



Decision with Written Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/CV/21/1248

Re: Property at 5 Hallforest Drive, Kintore, Aberdeenshire, AB51 0SP (“the Property”)

Parties:

Gillian Huntley, Mr Brett Huntley, 91 Penzance Road, Mairangi Bay, Auckland, New Zealand (“the Applicant”)

Rita Harris, Mr Wesley Harris, 25 Cumberford Close, Bloxham, OX5 4HN (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Mike Scott (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) grants a Payment Order against the Respondent for the sum of £1565.

1. Introduction

This Hearing concerned an Application for civil proceedings in relation to a Private Residential Tenancy under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The Hearing took place by WebEx due to the covid-19 pandemic and location of the Applicant.

2. Attendance and Representation

The Applicant was in attendance.

The Respondent Rita Harris was present.

2. Background/ Preliminary Matters

This application called before the Tribunal previously as a CMD and the Applicant who resides in New Zealand was not present. There had been communication regarding difficulties in joining the teleconference from New Zealand. The Application was adjourned to a WebEx hearing on 23rd September 2021. On 23 September 2021 the tribunal part heard evidence in the case and adjourned the hearing to allow for video evidence to be viewed by the Tribunal/parties. On and thereafter to a further Hearing on a date to be arranged by the Tribunal Administration. On 12th November 2021 parties confirmed that the video evidence had been viewed and the case was further heard and concluded.

3. The Hearing

For the Applicant

The Applicant set out that his application for rent monies due was based on an agreement and a contract that the property was rented with a monthly rent of £1100. He said that this rent had not been paid for the last three months of the tenancy and he was seeking for the rent due to be paid in full. The Applicant said that he had served a notice to leave on the Respondents and they then stopped paying rent due from April to June 2021. The Applicant said that the deposit was released and applied to the rent arrears which covered part of the rent. The total rent arrears due were £3300 and the Applicant said he applied the £1500 deposit. He said this left £1800 due and the Respondent's had made payments of £200 and £35 which then brought the sum sought to £1565.

The Applicant gave evidence in response the Respondent's representations that there ought to be a deduction for work they had done on property. He said none of the work was authorised by himself. He agreed that there was work that was done as the Respondent's had informed him of this but he had advised that they had not authorised any work on the property. The Applicant said that lockdown affected him being able to get work instructed. The Applicant said that cosmetic work was required and that there was nothing essential.

The Applicant have evidence that there was no notice given by the Respondent's about the fact they would leave early or any negotiation for early exit from the property. The Applicant said the notice period was to end of June 2021 and the Respondent's had been responsible for rent until that date. The Applicant said the contract ended in June 2021. He agreed the Respondents had left on 29th May 2021.

In regards the video footage the Applicant said the reason for the footage was that his wife had told the Respondent's to exit but on viewing it lthe Applicant's position was that he could not see that was the case. the Applicant said the decision to leave early was a decision they made and not to do with the communication from the Applicants.

For the Respondent

The Respondent set out that she disputed the Application for payment on three grounds. The first was that the costs to them of leaving the property were substantial, the second was that the Respondent disputed the total amount due and thirdly that the Respondent had carried out maintenance that they were entitled to deduct from the arrears.

The Respondent said that on 24th May 2021 the Applicant had said that the Respondents were in 2 months arrears which was incorrect as they had suggested a repayment plan for 2 months of arrears on 21st April 2021 which was rejected by the Applicant. The Respondent said that by email on 21st April 2021 they had asked for the full deposit to be paid and discussed how they had planned to cover the remainder of the arrears

The Respondent said she explained to them on several occasions that the decision to recover the property left them in physical strain, that they had no savings due to covid and the sudden notice need to relocate meant they incurred rent arrears. The Respondent said they tried to negotiate more notice which was refused and her husband then secured employment in England.

The Respondent said that she then had to reapply for employment in England and that the Applicant's did not consider the position that the notice to leave had on the respondents. The Respondent said that Applicant's had assured them that their move to New Zealand was permanent and said they would consider selling them the property in the future. The Respondent said the notice to leave and subsequent move caused them additional expenses of £8285.26. She said she had to take extended leave from work and was placed on medication for this whilst her husband had to sell his car despite working shifts with no public transport .

