

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

Chamber Ref: FTS/HPC/CV/23/1110

Re: Property at 25 SMITH AVENUE, COWDENBEATH, KY4 9LU (“the Property”)

Parties:

Miss Elaine Ward, 45 FOULFORD STREET, COWDENBEATH, FIFE, KY4 9ND (“the Applicant”)

Mrs MICHAELA AYDIN, Mr Azmi Aydin, 15 ETTRICK DRIVE, CRAIGSHILL, LIVINGSTON, EH54 5LL (“the Respondents”)

Tribunal Members:

Lesley Ward (Legal Member) and Sandra Brydon (Ordinary Member)

1. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents shall make payment to the Applicant the sum of £3824.41.

2. This was a hearing in connection with an Application in terms of section 71 of the Housing (Scotland) Act 2016 (‘the Act’) and rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (‘the rules’). The Applicant and Respondents attended.

Preliminary matters

3. The Applicant’s husband Mr Stephen Page was a witness. The Applicant also wished Mr Page to attend the hearing as a supporter. He would therefore require to attend the full hearing. The Respondents had no objection to him attending and the Tribunal in accordance with the overriding objective decided to allow him to attend the hearing as the Applicant’s supporter.

4. The Tribunal had made the following directions at the case management discussion on 1 September 2023:

The Applicant is required to provide:

- 1. A copy of the notice to leave served on the Respondents.**
- 2. A copy of the email or text message sent by the first Respondent notifying her of the end of the tenancy.**
- 3. Copies of any correspondence received from the Respondents intimating that they intended to withhold rent.**
- 4. Vouchers in relation to items 17 to 24 of the spreadsheet of losses in the form of receipted invoices or bank statements showing the sums have been paid.**
- 5. Evidence of what the items 'order payment 'relate to on receipts 5 and 6.**
- 6. A detailed statement from Steve Page, the Applicant's husband giving a detailed breakdown of how the sum of £2175 for labour is arrived at.**
- 7. Any other documents she has to substantiate her position.**
- 8. Confirmation as to whether Mr Page will be giving oral evidence at the hearing by telephone.**
- 9. A list of witnesses she intends to give evidence at the hearing.**

The said documentation should be lodged with the Chamber no later than close of business on 22 September 2023.

The Respondents are required to provide:

- 1. A copy of any emails or text messages sent to the Applicant regarding the condition of the property or the withholding of rent.**
- 2. Legible copies of the attachments to the first named Respondent's email to the tribunal chamber of 19 August 2023.**
- 3. Any other documents they have to substantiate their position with regard to an abatement of rent.**
- 4. A list of witnesses who will be giving evidence at the hearing.**

5. The Applicant had sent an email on 19 September 2023 with various documents attached. She stated in her email that she was unable to provide any documents in support of items 19 to 22 of her spreadsheet as they were paid in cash. The Respondents had not complied with the direction timeously, however on 18 December 2023 the first Respondent emailed the tribunal chamber with legible copies of the emails attached to her earlier email of 19 August 2023. They were late however the tribunal allowed them to be received late, the Applicant having no objection.

Hearing

6. The Tribunal heard oral evidence from the Applicant and her husband Mr Stephen Page. It was their evidence that due to the condition the Respondents left the property in they had to clean the property, remove rubbish, redecorate throughout and replace light fittings, kitchen cabinets, part of the kitchen floor, part of the garden fence and gate. The Respondents conceded that the hob was broken, some items were left behind and the cupboards had not been cleaned. The Applicant was seeking £4014.99 in unpaid rent between April 2022 and 9 November 2022. She was also seeking £3911 in respect of outlays and labour to carry out repairs to the property due to the condition the Respondents left it in. The kitchen units and floorcoverings in the property were around 20 years old.

