



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/21/2347

Re: Property at 22 Corbett Place, Aviemore, PH22 1NZ (“the Property”)

Parties:

Mr Mark Johnston, Pollswells Farmhouse, Whiterashes, Aberdeen (“the Applicant”)

Miss Nicole Connelly, Coylumbridge Hotel, Staff Accommodation, not given, PH22 1QN (“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 ONE THOUSAND SEVEN HUNDRED AND THIRTY FIVE POUNDS STERLING (£1735) ONLY.

1. BACKGROUND

This is an application for payment of rent arrears arising out of a Private Residential Tenancy Agreement between the parties commencing 7 September 2020, in respect of which the Applicant originally stated rent arrears had accrued in the sum of £1470, up to 17 September 2021 and, in addition, claimed repair costs of £1134 (inclusive of Value Added Tax) in respect of repair of damage caused to the Property for which the Respondent was responsible, for which an estimate dated 6 September 2021 was produced, but the total of which fell to be reduced by the £580 deposit paid by the Respondent at the beginning of the tenancy, leaving a total of £2024. Accordingly, that was the focus of the 2 Case Management Discussions (“CMD”s) which took place on 17 January and 17 February, both 2022 and also formed the issues to be resolved at same.

2. CASE MANAGEMENT DISCUSSIONS

At both, the Applicant was represented by his Letting Agent, Linda Fraser, from Allan Munro Lettings, Aviemore and the Respondent was neither present nor represented. The Tribunal was satisfied notice and intimation of the CMD of 17 January had been intimated to the Respondent personally by Sheriff Officers on 10 December 2021 and also that standard intimation letter had been sent to her regarding today's CMD.

However, since the Respondent was neither present nor represented at either, no facts relating to any background in which the rent fell into arrears or the damage in respect of which the further claim was made were capable of agreement, nor was the Tribunal advised of any contrary position, other than as stated herein, to either part of the Applicant's claim.

The CMDs proceeded as follows:--

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Just a short time prior to commencement of the CMD, the Tribunal received an e-mail in the following terms from a Tribunal staff member:--

"Just to make you aware that I took a call from a Kieran Brannan, the cousin of the Respondent. Mr Brannan informed me that the Respondent has suffered an epileptic fit overnight and as such will not be able to participate in the CMD. I have been unable to speak to the Respondent as Mr Brannan is currently on his way to see her."

Accordingly, the Tribunal considered this matter would require to be discussed and addressed at the CMD also.

The Tribunal was then able to clarify with Mrs Fraser:--

- a) The Respondent was no longer living at the Property, having moved out on 17 September 2021, to staff accommodation at the Coylumbridge Hotel, Aviemore, (where sheriff officers had effected service of documentation regarding this CMD on her);
- b) The deposit had been recovered and applied towards repair costs without any opposition by the Respondent;
- c) During the tenancy the Applicant had dealt occasionally with a 3rd party regarding payment of rent etc.; and
- d) She was aware of Mr Brannan's name in connection with this tenancy.

So far as the e-mail was concerned, Mrs Fraser was aware of the Respondent having had fits of some nature in the past, as a result of which she required to have hospital treatment, which added some credence to the content of the e-mail. She understood that it was during such a hospital attendance that the Respondent's dog had been left unsupervised for a period and caused the damage forming part of this claim, which had since been repaired.

Having also considered all of the information provided, the Tribunal was concerned that no receipt for the repair work had yet been produced, only an estimate. Mrs Fraser advised a receipt had been requested on several occasions but not yet supplied.

Obviously, the Respondent was not present and therefore not able to state her own case. Accordingly, the Tribunal had no information about her position regarding the claim, although there was information from the sheriff officers that the Respondent believed her deposit should have been sufficient to clear all outstanding matters and intended to seek legal advice,

In all of the circumstances, not least of all the ostensibly valid reason for the Respondent's non-attendance at today's CMD, the Tribunal considered it just to fix a further CMD to enable the Respondent to attend and the Applicant to provide the further information discussed. Mrs Fraser appreciated the Tribunal's position.

17 February 2022 at 10am was subsequently identified as a suitable date for same.

In view of the explanation tendered via Mr Brannan regarding the Respondent's non-appearance at this CMD and the fact it still required to see a receipt for the repair work stated by the Applicant to have been carried out, the Tribunal issued a Direction regarding both matters.

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Prior to today's CMD, the Tribunal had sight of a receipt for the repair work in the sum of £845, lodged by the Applicant's agents on 24 January 2022, in accordance with the Tribunal's Direction.

Nothing had been received from the Respondent in response to same.

In addition, despite having been in contact with the Tribunal through a third party for the previous CMD and today's CMD having been intimated to her by letter of 27 January 2022, confirming her attendance was required and advising as to what could happen at same, there was no attendance by the Respondent. Notwithstanding her absence, the Tribunal considered it just to proceed, given the intimation letter to her and the fact a third party acting on her behalf had been in touch with the Tribunal prior to the previous CMD. That being so, the Tribunal felt it was for the Respondent to take appropriate steps to manage her involvement in the case, under peril of a decision being made in her absence if she did not do so.

Given the receipt for the damage repair was for a different amount than had formed the basis of the original claim, the Tribunal clarified with Mrs Fraser that she was accordingly now seeking to amend the amount claimed to £1735, being the rent due of £1470, as brought out in Rent Statement to 17 September 2021 previously lodged, together with the repair cost of £845, giving a total of £2315, from which there fell to be deducted the recovered deposit amount of £580, as previously referred to.

The Tribunal accordingly formally allowed amendment of the sum claimed.

Mrs Fraser confirmed and advised she had heard nothing further from the Respondent and that she was seeking, on behalf of the Applicant, an order in this amended sum of £1735.

Obviously, in view of the Respondent's non-attendance, there was no challenge to any of what was stated on behalf of the Applicant.

3. FINDINGS IN FACT

The Respondent is due and liable for arrears of rent up to 17 September 2021 in the sum of £1470, all as brought out in Rent Statement to said date, arising out of a Private Residential Tenancy between the parties commencing 7 September 2020, in respect of which the Respondent agreed to pay rent of £580 per month. In terms of said Agreement, the Respondent is also due and liable for the repair cost of £845, giving a total of £2315, from which there falls

to be deducted the recovered deposit amount of £580, as previously referred to.

4. REASONS FOR DECISION

The Tribunal was prepared to accept the position as stated on behalf of the Applicant regarding accrual of rent arrears and cost of repair, under deduction of the recovered deposit amount, there being no contrary position placed before it. Accordingly, the Respondent is due and liable in respect of same in the sum of £1735, for which sum the Tribunal considered it just grant the order for payment.

5. DECISION

To grant the order for payment sought by the Applicant in the sum of £1735.

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.

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Legal Member/Chair

Date