 2017. The Applicants let the Property to the Respondents;
2. The period of Let was from 26th April 2017 until 25th April 2019;
3. The rent payable was £1,200.00 per calendar month;
4. A tenancy deposit of £1,200.00 was paid by the Respondents and lodged with an approved scheme;
5. On or around 30th November 2017 the Respondents vacated the property. Prior to doing so the Respondents forwarded an email to the Applicants Leasing agents advising that the First Respondent, Mr Bruce Hosie, had lost his employment and they were no longer in a position to meet rental payments;
6. The property was re-let to another tenant on 22nd June 2018. The Applicants sought an Order for payment of all rent due in the period from 1st December 2017 until 21st June 2018 together with other costs associated with the termination of the Lease and the subsequent marketing and re-letting of the property;

7. The Respondents opposed the application for a payment order intimating that they had, in fact, rescinded the Lease due to defects within the property and the garden ground associated with it;

THE CASE MANAGEMENT DISCUSSION

8. A Case Management discussion was held on 6th March 2019. At that Case Management Discussion the following matters were agreed between the parties;
 - a) The Respondents left the property on 30th November 2017;
 - b) Rent was fully paid until that date;
 - c) The property was re-let by the Applicants agents on 22nd June 2018;
 - d) The Second Respondent (who represented the First Respondent at the Case Management discussion) did not dispute charges totalling £580.20 as “expenses incurred in re-letting Property”;
 - e) The rent payable in the period between 1st December 2017 and the date on which the property was re-let amounted to £8,067.98;
 - f) The tenancy deposit of £1,200.00 was uplifted from the tenancy deposit scheme and returned to the Applicants to be used in satisfaction of any rental payments due;
 - g) The Second Respondent forwarded an email to the Applicants Leasing Agents on 23rd November 2017 intimating an intention to quit the property on 30th November 2017 due to the First Respondent having been “paid off” and advising of difficulties with maintaining rental payments. The email contained an apology for the situation;
 - h) Prior to then, there had been an exchange of emails in relation to various issues/defects within the property, the equipment within the property and the garden ground;
9. At the conclusion of the Case Management Discussion the Tribunal was of view that the following issues were in dispute between the parties:-
 - a. Whether the Respondents vacated the property, and terminated the lease, due to the poor condition of the property and the garden ground and, accordingly, whether the Respondents were entitled to rescind the lease. If so, there would be no obligation to make further rental payments;
 - b. If the Respondents were not entitled to rescind the lease, were they entitled to an abatement of rental payments due to defects within the property and the garden ground;
 - c. Whether the Applicants had mitigated their losses and, in particular, whether there had been any delay in the property being marketed for let;
10. At the Case Management Discussion it appears to have been suggested that the onus for establishing the matters referred to at paragraphs 9. a., b. and c. rested on the Respondents;

THE HEARING

11. A Hearing took place on 17th May 2019 at 10am within the Credo Centre, 14-20 John Street, Aberdeen, AB25 1BT;
12. The Applicants were not personally present but was represented by Kathie Clark and Sarah Harley of Margaret Duffus Leasing, Aberdeen. Both Respondents were personally present;
13. Prior to the Hearing, the Respondents submitted further documentation to the Tribunal, including a Property Inspection Report which had been completed on 28th June 2017. These were forwarded to the Tribunal by email on 15th May 2019, two days before the Hearing;
14. The Tribunal drew attention to the Tribunal rules contained within the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the FTT" Rules) and, in particular, Rule 22 which requires documents to be lodged no later than 7 days prior to any Hearing. The Applicants representatives intimated that they were unaware of these rules and pointed out that the Case Management Discussion Note which had been circulated following the Case Management Discussion did not draw attention to this time limit either. The Respondents had received a copy of the documents submitted. In the circumstances, the Tribunal considered that, on this occasion, there was a reasonable excuse for allowing the documents to be received although late although the Tribunal did comment that parties appearing before it ought to be aware of the FTT Rules;
15. The Respondents maintained that there were numerous defects with the property which, in their view, entitled them to rescind the contract. In particular, there were the following defects:-
 - a. There was a defect with the tumble dryer resulting in it being extremely noisy. This had been raised on various occasions but had never been repaired;
 - b. The dishwasher only worked intermittently. This had been reported on various occasions but had never been property repaired;
 - c. There was a water leak in the bathroom which was causing staining on the ceiling in the downstairs area. This had been reported on various occasions but was never repaired;
 - d. There was a significant problem with the garden area resulting in it continually being wet and unable to be used for any practicable purpose. This issue had never been addressed;
 - e. Separately, in connection with the garden, there were issues with overgrowing trees from neighbouring properties and with leaves/needles being shed from shrubs and bushes within the garden area of the property;
16. Having heard submissions in relation to these matters, the Tribunal concluded that, while there were clearly certain issues with the Property and items within it, they were not of such materiality as would justify the Respondents rescinding the contract;
17. In any event, having regard to the information provided about the defects and the exchange of emails from 23rd November 2017 in relation to the First Respondent losing his employment and both Respondents being unable to maintain rental payments, the Tribunal was not satisfied that the reason the Respondents withdrew from the contract was, in fact, due to these defects. The reason the Respondents withdrew from the contract was due to the financial difficulties they were encountering at that particular time;

