



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

Chamber Ref: FTS/HPC/CV/21/1802

Re: Property at 19 Hilton Road, Rosyth, KY11 2AZ (“the Property”)

Parties:

Mr Callum Forrest, 25 Clermiston Green, Edinburgh, EH4 7PB (“the Applicant”)

Miss Ashley Milton, 27 St Andrews St, Dunfermline, KY11 4QW (“the First Respondent”)

Mr Dale Meikle, 8 Kincaig, Knockhouse Road, Crossford, KY12 8PX (“the Second Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the First and Second Respondents in favour of the Applicant in the sum of ONE THOUSAND EIGHT HUNDRED POUNDS (£1800) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.

Background

1. This is an application for an order for payment of rent arrears of £1800 and for remedial works of £600 under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. A Case Management Discussion took place on 15 October 2021. The case was continued to a hearing to determine whether the Applicant firstly was entitled seek rent at the full level of £600 per month or whether there was an

agreement that the rent be reduced to £300 and secondly whether in all the circumstances he was entitled to seek payment of remedial works at the Property. The Respondents agreed the Applicant was entitled to charge them £200 for skip hire and rubbish removal, that the nursery needed repainting, but disputed the Applicant was entitled to seek any more from them due to dampness and having received the return of the £600 deposit. A note on the Case Management Discussion was issued to parties. A hearing was fixed for 1 December 2021.

3. The Tribunal issued a Notice of Direction to parties on 8 November 2021. The Applicant lodged documents in response to the Direction being a chain of emails between himself and the second Respondent dated 15 September and a breakdown of painting works carried out at the Property.

Hearing

4. The Tribunal proceeded with the hearing on 1 December 2021 by way of teleconference. The Applicant was in attendance and represented himself. Both Respondents were also in attendance and represented themselves.
5. The Tribunal had a copy of the Private Rented Tenancy agreement dated 14 November 2019, bank statements from the Applicant for December 2019-January 2021 and various photographs. In addition the Tribunal had the documents lodged by the Applicant in response to the Notice of Direction being emails with the second Respondent and a breakdown of painting works from a painter. Unfortunately neither Respondent had received a copy of the documents lodged in response to the Notice of Direction by the Applicant. The Tribunal accordingly adjourned for these documents to be emailed to both Respondents, to give them an opportunity to read these and discuss these between themselves.
6. After the adjournment the Tribunal checked with the Respondents that they had received these documents and had had an opportunity to read these. Both separately confirmed they had.

Arrears evidence

7. The Applicant gave evidence on his own behalf. He explained that in mid-March 2020 he got a call from Mr Meikle who was concerned that as he had been put on furlough and Miss Milton was expecting their first child, they would struggle to pay the full rent of £600. Mr Forrest explained that he told Mr Meikle to pay what he could afford to pay, not to worry and they would see how things developed. He felt he was following guidance that landlords had to be flexible towards tenants during the pandemic. The Respondents paid £300 per month for 6 months, half the rent under the tenancy agreement. A few months later he had cause to go to the Property. At that time Mr Meikle showed him his home office and explained that he had set up his own business which was doing well. Mr Forrest explained that was hard for him to hear as the Respondents were still only paying £300 per month six months

down the line. He contacted Mr Meikle after that to advise they would have to clear the arrears of £1800 which had built up over those 6 months. He felt that the Respondents were no longer in hardship. Mr Meikle agreed to pay an extra £150 per month towards the arrears. Mr Forrest explained he was happy with that. However after the first month, no amount towards the arrears was paid. He texted Mr Meikle. The Respondents again paid the rent on the second month, but nothing towards the arrears. He texted Mr Meikle who responded that there had been issues with Miss Milton's car that they had to pay for. They also disputed any arrears were due.

8. Mr Meikle and Miss Milton were given an opportunity to question Mr Forrest. In response to questioning by Miss Milton as to why he had not clearly explained to them that the agreement to pay £300 was not a rent reduction, Mr Forrest explained he was trying to be helpful and flexible and to assure them that they would not be evicted if they could not afford to pay the full rent at that time but felt that it had been clear that the full rent would have to be repaid at some stage. He disputed he had agreed to reduce the rent to £300. In response to questioning from Mr Meikle asking why this had not been put in writing, Mr Forrest explained that he had thought they had understood he was trying to help them through a difficult time. Mr Forrest also read out a text message from Mr Meikle that stated they would pay a lump sum after Christmas.
9. In response to questioning by the Tribunal as to whether the arrangement to pay £300 was a permanent or temporary arrangement, Mr Forrest explained no-one knew how long this would go on for. However after six months he made it clear they would have to come to some arrangement to pay the arrears which had built up.
10. Mr Meikle gave evidence that there was no formal agreement that they would have to pay full rent for the period when they paid £300. He had thought that the arrangement was that Mr Forrest had agreed to reduce the rent from £600 to £300 for this period. He gave evidence that it had come as a surprise to him and Miss Milton when Mr Forrest contacted them to say they would need to enter into an arrangement to clear the arrears. He felt between a rock and a hard place. Miss Milton added that if they had known they would have to pay the full rent for that period and not a reduced rent they could have moved out as they did not want to get into arrears.
11. During questioning from the Tribunal Mr Meikle explained he had never asked for a set figure or period of time when he contacted Mr Forrest. He had explained to Mr Forrest he was on furlough on 70% of his normal salary. He had not had any conversation with Mr Forrest as to the impact this would have on him, but that there was help such as mortgage holidays for landlords. It was not his responsibility as to what arrangements Mr Forrest had in relation to any mortgage holiday. He felt that Mr Forrest should have been clear and put the arrangement about the £300 in writing as that was Mr Forrest's job as

the Landlord. They paid what they could afford to pay, Mr Forrest didn't voice any concern, but he appreciated that could not continue.

