



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) Act 2016

Chamber Ref: FTS/HPC/CV/19/2536

Re: Property at 9 Corseford Avenue, Johnstone, PA5 0PD (“the Property”)

Parties:

Mr Basman Karaali, 18 Hagg Road, Johnstone, PA5 8TD (“the Applicant”)

Mr Kenneth Grant, 69H Dundonald Road, Paisley, Renfrewshire, PA3 4NB (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member)

Decision (in absence of the Respondent)

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

The Respondent is to pay to the Applicant the sum of THREE THOUSAND SIX HUNDRED AND NINETY TWO POUNDS 57 PENCE (£3692-57) STERLING

BACKGROUND

This is an application for a payment order dated 9th August 2019 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The Applicant provided with his original application copies of the Private Residential Tenancy Agreement (“PRT”), Notice to Leave with Execution of Service, section 11 notice with proof of service, and rent arrears statement.

The Applicant originally sought payment of rent arrears of a figure unspecified in the application, together with the cost of certain repairs estimated at £370.00, but for which he did not provide any vouchers.

A previous Case Management Discussion (“CMD”) took place on 23 December 2019. From the Notes of same, which I have considered, this was attended by both parties, the Applicant represented by his letting agent and the Respondent accompanied by his mother as a supporter and the Tribunal found and established that as at that date the rent arrears were £2,814.97, accepted by the Respondent as being due by him alone. There was also a fair degree of goodwill on both sides to attend to any outstanding repairs etc. without any further involvement of the Tribunal.

Accordingly, upon joint request of the parties it adjourned this application to a further date for them to identify the remedial work required and for the Respondent to carry it out. If it was all done to the parties' satisfaction, then the application might in that event be withdrawn. If not, then any remaining issues in dispute were to be focused and addressed at a further CMD. This was originally scheduled for 2 March 2020 but postponed on the Applicant's request. After sundry other postponements, mainly occasioned by the coronavirus pandemic, it called for a further CMD on 24 February 2021.

An associated eviction application (ref FTS/HPC/EV/19/2535) was granted on 23 December 2019, based on the rent arrears of £2814-97 found to be established and previously referred to. I also had the benefit of reading this decision prior to today's CMD.

CASE MANAGEMENT DISCUSSION

Prior to the CMD, in response to a request from the Tribunal for him to do so, the Applicant provided further detail regarding the sums sought by him, which was of assistance in providing focus for the CMD.

Only the Applicant attended and, after explaining and clarifying that he understood the procedure to be followed, I went through with him his claimed sums in turn and found as follows, using the same numbering as he provided in his note:--

- 1) He confirmed that the further rent due was for the period 23 December 2019 (when the Tribunal calculated rent due at £2814-97, as above referred to) to 24 February 2020 (when, he advised, the Respondent left the Property), i.e. 2 months at £575 per month, totalling £1150. From this there fell to be deducted local authority payments he had received and vouched, totalling £672-07, leaving a balance of £477-93.

Accordingly, I found the Applicant entitled to this sum.

- 2) He candidly conceded he had now uplifted the deposit of £575 and accepted it would be deducted from any total arrived at.

3) He produced vouching for the £250 outlay to repair a damaged window. When asked about the circumstances, he very fairly advised his information was that they had been damaged by a third party and the Respondent had reported this to the police, which he accepted. I referred him to pages 15 and 17 of the PRT and advised that since he was responsible for the upkeep of the structure and repair of the Property and this damage did not appear to have been caused by the fault or negligence of the Respondent, I did not feel it was properly due by the Respondent.

Accordingly, I found the Applicant not entitled to this sum.

4) He advised he had been told after the fact of a drip in the toilet or somesuch which the Respondent had attempted through a third party to repair, which had proved ineffective and then caused water damage. Although he claimed this through his insurers, for which vouching was produced for £1116, he required to pay a £350 excess. Again, under reference to p17 of the PRT and also having regard to p13, I considered this had been caused by the fault and negligence of the Respondent in not either instructing a properly qualified plumber to fix the problem or tell the Applicant, so he could do so. I therefore found this part of the Applicant's claim established in the sum of £350, the insurance excess.

Accordingly, I found the Applicant entitled to this sum.

5) Again, this was an insurance excess for repair to damage he found after the Respondent left the Property, which appeared to be deliberate and/or negligent, in that it comprised graffiti on the walls, damage to doors and soiling to carpets. I again refer to p17 of the PRT. Vouching was produced for an insurance payment for this of £3084-88 and I found this part of the claim established, again in the sum of £350.