18. The Tribunal did, however, consider that the defects merited an abatement of rental payments given the nature and number of the defects and the period of time over which they persisted;
19. In relation to the remarketing of the property, no documentary evidence was placed before the Tribunal to confirm when the property was remarketed, the manner in which it was remarketed nor any information to explain the delay in another tenant taking occupation. The Applicants' representatives had submitted written submissions referring to a "viewing schedule". This viewing schedule was not submitted with the written submissions, despite being referred to within them. This viewing schedule was not brought to the Hearing by the Applicants' representatives. The Respondents accepted that the property had been remarketed early in 2018 but were quite clear that the marketing information advised that the property would not be available for occupation until April 2018. They were able to confirm that the property had been marketed on "Zoopla" and "City Lets" and, in each, it was indicated the property would not be available for occupation for a number of months. In those circumstances, they had concerns that they were being asked to pay rent for a period of time during which the property was not available for occupation by others;
20. The Tribunal believed and accepted the submissions made by the Respondents in that regard;

REASONS FOR DECISION

21. Having heard submissions in relation to the defects to the property and items within it, while the Tribunal accepted that some defects existed, the nature and extent of these were relatively minor and certainly did not justify the Respondents rescinding the contract on the basis of them;
22. In any event, the Tribunal was unable to accept that that was truly the reason the Respondents did, indeed, withdraw from the contract. An e mail forwarded by the Respondents on 23rd November 2017 was quite clear in its terms. It stated:-
"it is with much regret we feel at this point we have no option but to ask if we can quit our tenancy. Sadly Bruce has been paid off by his employer This has come as a massive shock to us as this definitely not what we were expecting. We feel its best that we ask to quit our tenancy on the last day of this month instead of trying to stay somewhere that we can no longer affordour sincerest apologies."
This was followed by an exchange of emails between the parties in which the Applicants' representatives suggested various ways of resolving the situation including a potential reduction in rent, which failing a proposal that the Respondents paid four months rent to end the contract at that stage. Neither proposal was a realistic option for the Respondents at the time. The exchange of e mails make it clear that the reason the contract was terminated was due to the financial position of the Respondents rather than due to any defects within the property;
23. In relation to the remarketing of the property, the Tribunal found it surprising that the Applicants did not produce any documentation whatsoever to evidence the remarketing of the property. In relation to that it is noted that in the note of the Case Management Discussion held on 6th March 2019, it was stated that:-

“both parties were invited to consider what evidence, if any, they would wish to place before the Tribunal, including (but not limited to) a statement from an independent letting agent as to whether the property could have been let more quickly after 30th November and, if so, at what rate.”

In the circumstances, given the absence of any such information, the Tribunal required to proceed on the basis of the submissions made to it at the Hearing by those appearing before it. The Tribunal believed and accepted the submissions made by the Respondents to the effect that, while the property was marketed, it was indicated that it would not be available for occupation until April. That being so, it would appear that the Applicants had not mitigated their losses by arranging for the Property to be re let at the earliest opportunity and, accordingly, no lawful basis for requiring the Respondents to pay rent for any period during which the Property was not available for let;