On the second ground the Tribunal were told that the Respondent disputed that they were liable for rent of £3300 up to the 23rd June 2021 as they had occupied the property in total from 23rd July to 29th May 2021. She calculated this was 10 months 6 days and in order to pay rent to end of May 2021 the total rent due was 11289.32. She said she had paid £9089.32 by bank transfer, leaving them £2200 in arrears and not the £3300 stated. She referred to an email lodged of 23rd March 2021 from the Applicant which said the Respondents could vacate earlier than notice period. She said further that on 28th May 2021 Mrs Huntley the Respondent came to the property to say it was not right for them to occupy the property without paying rent. The Respondent said they expressed they were relocating and that they would

communicate by email. This conversation was videoed by a small camera on door and the conversation that we had to leave the property could be heard she said. The Respondent said Mrs Huntley was very rude and said it was not right they were staying and they had to leave. She said further in cross examination that the impression was that the Applicant's wanted them to leave immediately as Mrs Huntley said it was it is not right to live there as they were in rent arrears and they definitely had to leave straight away. At the time of Mrs Huntley's visit they had started packing the house that week.

The Respondent went on to give evidence regarding the maintenance they had carried out in the property. She referred to the property inventory where she stated that the bath plug was sticking and as a result the bath was unusable. She said the bath panel was also cracked. The flexible shower pipe was burst. The Respondent said her husband repaired the bath plug and they asked to be reimbursed for this. The flexible shower pipe burst she said and the shower was unusable due to mould and the fittings being cracked. She refuted that it was non essential work and that the Applicant had sent the wooden panel to the house delivered which her husband installed. and they did not send anyone to install.

The Respondent said that at the outset the Applicant said they would pay for a gardener to do the property as it had not been done for a while and the grass was shin length. She also said that there was items in the shed and garage which were to be removed. The Respondent said that as the Applicant's had not found a gardener after 2 weeks they mowed the lawn and asked for reimbursement. She said they also asked for the items to be removed in the shed which was never done even though the Applicant's confirmed it would be removed. The Respondent said she asked for holes in the front room to be sealed as it was unusable. The Respondent said that the paving at the garage needed pressure cleaned, was slippery and covered with moss and was a safety concern. A neighbour had had theirs done for £600 and they asked the Applicant's for labour costs and product at a cost of £180. The Respondent said there was other minor maintenance items such as a shoe cupboard needing fixed to wall and there were lampshades they fixed as well as curtain rails. She said the maintenance amounted to £465 and that as a result there was no payment due by the Respondents for rent as it had been paid in full until when they left the property on 29th May 2021. She reiterated that the 1500 deposit had been applied to what was due, she sent £200 by bank transfer on 30th June 2021 and £35 on 2nd August 2021 and then with the maintenance of £465 she was not in any arrears and all had been paid.

In regards the video footage the Respondent said the Applicant came to the house and said it wasn't right for them to still stay there and not pay rent.

She said that she had not said they were told to leave, it was just right that they move.

4. Submissions

For the Applicants

The Applicant submitted that the rent still due of £1565 needs to be paid and that there was no notice given of leaving early and no discussion or agreement about leaving early. The Applicant said the Respondent had changed her story about Mrs Huntley suggesting they had to move out after viewing the video footage and if so the turn around to have moved out the following day even if this had been the case did not seem right. The Applicant's position was that the move on the 29th May 2021 was pre planned and not discussed but the contract was to the end of June 2021 and that's where the Respondent's liability for rent remains. In regards the defects the Applicant said there were no defects needing immediate attention and were cosmetic touch ups.

For the Respondent's

The Respondent submitted that she felt that rent was due to the end of May 2021 and all rent had been paid minus deduction of the maintenance work carried out. She said that the removal of furniture was only paid for the day before the move and it was not planned but rather a quick decision they had to make. The Respondent said that the Applicant's were holding them liable for rental when they were occupying the property as she believed they moved in when they vacated.