Accordingly, I found the Applicant entitled to this sum.

6) He produced vouching for the sheriff officers' fee of £141-72 and advised that the Respondent had indicated he would require a formal Notice of Eviction before he would be able to leave the Property and seek alternative accommodation, notwithstanding the decision in associated eviction case FTS/HPC/EV/19/2535. I considered the terms of that decision to be authority enough for the Respondent to vacate the Property and that he did not require any further notice to be given for him to do so. Accordingly, in terms of tribunal rule 40, I considered this to be "unreasonable behaviour" by the Respondent, occasioning "unnecessary or unreasonable expense" to the Applicant and granted this part of the Applicant's claim in the sum of £141-72.

Accordingly, I found the Applicant entitled to this sum.

7) He advised this was the Sheriff Officer's fee to trace the Respondent for these proceedings and this CMD. Unlike my finding in the preceding paragraph, I did not feel this was properly due by the Respondent, who had simply moved away from an

address from which he had been evicted. In any event, the PRT does not provide for the Respondent to be liable for this type of expense.

Accordingly, I found the Applicant not entitled to this sum.

- 8) He advised these mail costs were for correspondence asking/requiring the Respondent to leave the property, which were returned. I did not feel this was properly due from the Respondent since it seemed to me to be an outlay in the nature of general correspondence and, in any event, did not seem to be due from the Respondent in terms of the PRT.

Accordingly, I found the Applicant not entitled to this sum.

- 9) He advised this claim was for preparatory work instructed by him for the 2 Tribunal cases and produced vouching which appeared to confirm this. Again, I did not feel this was properly due by the Respondent in terms of the PRT.

Accordingly, I found the Applicant not entitled to this sum.

- 10) He advised this was a fee due to his property agent for general advice etc. regarding these proceedings. Again, this did not seem to me to be properly due by the Respondent in terms of the PRT

Accordingly, I found the Applicant not entitled to this sum.

- 11) He advised he had paid cash for this service, to remove a great deal of rubbish and debris from both inside and outside the Property. Under reference to p25 of the PRT, this seemed to me to be a breach by the Respondent of his obligations regarding the Common Parts, Private Garden and Bins & Recycling but for which the Applicant would not have incurred this expense, which I found established in the sum of £100.

Accordingly, I found the Applicant entitled to this sum.

- 12) He advised this was an uplift fee. Again, under reference to the same provisions of the PRT as the preceding paragraph, I found this expense established, in the sum of £32-95.

Accordingly, I found the Applicant entitled to this sum.

Therefore, starting with the rent arrears of £2814-97 found established by the Tribunal on 23 December 2019 and adding thereto the discrete sums of £477-93, £350, £350, £141-72, £100 and £32-95 I have found established in terms of paragraphs 1, 3(b) & (c), 4(a), 7 and 8 respectively, the total due is £4267-57 from which there falls to be deducted the recovered deposit of £575, referred to in preceding paragraph 2,

resulting in a total due to the Applicant of £3692-57, which is the figure to which I find the Applicant entitled.

FINDINGS IN FACT

I refer to the Tribunal's Note of the CMD of 23 December 2019 regarding compliance with the necessary formalities of constitution of the PRT and background and procedural steps relating to these proceedings. In addition, having now been addressed by the Applicant in relation to the other, final outstanding matters arising from the PRT, I have found in fact that he is entitled to the additional rent and other sums arising from the PRT, as specified in the preceding section of this decision.

REASONS FOR DECISION

In the absence of any competing argument, I required to be satisfied that the further sums now claimed were properly vouched and established by the Applicant. He advised he was somewhat unsure as to how to proceed in this scenario but he impressed me as having done his best to provide me as best he could with all relevant information. In assisting me further in addressing specific points made by me, he was candid and respectful and I had no difficulty in accepting he was telling me the truth throughout, especially in relation to the outlays claimed without vouching, which seemed proportionate and reasonable. In these circumstances, I was prepared to find in his favour where I was satisfied that the outlays were properly due by the Respondent in terms of the PRT. As can be seen, in respect of several of them, I was not so satisfied and declined to accept them, acting justly and in fairness to the Respondent.

DECISION

To make an order for payment by the Respondent to the Applicant in the sum of THREE THOUSAND SIX HUNDRED AND NINETY TWO POUNDS 57 PENCE (£3692-57) STERLING.

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.

24 February 2021

Legal Member/Chair

Date