

Housing and Property Chamber
First-tier Tribunal for Scotland



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/22/1077

Re: Property at 31 Greenbrae Drive, Aberdeen, AB23 8NH (“the Property”)

Parties:

Mrs Linda Banks, Mr Jonathan Banks, 15 Corse Wynd, Kingswells, Aberdeen, AB23 8NH (“the Applicant”)

Mr Iain Craig, Miss Kaye Taylor, Mr Kenneth Taylor, 18 Collieston Path, Bridge Of Don, Aberdeen, AB22 8LY; 18 Collieston Path, Bridge Of Don, Aberdeen, AB22 8LY; Hamewith Sheltered Housing, 1-50 Hamewith, Harehill Road Bridge of Don, Aberdeen, AB22 8SG (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted a Payment Order against the Respondents for the sum of £3595.38.

Introduction

This Hearing (CMD) concerned an Application for Civil Proceedings in relation to a Private Residential Tenancy under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The Hearing took place by teleconference.

1. Attendance and Representation

Mrs Linda Banks was present and her representative Stuart Carnie, Aberdeen Property Leasing Ltd, 138 Rosemount Place, Aberdeen, AB25 2YU attended with the Applicant.

The Respondents were not present. All had been served by Sheriff Officer on 13th July 2022 with the exception of Kenneth Taylor. The Tribunal adjourned the case to allow Kenneth Taylor's to be notified of the application following a change of address. The Tribunal notified the Respondent, Kenneth Taylor at the new address and amended his details to reflect same. No response from any Respondent has been received.

2. Preliminary Matters/Background

The Applicant's representative said that no contact had been received from the Respondent since the last Hearing.

The Tribunal noted that on 2 previous occasions the Tribunal had adjourned matters to be assured that the Respondent and guarantor had had notice of the application at his now known address.

There were no other preliminary issues raised.

3. Hearing

Evidence from Stuart Carnie, Aberdeen Property Leasing Ltd

The Applicant's representative Mr Cairnie advised he has over 20 years experience in the Aberdeen rental market. He told the Tribunal that the tenancy between parties had communication and rent arrear difficulties throughout. He said there were significant rent arrears particularly through the covid period. The Applicant's representative said further that a Payment Order was granted by the First Tier Tribunal in regards the rent arrears against the Respondent's for the sum of £2200. He said that the Applicant had successfully arrested the wages of the Respondent, Mr Taylor. This payment order was cleared.

The Applicant's representative said that the tenancy ended on 10th October 2021. Accordingly the rent statement of 30th September 2022 left the Respondents with rent arrears of £833.22. He explained this was accurate and had been checked with his team and director.

The Applicant's representative went on to discuss that Aberdeen Property Leasing Ltd has a thorough and detailed end of tenancy process that was enacted. He said that they contract with a company called Source Inventories who carry out inventory work. The company itself manages 1500 properties in Aberdeen. A strict inventory is carried out when the tenancy commences. The Applicant's representative said that at the end of the tenancy the outsourced company took a considerable time to conduct the exit inventory due to the state of the property. He said the inventory clerk highlighted that he had been unable to do it due to concerns over hygiene and measures were taken to protect the inventory clerk to allow same to be carried out.

The Applicant's representative said that his colleague, Craig Dalgarno the inventory manager made a visit to the property due to the state of it.

The Applicant's representative said that the tenants had been keeping pets, indoor cats and this caused a substantial amount of mess. The tenants were also tobacco smokers which caused damage. There were a considerable amount of items requiring to be disposed. The inventory manager said that the 2 bedroom terraced house involved would normally take 2 hours to complete at the end of the tenancy and instead it took 8 hours due to the condition of the property.

The Applicant's representative explained that the exit Inventory was submitted to the Applicant and they jointly pulled costs together and prepared quotes to claim the return of the deposit from Safe Deposit Scotland. There was no response from any respondent on that process and the deposit of £700 was returned on the 31st Jan 2022. The remaining costs were then pursued in this application. He said the sum sought as per the statement breakdown lodged for the remainder of the damage and works carried out was £2762.16

The Applicant's representative said that the amount sought was fair and a proportion of the re-let costs were allocated to both the tenant and the landlord. He said he believed no costs were for reasonable wear and tear and were damages directly due to the acts or failure to act by the tenants

The Applicant's representative said that before covid the neighbours to the property would come into his office to disclose their discomfort with the tenants due to the garden and the fact they stored rubbish and black bags in the garden and kitchen of the property.