7. The Tribunal heard oral evidence from the first Respondent on behalf of the Respondents. The second Respondent concurred with her evidence. There was no dispute that the rent arrears for the property between April 2022 and November 2022 amounted to £4014.99. The first Respondent stated in her evidence and in her written submission that she was withholding rent due to outstanding repairs to the property. The main repair from the Respondents' perspective was the repair to the shower which was completed around September 2021. The Respondents also maintained the floor to the property was unsafe for a baby. The Respondents produced photographs of the floor at the hearing but the Tribunal was not satisfied that there was evidence that the floor was unsafe. The floor appeared worn in places and there appeared to be loose skirting which required attention.

8. There was also evidence from both parties regarding the wardrobe in the main bedroom. It appears that one of the doors came off its runners and was removed around 2019. A second door did the same in 2022 and the Respondents removed it and put in the garden. The Respondents did not start withholding rent until April 2022 when they received the notice to leave. The Respondents produced copy text messages which showed that the leak of water from the bathroom from the shower was first intimated by the Respondents around October 2020 and the repair was not completed until around a year later in September 2021. The Applicant conceded that this was much longer than she realised.

9. The first Respondent maintained that she also complained of a leak to the kitchen and that this was still outstanding when she left the property. This was not borne out by the text messages she had lodged which only related to the leak from the bathroom and the Respondent was unable to clarify exactly what this leak related to. There was evidence from the Applicant to suggest that there was a leak under the sink which came to light during an inspection in January 2022. The Applicant was seeking the cost of replacing part of the garden fence and a repair to the gate. The Respondents did not accept that there was any issue with the fence or the gate and the Applicant conceded the gate may have been inadvertently removed when the Respondents moved their furniture from the property.

10. Findings in fact

- The Applicant is the owner of the property.
- The parties entered into a private residential tenancy agreement for let of the property from 21 May 2018.
- The agreed monthly rent was £550.
- The Applicant gave the Respondents a notice to leave in April 2022 on the ground that the Respondents had breached a term of the tenancy agreement by keeping birds in the property and failing to report repairs in a timely manner.
- The Respondents failed to pay rent from April 2022 until 9 November 2022 when they left the property.
- The accrued rent arrears were £4014.99.
- On October 2020 the Respondents brought a leak in the bathroom to the applicant's attention. The leak was not fixed until around August 2021.
- Around September 2021 the Respondents brought a leak in the kitchen to the Applicant's attention. The Applicant's husband made a temporary repair and the Applicant intended to replace the whole work top as it had been badly damaged by a leaking tap. The Applicant was unable to explain why only a temporary repair was carried out and the full repair was not completed.
- The Applicant intended to replace the bathroom in the property but this was not done due to the Applicant not having sufficient funds and then due to the Respondent having a small child and being reluctant to have the upheaval.
- The kitchen was around 20 years old.
- The flooring in the property including wood flooring and carpets was around 20 years old.
- There was a leak under the kitchen sink which came to the Applicant's attention when the property was inspected in January 2022. The leak was fixed by the Applicant's plumber but when the Respondent left the property in November 2022 there was a small leak in the same area and there was a small amount of water.
- The Respondent kept two budgies in the property which was in breach of the tenancy agreement.
- The Applicant was not aware of the birds despite the Respondent referring to the birds in text messages.
- The Respondent broke the electric hob and the cost of replacing the hob was £138.
- The Respondent's birds caused damage to the light fittings which cost £12.80 to replace.
- The Respondent left the property in a dirty condition.
- There was a missing door to one of the kitchen units.
- The Respondent left numerous personal items around the property.
- The Applicant's husband was obliged to hire a van to remove all of the belongings.
- The applicant's husband was obliged to spend time cleaning the property to enable it to be re-let.
- The Applicant's husband estimated that he spent 29 days but this included redecorating the property throughout and removal of the kitchen units.

- The property was re-let in January 2023.

