



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

Chamber Ref: FTS/HPC/CV/19/3973

Re: Property at 36E New Street, Stevenston, KA20 3HF (“the Property”)

The Parties:

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

Mr George Park, 64/1 Parkend Road, Saltcoats, KA21 5PJ (“the Respondent”)

Tribunal Members:

**Joel Conn (Legal Member)
Gerard Darroch (Ordinary Member)**

Decision

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

Background and procedural history

1. This is an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears and other sums related to the condition of the Property at termination of the Tenancy. The tenancy in question was a Private Residential Tenancy Agreement of the Property by the Applicant to the Respondents dated 19 February 2018 and starting on that same date.
2. The application was dated 13 December 2019 and lodged with the Tribunal shortly thereafter. The order sought in the application was for £1,676.94, broken down into: rent arrears of £838.76 which developed from 19 October 2018 until the termination of the Tenancy on 15 January 2019; £218.73 for “debris removal and cleaning”; and £619.45 for “re-decoration”. Both of the later sums were related to the condition that the Applicant stated the Respondent

had left the Property in when vacating at the end of the Tenancy. The lease for the Tenancy also accompanied the application and bore a rental payment of £350 per month, payable on the 19th of each month (following the date of entry of 19 February 2018 in the Tenancy Agreement). A rent statement showing how the arrears figure sought was calculated, invoices for the cleaning and redecoration costs, and some photographs were also lodged.

3. The application called at a case management discussion (“CMD”) on 13 February 2020 and, prior to the CMD, a Notice of Direction was issued to the parties seeking further documentation. The Respondent, then represented by solicitors, lodged written submissions (effectively disputing the claim and seeking some further information) and the Applicant provided a more detailed rental statement; clarification that there was no deposit; and lodged correspondence between the parties on the arrears and vacating the property, some of which – from the Respondent – pointed to vague disputes between the parties which did not develop fully within the application process.
4. At the CMD, the Respondent remained represented by a solicitor and the parties agreed the accuracy of the amount in the invoices for cleaning and redecoration (but not the liability); the dates of commencement and end of the Tenancy; and that no deposit was paid. The matters remaining to be resolved were noted by the Legal Member as:
 - Whether the sum of £838.76 was owed in rent arrears;
 - Whether the cleaning and rubbish removal costs were justified and payable by the Respondent; and
 - Whether the redecoration costs were justified and payable by the Respondent.

In regard to these three disputes, only narrow issues of dispute were identified being (following the same order):

- Whether the Respondent had any evidence to dispute the rent arrears calculation;
 - The Respondent held that he had intended to return to the Property prior to 15 January 2019 to carry out cleaning and removal of items, but the Applicant had barred him from doing so, meaning he should not be liable for the costs of cleaning and clearance. Further, personal items of the Respondent - such as a television – had been removed by the Applicant; and
 - The Respondent appeared to dispute redecoration costs only on the bare grounds that he should not be liable for these.
5. The application was adjourned to a Hearing of 10 March 2020 and the Legal Member conducting the CMD issued a further Notice of Direction seeking any further evidence, lists of witnesses, and specification of the Respondent’s defence, all to be lodged by 3 March 2020.
 6. In response to this further Direction:
 - The Applicant lodged a letter from a gentleman said to have been the neighbour at the Property who stated that the keys to the Property had

been put through his letterbox on 6 January 2019 and, following that, he and the Applicant's director, Ken Johnstone, had attended at the Property. The writer of the letter said he found "the condition of the flat... shocking, ... manky and... [the Respondent's] belongings that he obviously didn't want were left for... [the Applicant] to remove".

- Shortly before the Hearing, the Respondent's then solicitor wrote on 9 March 2020 to confirm that "our client accepts that he is in arrears of £845.47" and made an instalment offer.
7. On 10 March 2020, at a Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at The Frank Sweeney Centre for Enterprise, Ardrossan, the Tribunal Panel was Joel Conn and Gerard Darroch (whom have also issued this Decision). The Applicant was represented by its director, Ken Johnstone. The Respondent was represented by a solicitor, Mylene Scott of Douglas Wright solicitors though Ms Scott was not the principal agent. Mr Johnstone was ready to commence, and would be the sole witness for the Applicant. There was no appearance from the Respondent and matters were delayed while Ms Scott attempted to contact him, to no avail.
 8. Various options for progressing the application were then discussed, including whether the Applicant would simply commence presenting its evidence at the Hearing, but Ms Scott was clear that she would need to withdraw from acting if the Hearing commenced in earnest. Parties' representatives also engaged in settlement discussions. Ultimately, a motion was made to discharge the Hearing to allow for the settlement discussions, which motion was granted. A further Notice of Direction was issued requiring clear communication to the Tribunal if matters settled or with unsuitable dates for a further Hearing if they did not. A deadline of 31 March 2020 was set for responding to the Tribunal with this update. The Respondent was also ordained to appear at any further Hearing.
 9. Subsequently, the COVID-19 public health situation developed and interrupted matters. The Tribunal was next contacted by parties on 20 April 2020 when both parties independently emailed the Tribunal's clerk. The Respondent indicated that he had ceased to instruct Douglas Wright and was now self-representing. The Applicant provided further email correspondence from the Respondent that had been received direct to its office, which appeared to show that the Respondent now wished to dispute the entire claim and expand it with a counterclaim. The email from the Respondent was unclear as to the details of any of these points and, on its face, the Respondent's correspondence to the Tribunal was in different terms.