Evidence from the Applicant, Mrs Linda Banks.

The Applicant said she was 59 years of age and a project manager for an oil company. She had owned the property since 2014 and it is a 2 bedroom property with a utility room, living room and kitchen. At the start of the tenancy it was in an acceptable state. It was a furnished property and a new Mattress had been provided. It was very clean and tidy and the only property which she lets out.

The Applicant said there had been problems throughout the tenancy and that they reached out to try and help during covid but there was no take up. She said it got to the point that that her letting agent had to get environmental health involved due to a number of black bags in kitchen and neighbours complaining.

The Applicant said the inventory detailed what percentage she could claim so that there was no betterment of the property. Items which required to be replaced were discounted according to their age and she cross referenced the inventory herself and allocated the percentages she was allowed to claim.

The Applicant said the costs over and above wear and tear and like for like were £3462.16. She in fact paid in total £5537.97 and she said and relied on all the invoices in the file. She referred to the decor invoice and said that was broken down against the different rooms and there was a percentage reduction for fair wear and tear.

The Applicant said a skip was needed to clear the property and a second skip was required which she has not claimed for. The Applicant said that during the tenancy her letting agents confirmed after inspections that the living room was covered in cans and bottles and the kitchen was covered in black rubbish bags.

The Applicant said she was horrified that someone would leave a property like that. She said all the light fittings, metal curtain poles, door handles and 4 of the radiators needed replaced due to rust and tarnishing. She referred specifically to the inventory report at photos 216, 217 and 218 and 225 on this

4. Findings in Fact

1. This Application is dated 8th April 2022 and brought in terms of Rule 111 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. The Applicant is the heritable proprietor of the property at 31 Greenbrae drive, Aberdeen, AB23 8NH.
3. The Applicant and the Respondent entered into a Private Residential Tenancy for the property on 31st May 2019.
4. This Tenancy is a Private Residential Tenancy under the Private Housing (Tenancies) (Scotland) Act 2016.
5. Rent payable under this tenancy was £700 per month. The PRT ended in October 2021. In terms of Clause 38 of the PRT the Respondent Kenneth Taylor entered into the PRT as Guarantor.
6. As at the rent statement lodged dated 30th September 2022 the remaining rent due by the Respondents to the Applicant is £833.22.
7. The Applicant previously received a Payment Order granted by the First Tier Tribunal for rent arrears during the Tenancy. The remainder of rent arrears due as at the end of the tenancy on 10th October 2021 were as at 6..
8. Source Property Services, an independent contractor carried out a detailed inventory check on the property and tenancy on entry in May 2019 and then carried out an exit check on 11th October 2021. The inventory exit check detailed pictures of damage to the property.
9. The Applicant's costs due to the damage in the property during the tenancy totalled £5537.97.
10. The Applicant and her letting agent applied a discount to the cost to reinstate the property following the damage which occurred during the tenancy for wear and tear not recoverable from the Respondents.
11. The damage due by the Respondents to the Applicant in terms of the detailed statement of invoices produced by Aberdeen Property Leasing dated 17th May 2022 is £3462.16.
12. The Applicant sought return of the deposit due to said damage and Safe Deposit Scotland returned same to the Applicant on the 31st January 2022. The deposit returned was £700. The deposit was applied to the damages of

£3462.16. The damage thereafter due by the Respondents to the Applicant as at the date of the application is £2762.16.

13. The Tribunal considered it was appropriate in terms of the evidence lodged and the evidence heard and having regard to the overriding objective on balance that the Respondents owe rent and are liable for damage for the total sum of £3595.38.

5. Reasons for Decision

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 the Respondents remain in arrears of rent lawfully due to the sum of £833.22. The Tribunal on the matter of the damage to the property during the tenancy was satisfied on the basis of the written and detailed evidence included 3rd party contractor invoices and reports together with oral evidence that the Respondents were liable for the sum of £2762.16. The Tribunal found the oral evidence of both Stuart Carnie and the Applicant as credible and reliable. Their evidence was consistent with the written and detailed evidence in the application. In terms of Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal granted an Order for payment for the sum of £3595.38.

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.

Karen Kirk

Legal Member/Chair

15th December 2022

Date