



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/22/3490

Property : 36C Virginia Street, Aberdeen AB11 5AU (“Property”)

Parties:

Kenneth Smollet, 61 Craigpark Circle, Ellon, Aberdeenshire AB41 9FJ (“Applicant”)

Mayank Bhandari, 62 Gairn Road, Aberdeen AB10 6AP (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £115.60 should be made.

Background

The Applicant sought an order for payment of £744. The Applicant had lodged Form F along with supporting documents. A case management discussion (“CMD”) took place on 9 March 2023. At the CMD the Applicant withdrew the Application insofar as it was directed against the Party who at that time was the Second Respondent. At the CMD a discussion took place regarding the various items that made up the Applicant’s claim. It was apparent that every aspect of the claim was in dispute on the basis that the sums claimed were excessive. The Tribunal determined to fix a Hearing and to issue a Direction asking Parties to lodge any documents on which they intend to rely in advance of the Hearing and to identify any witnesses they intend to call. On 24 April the Applicant lodged a written submission with supporting documents. The Respondent did not lodge anything in response to the Direction.

Documents

The documents lodged by the Applicant in support of his claim were :

1. a Tenancy Agreement dated 2 April 2018

2. an invoice from The Handy Man dated 23 April 2022 for £40.20 for repair to a headboard
3. an invoice from Keith Smith, painter and decorator, dated 11 May 2022 for £778.80
4. an invoice from MGO Cleaning Services dated 28 April 2022 for £302;
5. a list headed "*damaged items depreciation costs from checkout report*"
6. an inventory for the Property including photographs dated 28 March 2018 with pages numbered 1- 22
7. a check out summary for the Property including photographs dated 18 April 2022 with pages numbered 1- 37
8. copy receipt from Timpson dated 19 April 2022 for £38.00
9. guide from National Residential Landlord's Association regarding product lifespans
10. copy email from Denise Campbell to the Respondent dated 17 May 2022 summarising the items making up the claim for payment of £1344.

Hearing

A Hearing took place before the Tribunal on 24 May 2023 by teleconference. The Applicant and the Respondent were both in attendance.

The Tribunal noted that the Applicant sought to recover from the Respondent £744 being his total claim of £1344 less the deposit of £600. The Tribunal noted that in his written submission the Applicant had said that there had been a double charge for replacing a shower curtain which meant £16 should be deducted leaving the claim at £728. At the CMD the Respondent had said that he did not dispute that the Applicant was entitled to retain the deposit of £600. The Tribunal reviewed each element of the claim.

Cleaning - £302

The Respondent said that the sum claimed was excessive. He said he thought that £150 would be a reasonable charge. The Applicant said that 81 items in the check out report were identified as needing cleaned. He referred to the photographs in the check out report of the oven and hob and to the grout in the shower.

Cost to launder bedding and curtains - £38.00

The Applicant said that he included bedding when letting a property. He said it was good quality bedding. He said it was mostly new at the start of the tenancy. The Respondent said that no damage had been caused to the curtains. As regards the bedding, he said that he did not use the bedding supplied but used his own bedding. The Tribunal asked the Applicant what was his policy regarding bedding and whether it was renewed after each tenancy or more than one set was provided. The Applicant said he would need to check if there had been spare bedding supplied in this case. He said that if the bedding had been stained when the Respondent moved into the Property he would have complained.

Repair to headboard - £40.20

The Applicant said that the damaged headboard was in the bedroom opposite the lounge. The Respondent said that room was used as the spare bedroom and was not used that often. He said that he moved the bed about a year into the tenancy and the headboard support fell. He said he did not know if it had been like that at the start of the tenancy.

Painting - £778.80

The Applicant said that the Respondent put wet towels on the radiators which caused the paint to be removed. This meant the radiators needed to be painted. He said that the window sills had rusty rings on them possibly from plant pots or cups. He said there were holes in the living room wall and bedroom wall. He referred to the check out report page 30 picture reference 32 and page 23 picture reference 59. He said that the holes had been filled with wood. He said that in the hall there were marks around the switches probably caused by greasy hands. He said that in the bedroom opposite the lounge there was blue tac on the wall. The Applicant said that on looking at the invoice for the painting he saw that the charge was for painting all walls in bedroom 1. He said that he only wanted to charge for painting the damaged walls. The Tribunal asked if the claim for the cost of painting included an element of betterment. The Applicant said that it probably did and that he wanted to reduce that part of the claim by 30%.

The Respondent said that he did not dispute the holes in the walls and was happy to pay for painting those walls in the living room and bedroom. He said that he was also happy to pay for painting two radiators. He said that the rest of the painting was not required because of damage caused by him. He said eh thought that a reasonable charge would be £300-£350.

