



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/21/1634

Re: Property at 5 Old Causeway, Kinross, KY13 8DT (“the Property”)

Parties:

Waugh Investments Limited, Registered Office at Forth Social and Leisure, Grangemouth Road, Falkirk, FK2 9DD (“the Applicant”)

Miss Claire Alashal, 42D Rolland Street, Dunfermline, KY12 7ED (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of eight thousand four hundred pounds (£8400) plus interest at the rate of eight per cent (8%) per annum from the date of the decision of the First Tier Tribunal to grant the order, being 3 December 2021, until payment be granted against the Respondent

- Background
 1. An application was made dated 28 June 2021 in terms of Rule 111 of the Chamber Rules for an order for payment in respect of rent arrears in the sum of £7800 along with any further sums due from the date of the application to the date an order is made together with interest from the date of decision. Along with the application form, the Applicant’s representative lodged the following documents:
 - Copy tenancy agreement
 - Rent statement

2. The application was accepted and assigned to a case management discussion on 1 October 2021 by teleconference.
3. Notification of the case management discussion was served on the Respondent requesting written representations be lodged no later than 17 September 2021.
4. The Respondent emailed the Tribunal on 20 September to advise that she was no longer at the Property and had only just received the documents. She wanted to advise that papers were on their way via multiple emails.
5. The Respondent submitted copies of payslips, a copy of deposit information from the Letting Protection Service, a copy of a message regarding returning the keys to the Property, photographs of the Property, written representations and a Time to Pay Application. The Respondent also emailed separately to say that her deposit had been lodged late and she intended to take action in this regard.
6. The Tribunal responded by email on 23 September 2021 acknowledging the papers and noting that written representations had been received at the same time as a Time to Pay Application. The Tribunal noted that the box had been ticked accepting liability for the claim. The Tribunal also noted the position in relation to the alleged late lodging of the deposit and informed the Respondent that if she wished to make an application in this regard it would require to be a separate application and strict time limits applied.
7. Notification of the Time to Pay application was given to the Applicant's representatives. They emailed the Tribunal requesting an extension of the time limit to respond. The Tribunal extended the time limit to midday on 30 September 2021. The Applicant's representatives submitted an acceptance of the Time to Pay Application on 29 September 2021 but on the same date the Respondent emailed the Tribunal to say she was happy to proceed with the hearing on Friday and did not accept the claimant's proposed settlement.
8. The day before the case management discussion the Applicant's solicitor emailed an up-to-date rent statement showing the arrears now stood at £8400.
9. The case management discussion took place on 1 October 2021. The applicant was represented by Nicola Caldwell, TC Young and the Respondent represented herself. The Respondent admitted the sum due and wanted to advance an argument that the Applicant had breached the tenancy agreement due to defects in the Property namely:
 - Dampness in the Property which was reported to the Applicant's agents and not resolved to the Respondent's satisfaction

despite fans being fitted in the kitchen and bathroom which ran constantly;
Central heating system issues as it would switch off and leak frequently. There was video footage of this;

Roof leaked in a number of places, including the kitchen, hall and main bedroom which damaged the Respondent's property;

Ripped linoleum in the kitchen which was apparent at first viewing but Respondent was advised would be fixed;

Constantly wet hall and stair carpet;

Dampness despite constant heating.

10. The case was set down for a full hearing on evidence and a Notice of Direction was issued dated 1 October 2021 directing parties as to what evidence required to be lodged in advance of the Hearing and which witnesses required to attend.
 11. The Applicant's agents submitted two inventories of productions and a list of witnesses prior to the Hearing.
 12. The Respondent attempted to lodge video evidence which she was advised she would require permission for and also attempted to lodge emails which were not received although she said they mostly duplicated the emails lodged by the Applicant's agents.
- The Hearing
13. The Hearing took place today by teleconference. As a preliminary issue the Tribunal raised the lack of evidence lodged by the Respondent. The Respondent advised that the video footage comprised three videos. The first one showed water leaking through the concave in second bedroom onto two units. It was taken in May 2020. The other two videos were both of the boiler showing the pressure dropping. One was taken just after the Respondent had moved in and the other just before she moved out. The Tribunal proposed to proceed in the absence of the video evidence under reservation that, if the Tribunal later felt that it would be useful to view the video footage then this could be revisited. This was agreed by parties.
 14. The Respondent had not brought a witness as her twin boys were at college in Edinburgh that day and had exams. She had also not lodged any utility bills as didn't want to show bank details to the Tribunal. She also had no receipts to quantify the alleged damage to property.
 15. The Tribunal advised that normally the Applicant would present their case first followed by the Respondent but, in this case, the Respondent admitted

the debt but wanted to put counter arguments forward and it made sense for her to present her case first.

- The Respondent's case

16. The Respondent's position was that there were a number of deficiencies to the Property. The dampness became apparent in approximately August 2020. She complained to the letting agents who instructed Wise Property Care to do a damp survey. They produced a report dated 18 December 2020 recommending fans being fitted but it had taken until May 2021 for the fans to be fitted and they hadn't helped despite running continuously.