Procedure for determining application without a further Hearing

10. In an attempt to bring structure, the Tribunal Members opted to issue yet a further Notice of Direction on 6 July 2020 providing both sides until 27 July 2020 to lodge any further submissions limited to those points which were noted to be in dispute at the CMD of 13 February 2020 (under exception of the rent arrears which had been admitted on behalf of the Respondent on 9 March

2020). Further parties were asked for submissions on whether a further Hearing of any sort (whether by telephone or otherwise) was desired. In addition, a covering letter accompanied the Notice of Direction to the Respondent setting out the procedural position so that he was clear what was needed of him, why the scope of any defence was restricted, and guiding him to submit a formal Time to Pay application if he wished in regard to the rent arrears and any other amount.

11. The Applicant provided further submissions in writing on 7 July 2020, giving further specification on the quantum of the cleaning and removal invoice, and of the decorating invoice. The Applicant did not wish a further Hearing and was satisfied for any Decision to be considered without the need for one. The Respondent did not respond at all.
12. On 12 August 2020, on the Tribunal's instruction, the Tribunal clerk wrote to the Respondent noting the lack of response to the last Notice of Direction and noting that the Tribunal regarded this as confirmation that he did not seek to engage further and the application process would now proceed without further contact with him prior to issuing of the Decision. No contact has been received from the Respondent in response to this email.
13. On the same day, also on the Tribunal's instruction, the Tribunal clerk wrote to the Applicant with further specific questions about the redecorating invoice. On 18 August 2020, the Applicant responded to clarify why he held it necessary to redecorate the entire flat; that he did not regard the damage to the decoration to be normal wear and tear; that the flat had been freshly repainted prior to the Respondent's Tenancy; but that no further photographic evidence was available to show the full extent of the damage to the decorations that the Applicant relied upon.
14. The Tribunal has re-reviewed all papers remotely and its members have consulted between them in a similar remote fashion before issuing this Decision without a further Hearing. The Tribunal issues this Decision further to Procedure Rule 18 and in consideration of the overriding objective in Procedure Rule 2. The Tribunal has determined that, in consideration of the procedural history of the case, the public health situation and the limitations it places, and the evidence not in dispute (and that not actively disputed) that it is able to make sufficient findings to determine the case, and to do so will not be contrary to the interests of the parties.
15. No motion has yet been made by any party for an order in respect of expenses.

Findings in Fact

16. On 19 February 2018, the Applicant let the Property to the Respondent by a Private Residential Tenancy with a start date of 19 February 2018 ("the Tenancy").

17. Under the Tenancy, the Respondent was to make payment of £350 per month in rent to the Applicant on the 19th of each month.
18. Under the Tenancy, no deposit was due to be paid nor was one received by the Applicant from the Respondent.
19. The Respondent intimated, in terms, by email on 17 December 2018 that he was leaving the Property.
20. The date of termination of the Tenancy was 15 January 2019.
21. The Applicant wrote to the Respondent by email on 24 December 2018 proposing 7 January 2019 as an inspection date prior to the termination of the Tenancy.
22. The Applicant wrote to the Respondent by email on 8 January 2019 noting that the Respondent had handed in his keys to a neighbour on 6 January 2019 and reporting that an inspection would take now place later in the week.
23. The Applicant wrote to the Respondent by email on 10 January 2019 reporting on an inspection had taken place on 9 January 2019 and expressing dissatisfaction with the condition of the Property, including items left, stains and marks.
24. The Respondent wrote to the Applicant by email on 11 January 2019 raising complaints and asserting that he had left "serious cleaning material" in the Property and that he "had a right to be able to leave a clean flat to be given access" but not expressly requesting further access prior to the termination of the Tenancy.
25. As of 15 January 2019, there was unpaid rent of £838.76 due by the Respondent to the Applicant in terms of the Tenancy being the rent arrears accrued from 19 October 2018 of £350, that from 19 November 2018 of £350, and a pro-rated sum due from 19 December 2018 to 15 January 2019 of £315.48; all less a payment to account during that period of £176.72.
26. Prior to the last date of the Tenancy, on or around 6 January 2019, the Respondent or someone on his behalf, posted keys to the Property through the door of the neighbouring property.
27. In conjunction with parting possession with the keys, the Respondent provided the Applicant with no express indication that he was to return to the Property prior to 15 January 2019 to carry out any further clearance, cleaning or decoration, nor requesting an opportunity to do same.
28. Clause 16 of the Tenancy Agreement includes the obligation that: "The Tenant agrees to take reasonable care of the Let Property"

