



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) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/CV/22/4398

Re: Property at 62 Farquhar Terrace, South Queensferry, Edinburgh, EH30 9RW (“the Property”)

Parties:

Mr Paul Leslie Spybey, Mr Carol Ann Spybey, The Drey, 75 Queens Park Flats, Queens Park Close, Mablethorpe, LN12 2XA (“the Applicant”)

Mr Momodou Jammeh, Miss Carla McCue, 123 Walker Drive, South Queensferry, West Lothian, EH30 9RP; 123 Walker Drive, South Queensferry, West Lothian, EH30 9RP (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of £7254.08 be made in respect of rent arrears and breach of contract with interest thereon at a rate of 8% per annum from the date of decision until payment.

Background

1. An application was submitted dated 7 December 2022 in terms of Rule 111 of the Chamber Rules for civil proceedings in relation to a private residential tenancy in terms of section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016. Along with the application form, the Applicant lodged copies of the following documents:
 - tenancy agreement
 - rent statement
 - check in inventory
 - check out inventory
 - Osprey Property Maintenance Ltd invoice dated 18 July 2022

- Osprey Property Maintenance Ltd invoice dated 10 August 2022
 - P J Davey Invoice dated 19 August 2022
2. The application was accepted and assigned to a case management discussion on 17 March 2023. Intimation of the application and the case management discussion were served on the Respondents by Sheriff Officers on 14 February 2023. The Respondents were advised that they were required to submit any written representations in response to the application by 2 January 2023.
 3. No written representations were received from the Respondents.

The First Case Management Discussion

4. At the case management discussion on 17 March 2023 Ms Kirstie Donnelly of TC Young attended on behalf of the Applicants. Initially there was no attendance by the Respondents but at 2.10pm the second Respondent joined the conference call. She believed that the first Respondent had also tried to join the call but that it was fine to proceed in his absence.
5. Ms Donnelly outlined the position for the Applicants and provided an explanation for the sum sought and directed the Tribunal to the relevant clauses of the private residential tenancy agreement. She understood the tenancy to have ended by the Applicant's serving notice that they wished to sell the Property. The sale of the Property has since occurred.
6. The second Respondent understood that herself and the first Respondent were jointly responsible. She confirmed that the first Respondent agreed with her position. Her position was that she had understood that the level of rent arrears was to be substantially reduced by virtue of them having left the Property early. She had emails showing this. She confirmed not having lodged written representations with the Tribunal. She was surprised to be being pursued for any rent arrears in the circumstances.
7. In relation to the damage to the Property, the second Respondent advised that they had redecorated the Property. She said that the rubbish in the bin was not theirs and that the garden was a communal garden for which the Respondents were not solely responsible.
8. She could not identify any witnesses who would be willing to give evidence about the rubbish in the bin and the communal garden.
9. If a payment order was granted she would require to pay this in instalments.
10. A case management discussion note and a direction were issued and the application was continued until 26 May 2023 to allow for the terms of the Notice of Direction to be complied with.
11. In the letter to the parties confirming the date and time of the continued case management discussion the Tribunal advised:

“The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”

12. The terms of the Notice of Direction required the Respondents to provide copies of any emails or other messages or correspondence between the Respondents and the Applicant, or anyone acting on behalf of the Applicants, showing a suggestion that the level of rent arrears would be reduced by virtue of the Respondents vacating the Property before the end of the notice period or otherwise earlier than they might have done and a note of their position in respect of the application. The Respondents were required to provide these no later than close of business on the day 7 days before the continued case management discussion.
13. No documents have been received from the Respondents.
14. The Applicant's agent lodged an Inventory of Productions on 2 May 2023 comprising email exchanges between the Respondents and Applicant's agent in relation to the rent arrears and suggesting that there may have been a reduction made to the arrears figure if the Respondents were able to vacate the Property by February 2022. The Respondents vacated the Property on 8 July 2022.

The second case management discussion

15. A continued case management discussion took place by teleconference this afternoon. Ms Donnelly of TC Young Solicitors again appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondents.
16. Ms Donnelly invited the Tribunal to grant a payment order in the sum of £7254.08 made up of £5338.08 rent arrears and £1916 in respect of rectifying damage to the Property. In terms of clause 8 of the tenancy agreement she sought interest at a rate of 8% on the rent arrears and in terms of Rule 41A of the Tribunal Chamber Rules she sought 8% interest on the figure for repairs.
17. On being asked about the invoice for £1250 from PJ Davey of 19 August 2022 and the cost of repainting the rooms and whether it would normally be required to be repainted after a tenancy lasting almost four years, Ms Donnelly advised that this invoice was not challenged by the Respondent at the last case management discussion and the Upper Tribunal decision of Woro v Brown [UTS/AP/21/0031] was authority for the limitation of the Tribunal's ability to interfere in undefended applications.

Findings in Fact

18. The Tribunal made the following findings in fact:

- The parties entered into a private residential tenancy agreement from 3 August 2018 to 8 July 2022;
- In terms of the tenancy agreement rent was payable in the sum of £700 per calendar month;
- Arrears of rent had accrued in the sum of £6138.08 of which the deposit of £800 was retained by the Applicant in respect of leaving a balance of £5338.08.
- The Applicant had incurred costs to repair the Property in breach of the tenancy agreement in the sum of £1916.
- Interest was contractually due at the rate of 8% per annum on the rent arrears element of the sums due;
- The awarded 8% on the repairs sum in terms of Rule 41A of the Chamber Rules.

Reasons for Decision

19. The Tribunal took into account all the papers and evidence before it along with the written submissions of the Applicant's agent. The Tribunal also took into account the oral submissions of the Applicant's agent today and the oral submissions from both parties at the last case management discussion. The Tribunal also took into account the documents lodged in the Applicant's second inventory of productions lodged on 2 May 2023.

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

26 May 2023

Legal Member/Chair

Date

Anne Mathie