17. The central heating system had a problem with the pressure. It would leak. One of the radiators would leak. The Respondent recalled complaining about it after being in the Property for approximately a month. The letting agents had told her how to adjust the pressure but she didn't feel she should be doing it. Heating engineers did attend a few times and at one time told her a cable was dangerous. She recalls complaining about the central heating throughout the tenancy.

18. The roof leaked. The photos submitted previously by the Respondent showed where the water would drip through. The Respondent's evidence was that she complained about this from about 1 October 2020 until about May 2021. She recalls complaining about this 5, 6 or 7 times. It was a mixture of emails and phone calls. A roofer came when her son was isolating. She didn't know what the roofer did. She didn't see them do any work. They didn't come inside the Property to look. The roof was still leaking when she moved out when there was heavy rain.

19. There was ripped linoleum in the kitchen. It had been like that when she moved in. Mr Watson had said it would be replaced but it never was.

20. The hall and stair carpets were constantly wet. It even shows on the photos in the check out report. The mark wasn't as big initially but got bigger. She had complained about this via telephone.

21. Dampness required the heating to be on constantly. The fans would run 24 hours a day.

- The Applicant's case

22. The Applicant's first witness was Diane Watson, Property Director, Cornbank Letting Ltd. She dealt with all the admin of the Property – getting the lease together etc. She said she often contacted the Respondent and didn't get a response especially about the rent arrears. She was not told of the ongoing issues at the Property. Whenever she was told of issues she would get the relevant contractors out.

23. The report from Wise Property was instructed because of a complaint of dampness and mould. Issue was reported not long into the tenancy. The report

had recommended fans be fitted and the Landlord had given authority for this work to go ahead. The fans were eventually fitted in May due to access issues.

24. Production 8 was an invoice from Doyle Roofing Ltd dated 1 October 2020 but the work had been carried out much earlier than October to clear a down pipe and seal the boiler vent. Ms Watson had not heard further so had assumed this had been fixed.

25. Production 9/6 was an email from Blueflame who had been instructed to look at the boiler and a broken shower.

26. The Energy Engineers had carried out remedial work due to no heating or hot water. There was a slight delay while parts were ordered in. Ms Watson did not hear again from the tenant regarding this issue so assumed it had been resolved.

27. There was a lot of emails exchanged regarding the rent arrears. The issue of withholding rent was raised in some of the emails but the Respondent confirmed that the main reason for non-payment of rent was for financial reasons. She confirmed she had not kept rent in a separate bank account.

28. The Property has currently been empty for a few weeks. It has been really bad weather and there is no sign of any roof leaks.

29. The mark on the stair carpet looked like an oily substance rather than water.

30. The Applicant's second witness was Gordon Watson, Director of Cornbank Letting Ltd. He had conducted the check in and check out report and a visit in between.

31. He confirmed there had been some issues with the roof in the past but confirmed that the Property was an old building and was a conversion from an 18th century coaching inn.

32. Mr Watson confirmed he had carried out the check in inventory on 31 January 2020 with Respondent present. He confirmed photograph 14/32 showed what looked like some water ingress. There was a tear in the kitchen linoleum at the door and he had suggested replacing it but the pandemic had impeded this.

33. Mr Watson had carried out the check out inventory after the Respondent had left. It was in good condition except for a stain on stair carpet. There was some cosmetic staining and damage to under sink cupboard. There was evidence of a leak above the stain on the stair carpet which seemed to be an oily substance.

34. Mr Watson confirmed he had visited the Property a few weeks ago and there is no evidence of leaks. He had visited the Property on 2 December 2020 and reported back to Diane Watson about the continuing problem with condensation.

35. Ms Donnelly invited the Tribunal to grant the payment order in the sum of £8400 with interest determined at the Tribunal's discretion. The Applicant's had

dealt with any issues with the Property promptly and had assumed repairs had been effective.

- Findings in Fact

36. The parties had entered into a tenancy agreement from 31 January 2020 until August 2021.

In terms of the tenancy agreement, the Respondent was due to pay £600 rent per calendar month.

Rent arrears are currently in the sum of £8400.

Various issues with the Property were reported to the Applicant's agent, detailed above, who responded to these in a reasonable manner and in a reasonable time frame. Most delays were occasioned by access or supply issues. Accordingly, the Applicants were not considered to have breached their obligations in terms of the tenancy agreement.

- Reasons for Decision

37. The Tribunal took into account all the evidence in the form of documents lodged previously and the oral evidence and submissions made at the Hearing today. The Tribunal did not feel that the video evidence as described would offer any further assistance. The Respondent admitted her responsibility to pay rent and accepted the rent arrears figure advanced by the Applicant but wanted recognition of the Applicant's failure to provide her with an adequate Property. On all the evidence, The Tribunal found that the Applicant's agents had dealt with the repair issues in a reasonable time once they were aware of them and were entitled to assume repairs had been effective unless they were advised otherwise.

- Decision

38. The Tribunal granted an order against the Respondent in the sum of £8400 plus interest thereon at the rate of 8% per annum from the date of the decision until payment in terms of rent arrears under section 16 of the Housing (Scotland) Act 2014

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.

Anne Mathie

03 December 2021

Legal Member/Chair

Date

Anne Mathie