Redecoration evidence

12. Mr Forrest referred to photo 3 which showed the nursery where the Respondents had put dark spots on the walls. These had needed a few coats of paint to cover them. Splashes of this dark paint had splattered onto the woodwork and ceiling. There was a lot of work done. The charge was £350 as shown in the breakdown he had lodged with the Tribunal.
13. Photo 5 showed the main bedroom. There was a mark on the wall. The Applicant explained that there had been black mould spores on the wall shown which the Respondents had complained about at some stage. They had been concerned this was rising damp. However he felt it was condensation due to lack of ventilation. He gave them a dehumidifier. Post termination works included a fungicidal wash as well as painting the whole bedroom. The charge was £350 as shown in the breakdown he had lodged with the Tribunal.
14. Photo 4 showed the back bedroom where Mr Meikle had touched up in a different colour. He had to get the whole room painted at a cost of £150 as shown in the breakdown he had lodged with the Tribunal. He was no longer seeking £150 for the hallway. He confirmed the costs shown in the breakdown for the kitchen and the bathroom did not form part of his claim against the Respondents.
15. Mr Meikle questioned the Applicant and asked what evidence he had that they had not ventilated the Property properly. Mr Forrest explained he had no evidence but that he had explained that they should have the windows open to allow for ventilation. Condensation was attracted to the coldest walls. This had formed on the outside wall. Mr Meikle's position was that they did open the windows during the day. Mr Meikle questioned why there was no VAT on the breakdown of the figures. Mr Forrest guessed that perhaps the painter was not VAT registered.
16. Mr Meikle queried why it was necessary to paint the woodwork and the ceiling in the nursery and that the sum of £350 was excessive. He put it to Mr Forrest £200 was a more reasonable price to paint the wall where they had applied dark spots. Mr Forrest maintained his position that the dark grey paint had also gone onto the wood work and ceiling.
17. In relation to the back bedroom, Mr Meikle questioned why Mr Forrest had painted the whole room and not just the one wall where he had retouched with a different colour paint. Mr Forrest's position was that he couldn't just paint the one wall as it would be a different shade of white. On being questioned by the

Tribunal on this matter, Mr Forrest explained the whole Property had been painted in October 2019 just before the Respondents moved in. Mr Forrest went on to explain there were marks on the other walls in that bedroom too where Mr Meikle had attempted to cover up by retouching and not just what was shown in photo 4. He needed to paint all four walls so he could get an exact match. He disputed there had been an element of betterment in this room. When questioned further by Mr Meikle as to why he hadn't lodged other photos showing the retouching in the back bedroom, Mr Forrest explained that he would have had other photos on his phone, but would never be done lodging photos if he had lodged every single one. There had been a touch up on every single wall which made it look worse and it was necessary to paint the whole room.

18. Miss Milton also questioned Mr Forrest about why he had taken no steps to come back to see how things were going with the mould when he had said he could see what he could do. Mr Forrest again advised he had provided a dehumidifier and that he was not sure what more he could have done as there had been no issues with previous tenants. She suggested to Mr Forrest he could have done more and that he had not investigated the problem properly. Mr Forrest disputed that.

19. Mr Forrest was also questioned by the Tribunal on whether he had taken sufficient steps to remedy the mould. Mr Forrest explained he was a joiner to trade with 40 years' experience and he had assessed the problem to be caused by condensation and not rising dampness. He had no technical report to show the cause of the mould. That room had two external walls and the condensation would be attracted to them as being the coldest. The dehumidifier had collected black crystals which showed it was condensation. He accepted he had not used an anti-fungicidal wash at that stage and that the mould would continue to grow. With reference to photo 5A he explained this showed the external wall in the corner with the window which showed black mould. With reference to photo 5 he explained the mould must have been wiped away from the wall as it was not present when he had inspected the Property after the Respondents had vacated on 31 January 2021.

Findings In Fact

20. The Applicant and the Respondents entered into a Private Residential Tenancy agreement for the Property dated 14 November 2019. In terms of Clause 8 the Respondents agreed to pay monthly rent of £600.

21. In or about March 2020 the second named Respondent contacted the Applicant to advise that due to being put on furlough at a reduced wage of 70% and the fact the first Respondent was expecting their first child they would struggle to pay the rent of £600. The Applicant, being mindful that as a landlord he was expected to be flexible with rent payments at this time, assured the second named Respondent that they were not to worry about the

rent, to pay what they could afford to pay and they would see how matters developed.