29. Clause 23 of the Tenancy Agreement includes the obligation that: "The Tenant agrees to remove all of his or her belongings when the Tenancy ends."
30. Clause 29 of the Tenancy Agreement includes the obligation that: "The Tenant agrees to dispose of or recycle all rubbish in an appropriate manner and at the appropriate time."
31. As of the end of the Tenancy, the Respondent had left the Property in an unkept state, with personal belongings, clothing, and rubbish strewn throughout the living room and other areas; floors and carpets dirty; window openings covered with cushions; the kitchen (in particular the stove top and sink) most dirty; and walls marked throughout.
32. The condition in which the Respondent left the Property was in breach of clauses 16, 23, and 29 of the Tenancy Agreement.
33. The Applicant paid £218.73 to C Wheelan for labour to remove belongings and rubbish from the Property, and thereafter clean the Property and carpets. The date of invoice from C Wheelan was 29 March 2019.
34. The full cost of £218.73 was reasonably incurred by the Applicant in cleaning and clearance costs in attending in part to the breaches of the Tenancy Agreement by the Respondent.
35. The Applicant paid £619.45 to J Neil Contracts for redecorating the entirety of the Property after the Respondent had vacated. The date of invoice from J Neil Contracts was 1 March 2019.
36. The sum of £464.59 was reasonably incurred by the Applicant in redecoration costs in attending in part to the breaches of the Tenancy Agreement by the Respondent.
37. The Respondent has made no payment to the Applicant in regard to any sum since 15 January 2019.

Reasons for Decision

38. The application was in terms of rule 111, being an order for civil proceedings in relation to a private residential tenancy.
39. We were satisfied, on the basis of the application and supporting papers, and in any event the concession by the Respondent, that rent arrears of £838.76 remained outstanding for the period to conclusion of the Tenancy.
40. In regard to liability for the clearing and cleaning costs, the Respondent both disputed quantification and liability. On liability, he asserted that he was intending to return to the Property to clear it and clean it. There is some foreshadowing of this in the Respondent's email of 10 January 2019 but, with

respect to the Respondent, the email is very dense, long, and extremely difficult to follow. We cannot see anything in it which expressly requests a right to access the Property again to clean it. His depositing of keys with the neighbour is certainly inconsistent with seeking further access. Further, given the Respondent's lack of proper engagement with this application process, we do not find it credible that he would ever have returned and carried out a proper clearance and clean of the Property. In the circumstances, we find the Respondent liable for the clearance and cleaning costs.

41. In regard to clearance and cleaning costs, fourteen photographs (of a living room, kitchen and bathroom with no apparent photographs of any hallways or bedrooms) showed the Property to require much clearance work and cleaning. Clothing and litter were seen throughout, along with an electric heater, television, and assorted items. The invoice rendered of £218.73 was a reasonable amount given the condition of the Property shown in the photographs.
42. In regard to liability for the redecoration costs, the Respondent made no material defence. His defence appeared to be a general denial of the condition of the Property and the need for redecoration. Our comments about in regard to quantification of the sum equally explain our reasoning for the Respondent being liable for redecoration costs.
43. In regard to quantification of the redecoration costs, the photographs showed limited marking to the walls and woodwork but there were clear marks in the photographs of the bathroom. The Applicant stated in his supporting submissions that the photographs submitted did not "show the full extent of the damage and stains on the walls" and the flat was "in a disgusting dirty state". The Applicant rejected that any of the damaged areas redecorated could have been regarded as normal wear and tear. Given the condition of the Property in general, the Tribunal was willing to accept that material redecoration was required.
44. We were not, however, satisfied that – in a small flat that was painted before February 2018 and only occupied for 11 months - that it speaks for itself that every surface required to be fully repainted. No doubt it is significantly easier for the Applicant and its contractor to instruct a full repainting. The alternative is selectively washing down less badly affected areas and then touching up paint work (or even leaving some areas chipped or lightly marked commensurate with normal wear and tear). It is understandable why a landlord would, given the small size of the Property, just choose a full redecoration but that does not mean that the costs of same are fully recoverable from the departing tenant. In the absence of more detailed photographs evidencing the Applicant's position that everything needed to be entirely redecorated, we do not think it reasonable to award the full sum and we regard 75% of the invoice, being £464.59 as a reasonable amount on the evidence provided.

Decision

45. In all the circumstances, we were was satisfied to make the decision to grant an order against the Respondent for payment of the sum of £1,522.08 to the Applicant with interest at 8% per annum from today's date until payment.

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.

Joel Conn

21 August 2020

Legal Member/Chair

Date