



**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/20/0869

Re: Property at 43a Fullarton Street, Kilmarnock, KA1 2QX (“the Property”)

Parties:

Mrs Martha Speirs, 25 Mure Avenue, Kilmarnock, KA3 1UH (“the Applicant”)

Mr Neil D Mackie, 39 Barclay Drive, Kilmarnock, KA3 7PD (“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

1. 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 in relation to rent arrears and damage to the property.
2. The application contained :-
 - A copy of the tenancy agreement,
 - Rent statement
 - Various invoices in respect of the damage.
3. At today’s case management discussion, the Applicant attended. There was no attendance from the respondent or any agent. Service of the application had been made by sheriff officer on the respondent. As I was satisfied that

service had been effected, I was prepared to continue with today's CMD in his absence.

Discussion

4. The Applicant referred me to the tenancy agreement between the Applicant and the Respondent. She confirmed that rent had been payable until 17 May 2020 when the Respondent had vacated the property. She advised that she had already obtained two further payment orders for rent arrears due by the respondent. This was the third payment order sought and it was in relation to non-payment of rent from December 2019 until 17 May 2020. This sum amounted to £1800. She also sought payment in relation to damages to the property amounting to £391.
5. She advised that the Respondent left the property on 17 May 2020. She advised that the Respondent was aware of the rent arrears. He had not offered to make repayment of the rent arrears. He had ignored any requests she had made to try and get him to pay.
6. She advised that she sought costs for decorating, a toilet seat, electric oven, and council costs of removing certain goods. She advised that these items had to be replaced. She did not consider that they were fair wear and tear. She advised that the oven had been new when the tenant had taken entry. The oven was very dirty, the Respondent had been using one of the ribbed shelves as a grill. It was so dirty, while she had looked into cleaning it, it would have cost £65 and there was no guarantee that it would have cleaned. She decided that would be better to get a new oven. The decoration costs were for the sitting room and back bedroom. The back room had had posters on the wall and the blue tack used had left marks, which meant it needed to be repainted. The sitting room had been repainted by the Applicant without her consent and it had to be repainted. She was not seeking to recover decorating costs for the kitchen. She advised that there had been a new kitchen and cooker put in 5 years ago. She did not consider that the items claimed should be reduced for fair wear and tear, as the condition had been new on entry. Toilet seat was damaged, and had to be replaced. She had to pay for the council to uplift a sofa and chair belonging to the Respondent.
7. She advised that a deposit had been paid of £400 by the Respondent, this deposit had been sent to an approved scheme; however, it had not been cashed by the approved scheme. It was therefore still held by the Applicant.
8. The sum she sought was £2191.00. She advised that it was still outstanding.

Findings in Fact

9. The Tribunal found the following facts to be established:

10. A tenancy agreement was entered into between the Applicant and the Respondent for the Property and existed between the parties. It was entered into on 27 May 2016.
11. Clause 4 of the tenancy agreement provided that rent was £400 was payable per calendar month in advance. Rental payments were due on the 27th day of every calendar month.
12. Clause 6 of the tenancy agreement provided that the tenant would replace or repair any items damaged during the tenancy.
13. Clause 10.4 deals with alterations and says that the tenant will make alterations without the permission of the landlord.
14. The rent statement showed total rent arrears outstanding as of 17 May 2020 being £8350.
15. That there had been two earlier payment orders granted for unpaid rent.
16. That there were rent arrears for the period from 30 December to 17 May 2020.
17. Rent arrears for the period from 30 December to 17 May 2020 amounted to £1800
18. Invoices had been submitted to support the damages claim.
19. That there was a deposit payment of £400; this had been retained by the Applicant.
20. That it appears that there had been no payments towards the rent arrears or damages.

Reasons for Decision

21. Section 16 of the Housing (Scotland) Act 2014 provides that the First Tier Tribunal has jurisdiction in relation to actions arising from a number of tenancies, including those arising under an assured tenancy within the meaning of section 12 of the Housing (Scotland) Act 1988.
22. As this tenancy is an assured tenancy, I am content that I have jurisdiction to deal with this case.
23. There was no response or appearance from the Respondent.
24. The tenancy agreement created obligations between the parties, one of those obligations was to pay rent, and the Respondent has failed to do so. There was evidence showing the arrears due and additional information was

provided today by the Applicant that the sum sought for rent was still outstanding as at today's date.

25. The tenancy agreement also provided that the tenant would repair or replace any items that had been damaged; and seek permission before carrying out any alterations, including painting. The information from the Applicant was that there had been some damage to the property in terms of a dirty oven and bedroom walls; broken toilet seat; and items had to be removed from the tenancy which had been left by the Respondent. The Applicant made an oral submission about these matters supported by the invoices. She advised that the house had been newly decorated and there had been a new kitchen installed prior to the Respondent moving in. I consider that the Applicant is entitled to some of these costs, however I do not consider that she has taken account of fair wear and tear. The Respondent had lived in the property for 3 years and it is reasonable to expect that there would have been some wear to the property and items. The Applicant also advised that she was not seeking damages for redecoration to the kitchen. I am prepared to award £200 for the damages claim, but I do not consider she is entitled to all of the costs for redecorating and I do not consider that she was entitled to seek the full cost of a brand new oven, which was 5 years old and which she herself conceded may have been capable of being cleaned.

26. £400 should also be deducted from any award as the Applicant was in receipt of the deposit.

27. On the basis of the evidence submitted and having regard to all papers submitted including the application, I consider that I should make an order for £1600.

Decision

28. I grant an order in favour of the Applicant for ONE THOUSAND SIX HUNDRED POUNDS (£1,600.00) 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

20/10/20

Legal Member/Chair

Date