24. In relation to the rent, therefor, the Tribunal considered that the property was not available for occupation for a period of approximately 3 months following the termination of the contract. In the circumstances, the Tribunal was of the view that it was appropriate to order the Respondents to make payment of an amount equivalent to four months rent;
25. The Applicants were also claiming additional ancillary costs. The Tribunal considered these individually. While the Applicants representatives indicated that these amounts had been agreed at the Case Management Discussion, the Tribunal was of the view that, firstly, nothing discussed at the Case Management Discussion amounted to a final decision, and any comments made at a Case Management Discussion could not bind the Tribunal at any subsequent Hearing when evidence was to be heard and, despite what may have been said at the Case Management discussion, the Tribunal, at the Hearing, required to consider all matters fully;
26. The Applicants were seeking payment for 7 visits to the property during the period it was empty. These were being charged at £30 plus VAT per visit, being £36 per visit including VAT. The total amount claimed was £252. The Applicants' representatives accepted, however, that had the Lease been continuing, there would have been quarterly visits in any event which would not have incurred any charge. On the basis that the Tribunal was only allowing a four month period of rental payments also, during any such four month period, there would have been at least one routine visit to the property which would not have incurred any cost. In the circumstances, the Tribunal was willing to allow 3 visits to the vacant property at a total cost of £108 including VAT;
27. The Applicants were seeking payment for "Inventory costs", that being an outlay incurred by them by arranging for another firm to attend at the property to prepare an Inventory of all items within it. The Applicants' representatives accepted that, at the termination of the Lease, this is a cost which would have been incurred in any event and would not have been chargeable to the Respondents in those circumstances. The Tribunal considered that this was an outlay which would have been incurred by the Applicants at the termination of the lease no matter the circumstances in which the Lease was terminated and, as such, was considered that it was not an outlay for which the Respondents were responsible;
28. The Applicants claimed payment of £22.20 for window cleaning costs while the property was vacant. There was no dispute in relation to this claim and the Tribunal was willing to allow it;

29. The Applicants were seeking payment of £102 as a “new lease fee”. It was explained that this was a charge made by the Applicants’ representatives, to the Applicants, for them preparing and executing a new lease for the new tenants. Again, it was accepted that this was a charge which would have been incurred no matter the circumstances in which the contract was terminated. It was a charge levied to the Applicants by agreement between them and their representatives. The Tribunal considered that, in the circumstances, it was not reasonable to expect the Respondents to make payment of this charge;
30. In relation to an abatement of rental payments due to defects, the Tribunal has already commented in relation to the nature and extent of the defects. The Tribunal was willing to allow a modest abatement to rental payments as a result and, accordingly, deducted the sum of £480 from the award made by it to take account of the same;
31. The Tribunal, therefor, considered that the following payments were due by the Respondents to the Applicants:-

Four months rent	£ 4,800.00
Three Vacant Property Visits	£ 108.00
Window Cleaning	£ 22.20
Sub Total	£ 4,930.20
<u>Less</u>	
Abatement of Rent	£ 480.00
Total Amount due	<u>£ 4,450.20</u>

TRIBUNAL REVIEW OF ITS OWN DECISION

32. Subsequent to the Tribunal concluding and an Order being made, the Respondents contacted the Tribunal to enquire in relation to the rental deposit which had been uplifted and retained by the Applicants. This was a general enquiry by the Respondent rather than an application for review or appeal;
33. The Tribunal, however, considered that it was appropriate to review its own decision. This was done in accordance with Rule 39(1) of the FTT Rules. The Tribunal felt this was necessary to ensure that its decision was properly reflected in the Order made and to ensure that the Parties had a clear understanding of the amount actually due by the Respondents to the Applicants;
34. The sum of £4,450.20 referred to at paragraph 31 above reflects the total amount due by the Respondents to the Applicants in relation to the termination of the Lease. That amount does not take into account the retention of any deposit. Given that it was accepted at the Hearing that a deposit payment of £1,200.00 has been repaid to the Applicants by the tenancy deposit scheme, that amount ought to be taken into account in assessing the total amount due by the Respondents. In the circumstances, while at the conclusion of the Hearing the Tribunal stated in the presence of the parties that an order would be made for payment in the sum of £4,450.20, having regard to the deposit which has been retained by the Applicants, the Tribunal reviewed its own decision and, having regard to the retention of the sum of £1,200.00 received from the tenancy deposit scheme, makes an Order for payment in the sum of £3,250.20.

DECISION

The Tribunal determined that an order for payment by the Respondents of the sum of THREE THOUSAND TWO HUNDRED AND FIFTY POUNDS AND TWENTY PENCE (£3,250.20) STERLING to the Applicants shall be made.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.


Legal Member/Chair

30 May 2019

Date