22. There was no written agreement between parties that the rent was to be varied to a specific amount or for a specific period of time.
23. The Respondents paid £300 per month from April – September 2020. During this time the rent remained at £600 in terms of Clause 8 of the tenancy agreement. The Respondents accordingly accrued arrears of £1800 during this period.
24. The Applicant requested the Respondents clear the arrears on or about September 2020. The second named Respondent acknowledged arrears had accrued and promised to pay off the arrears at the rate of £150 per month. Neither he nor the first named Respondent made any payment towards the arrears.
25. From October 2020 – 31 January 2021 the Respondents paid £600 monthly rent. The Respondents vacated the Property on 31 January 2021.
26. The Applicant inspected the Property on 31 January 2021. He required to remove rubbish from the Property left by the Respondents at a cost of £200.
27. The Applicant required to re-paint the nursery due to the Respondents having placed dark paint spots on a wall. The whole room needed to be repainted including the woodwork and ceiling. The cost to the Applicant was £350.
28. Mould had developed in the main bedroom. The Respondents reported this to the Applicant. He supplied them with a dehumidifier and told them to ventilate the room. He did not apply an anti-fungicidal wash. After the Respondent vacated the Property he applied an anti-fungicidal wash and repainted the room. The cost to the Applicant was £350.
29. The back bedroom had been retouched in the wrong shade of white on one wall by the Respondents. This wall needed to be repainted. The Applicant repainted the four walls of the room. The cost to the Applicant was £150.
30. The Applicant received the full deposit of £600 after the tenancy ended from the scheme administrator.

Reasons for Decision

31. The Tribunal considered the issues set out in the application together with the documents lodged in support. There was no dispute that the Respondents

paid £300 per month between April – September 2020. There was no dispute that no written agreement had been entered into by the parties varying the terms of Clause 8 of the tenancy agreement to reduce the rent from £600 to £300 throughout this period. The Tribunal formed the very clear impression that the Applicant was conscious of the fact that at this time at the start of the pandemic, landlords were being encouraged to be flexible with the payments their tenants were making towards rent. The Tribunal accepted the evidence of Mr Forrest that he was trying to do his best to help the Respondents through this time, but that he had never agreed to reduce the rent to £300 for this period. The Tribunal accepted Mr Forrest's evidence and the evidence of the Respondents that no-one actually knew how long the Respondents would end up paying what they could afford. However it was clear from the evidence of all parties that when the Applicant first raised with the Respondents that arrears that had accrued over these six months had to somehow be cleared, this was initially accepted by the Respondents with the Second named Respondent offering to pay £150 per month in addition to the rent of £600. The Tribunal is accordingly satisfied that rent arrears of £1800 had accrued and that the Applicant has established his case for arrears.

32. It was a matter of acceptance that the Applicant had to pay £200 for rubbish removal and skip hire. Whilst the Respondents accepted that the nursery required repainting they did not accept that the sum of £350 paid by the Applicant was reasonable and disputed that the ceiling and woodwork needed repainting. However the Tribunal accepted the evidence of the Applicant that the ceiling and the woodwork also needed to be repainted due to dark paint splashes. The Tribunal found that the Applicant was entitled to look to the Respondents to repay him £350 for redecoration of the nursery.
33. The Tribunal on the other hand did not accept the Respondents should be liable to pay the Applicant the cost of redecorating the main bedroom. It was clear from evidence that there had been mould in that room. The Tribunal had no evidence before it to show what the cause of that mould was. Whilst the Applicant's evidence was this was condensation he accepted that without an anti-fungicidal wash the mould would simply grow back. He accepted in evidence that he had not applied an anti-fungicidal wash. It was therefore in his knowledge that regardless of the cause of the mould, there would likely to be an ongoing issue with mould. That was a matter for him. He was not entitled to hold the Respondents liable for the cost of redecoration including an anti-fungicidal wash in the circumstances. The Tribunal accordingly found the Applicant was not entitled to hold the Respondents liable for the cost of redecorating the main bedroom at a cost of £350.
34. With regard to the back bedroom the Tribunal preferred the evidence of the second named Respondent namely that only one wall needed repainting

where he had attempted to retouch it. It appeared to the Tribunal that the Applicant's position changed throughout his evidence that all four walls had been retouched. He had no photographic evidence of this. The Tribunal found that the Applicant was entitled to look to the Respondents to repay him £50 of the £150 claimed. The remainder of the painting works appeared to the Tribunal to form an element of betterment for which the Respondents could not be found liable.

35. Accordingly the Applicant is entitled to £1800 rent arrears, £200 for skip hire, £400 for redecoration (nursery £350 and back bedroom £50) being a total of £2400. It was a matter of agreement between the parties that the Applicant had already received the full £600 deposit back. The amount of the deposit falls to be deducted from the £2400 due and accordingly the Applicant is entitled to payment from the Respondents of £1800.

Decision

36. The Tribunal awards the Applicant an Order for payment of £1800. The decision of the Tribunal is unanimous.

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.

Shirley Evans

9 December 2021

Legal Chair

Date