The Tribunal asked the Applicant when the radiators were last painted. The Applicant said that the check in report showed that they were immaculate compared to the check

out report. The Tribunal noted that there were no photographs of radiators in the check in report. The Applicant said that the Respondent had not taken good care of the Property. The Tribunal asked if the letting agent had reported any concerns. The Applicant said he could not recall any particular issues. The Respondent said that the letting agent had not raised any issues with him.

Depreciation - £185

The Tribunal noted that the largest item in the list making up this claim was £120 for "soiled linen". The Applicant said he laundered some of the linen but some was too soiled to launder and therefore he had replaced it. The Applicant said that each item on the list was an item that had been thrown out and the Applicant was looking to recover a proportion of the cost. He said that a lamp was broken as was the support for a chest of drawers in the bedroom. He had purchased a new support for £20 and fitted it himself. He said the sweeping brush was broken and the oven glove and toilet brush were soiled. He said a red ceramic bowl had gone missing and the shower curtain was replaced.

The Respondent said that he changed the shower curtain perhaps twice during the tenancy. He said he did not recall the chest of drawers support being broken. He said it was in the spare room. He said he would expect items such as a shower curtain, toilet brush and oven glove to be replaced at the end of a tenancy at no charge to the tenant. He could not recall the red ceramic bowl or a light being broken.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 2 April 2018 ("Tenancy Agreement").
2. In terms of the Tenancy Agreement the Respondent agreed to take reasonable care of the Property and agreed and to replace or repair any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the tenant.
3. The Applicant incurred a cost of £286 to clean the Property at the end of the tenancy.
4. The Applicant incurred a cost of £40.20 to fix a damaged headboard support.
5. The Applicant incurred the cost of painting and decorating a wall in the lounge and one bedroom where the wall had been damaged.

6. The Applicant incurred the cost of painting and decorating radiators that had been damaged.

Reasons for the Decision

The tenancy agreement sets out the contractual relationship between the Parties. In terms of clause 17 the Respondent agreed to take reasonable care of the Property. Clause 18 notes that the Applicant is responsible for ensuring the Property meets the Repairing Standard (in terms of the Housing (Scotland) Act 2006) but notes that the Repairing Standard does not cover work for which the tenant is responsible due to his duty to use the Property in a proper manner. Clause 18 also provides that the tenant will be liable for the cost of repairs where the need for them is attributable to his fault or negligence. Clause 25 provides that the tenant agrees to replace or repair any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the tenant.

The first item of claim was £302 for the cost of cleaning. From this was to be deducted £16 for a shower curtain which had also been claimed elsewhere. This reduced the claim to £286. The Respondent accepted that there would be a cleaning cost at the end of a tenancy but was of the view that the sum claimed was excessive. The Tribunal noted that a receipt for the cost of cleaning had been lodged. This was the cost incurred by the Applicant. The Tribunal did not think that the charge was excessive and determined to allow this element of the claim.

The second item of claim was £38 to launder bedding. The Respondent disputed that the bedding had been used. The Respondent had lived in the Property for some four years. The Tribunal took the view that even if the bedding had been used, it would be subject to wear and tear over a four year period and determined not to allow this part of the claim.

The third item of claim was £40.20 to fix a damaged headboard support. The Respondent accepted that the headboard support was damaged. A receipt for the cost of the repair had been lodged. The Tribunal determined to allow this element of the claim.

The fourth item of claim was £778.80 for painting which was reduced by 30% in the course of the hearing. A receipt for this amount had been lodged. The Respondent accepted that a wall in the bedroom and one bedroom would require to be painted as would the radiators. The Applicant accepted that there was an element of betterment in this part of the claim. The invoice from the decorator included painting bedroom 2 as well as the hall and kitchen. The Applicant had not drawn the Tribunal's attention to any damage in those areas other than general wear and tear. In those

circumstances the Tribunal determined to allow 50% of the sum claimed which reduced this item to £324.50 plus vat of £64.90 totalling £389.40.

The fifth item of claim was £185 for depreciation. The Applicant had said that this element of the claim was made up of various items that required to be replaced at the end of the tenancy because they were soiled or broken. He had not sought to recover the full replacement cost but only a percentage of it to reflect "depreciation". No receipts were produced for the replaced items. No percentage figure was provided for depreciation. The items included bedding, an oven glove and a toilet brush. The Tribunal took the view that such items would be subject to wear and tear over a four year period and determined not to allow this part of the claim.

The Tribunal determined to allow the claim for cleaning, for repairing the broken headboard support and 50% of the claim for painting and decorating. These elements of the claim total £715.60. From this the deposit of £600 requires to be deducted which leaves a balance of £115.60.

Decision

The Tribunal grants an order for payment of £115.60.

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.

Joan Devine

Legal Member: Joan Devine

Date : 24 May 2023