5. Findings in Fact

1. This Application is brought in terms of Rule 111 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. The Applicants are the heritable proprietor of the property.
3. The Applicant and the Respondents entered into a Private Residential Tenancy for the property on 23rd July 2020.
4. This Tenancy is a Private Residential Tenancy under the Private Housing (Tenancies) (Scotland) Act 2016.
5. Rent payable under this tenancy was £1100 per month. The deposit for the property was £1500.
6. The Respondent's considered that the tenancy for them was a long term move and they moved to the property as part of a relocation.
7. Notice to Leave was served on 23rd March 2021. The tenancy ended on 23rd June 2020.
8. The Respondents did not meet their liability for rent on 23rd of April, May and June 2021.

9. The Respondents left the tenancy on 29th May 2021 and there was no agreed leaving date negotiated between the parties which would have affected liability for rent.
10. The deposit of £1500 was applied by agreement to the tenancy arrears. The Respondents also made payments towards the arrears by bank transfer of £200 on 30th June 2021 and £35 on 2nd August 2021.
11. As at the date of the Hearing the Respondents were liable for rent arrears for the property to the sum of £1565.
12. The Respondent's carried out works and maintenance to the property without the agreement of the Applicants to do the works or that any sums could be deducted from rent for the works.

6. Reasons for Decision

The Tribunal heard extensive evidence from both parties and also had the benefit of written representations, written communications between parties and excellent video footage of the visit by Mrs Huntley to the property on the 28th May 2021. The Applicant gave focused and credible evidence. The Respondent appeared credible in her evidence providing detailed reasons for her position supported by documentation but this was with the exception of her initial evidence given on the visit to the property by Mrs Huntley on the 28th May 2021. She initially said that Mrs Huntley had in effect left them with the view that they had to leave the property immediately and that she had said that it was not right they had to live there whilst not paying rent. Following all parties and the Tribunal viewing the video footage of that meeting the Respondent said that she had not said that Mrs Huntley had told them to leave. Although this may have affected credibility the Tribunal considered in the stress and upset of having received notice to leave, covid issues and packing the Respondent may have genuinely had that perception until she viewed the video footage that this was the case. The Tribunal considered contrary to the initial position of the Respondent that Mrs Huntley did not ask the Respondents to leave but asked for communication and made comment that they were not paying rent. This was the case on the basis no rent was received after Notice to Leave had been served. The Tribunal did not consider in terms of liability of rent that the communication on 28th May 2021 or the email of 23rd March 2021 constituted an agreement that rent would not be due for the full notice period in the event that the Respondent's were able to secure alternative accommodation early. The email of 23rd March 2021 stated:

“Once you have viewed the properties and you understand your position if you can keep us up to date with when you intend to vacate if it is earlier than the notice period end date that would be very much appreciated. We need to do an exit inspection and once this is complete and satisfied we contact the deposit body to have monies released to you.”

At most the email was an invitation in the Tribunal's view based on all the correspondence and the video to seek agreement from the Applicants on this but the Respondents instead left without seeking that agreement. It is unfortunate that relationships in some regard broke down and it appears on the evidence that neither party took or appeared to have any professional advice on the tenancy or on or after the Notice to Leave was served. Perhaps the action so both parties was less than ideal but the actions of both did not in the Tribunal's view affect liability for rent under the tenancy. The parties's actions appear also to be complicated by the pandemic and a change in circumstances for both but in the Tribunal's view was not relevant to the legal issues before them. The Tribunal did not consider that there was any evidence to show that there was agreement that any maintenance or works were authorised or would affect rent liability.

The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property. The Tribunal was satisfied that there was a Private Residential Tenancy between parties and that on the evidence provided it was appropriate having regard to the overriding objective of the Tribunal to make an Order for Payment. The Tribunal was satisfied that the respondents were in arrears of rent lawfully due and rent owed amounted to £1565. In terms of Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal granted an Order for payment for the sum of £1565.

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.

K. K

Karen Kirk

Legal Member/Chair

9 November 2021

Date