Reasons

11. The Respondents did not specifically seek an abatement of rent and had not paid the rent arrears. They accepted that some rent was due and invited the Tribunal to make an order for half of the sum due. Whilst the Respondents did not specifically seek an abatement this was implied in the first Respondent's closing submission to the Tribunal. Taking the Respondents evidence at its highest level and noting the concession by the Applicant that the leak to the bathroom had taken longer than she realised, the Tribunal decided it was fair in all of the circumstances to make a small reduction in the rent arrears to reflect the Respondents' loss of amenity due to the temporary repair to the worktop and the length of time it took to fix the leak in the bathroom. The Tribunal decided to deduct 7 percent of the arrears giving a net sum due of £3733.94.

12. The Applicant was seeking the cost of redecoration of the whole property. She had lodged vouching from B and Q for paint and other items and the work was all carried out by Mr Page. The Applicant had lodged 35 photographs with the application and further photos were produced at the hearing. There was no photographic evidence of damage to the décor to the property apart from two photos which appeared to show a coffee stain and some scratching. Given the length of the tenancy and the lack of evidence of damage to the décor the Tribunal was not satisfied it was reasonable to award any sums in respect of redecoration.

13. The Applicant's position was the leak in the kitchen was not brought to their attention and due to the Respondents' failure to notify them they had to replace most of the kitchen units as they fell apart when they were removed to effect the repairs needed. This was disputed by the Respondents and with the exception of one photo which showed a small amount of water in the cupboard below the sink there was no photographic evidence of the damage to the units. There was a photograph which showed water damage to the floor boards in the kitchen but no evidence of damage to the units. The Tribunal was not satisfied that there was a causal link between the actions or inactions of the Respondents to any losses the Applicant may have had in replacing part of the floor boards or the cupboard under the sink. The kitchen was noted to be around 20 years old. The Tribunal did not consider it was reasonable to make any award under this head.

14. There was photographic evidence of a missing door to one of the kitchen cupboards. The Respondents' evidence was that the door was faulty but was not broken. The Applicant's evidence was it was missing. The Tribunal accepted on the balance of probability that the door was missing. Mr Page gave evidence that it cost £310 to replace this door as it had to be matched with the other oak units. This seemed excessive for a door given the other units claimed cost around £48 for a complete unit. The Tribunal awarded £48 under this head as being reasonable in the circumstances.

15. The Applicant was claiming £500 for one half of the cost of replacing and fitting the carpets in the property. No vouching was produced and no evidence of damage of carpets was produced. The carpets were around 20 years old. The Tribunal did not make any award in relation to this aspect of the claim.

16. The Applicant produced a receipt for £12.80 to replace two light fittings damaged by bird faeces. Photos were produced and the Respondent did not contest this. The Tribunal awarded this sum and the labour involved in replacing the fittings is included in paragraph 19 below.

17. The Applicant was seeking the sum of £110 for van hire costs and £59.79 for fuel. Receipts were produced. It was not disputed that some of the Respondents' belongings were left in the property and it seemed reasonable to hire a van to dispose of them. The Tribunal awarded £169.79 under this head.

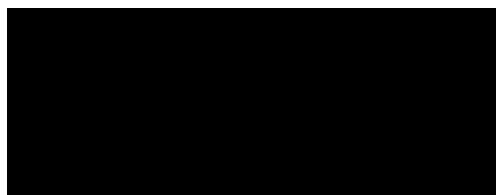
18. The Applicant was seeking £138 for a replacement hob. This was conceded by the Respondent and a receipt was produced. The Tribunal awarded £138 under this head.

19 The Applicant was seeking the sum of £1087.50 which was one half of Mr Page's labour costs. Mr Page had replaced part of the floor in the kitchen, most of the kitchen units, and redecorated throughout. The Tribunal did not award any sums under those heads with the exception of the unit door and the light fittings. It was accepted that cleaning and clearing was also required. The Tribunal decided that the sum of £271.88 (one quarter of the sum sought) was a reasonable reflection of the time expended in cleaning and clearing the property and replacing the unit door and light fittings.

20. The Tribunal deducted the deposit of £550 retained by the Applicant leaving a balance due by the Respondents of £3824.41.

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.



Legal Member/Chair

21 December 2023

Date