



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

Chamber Ref: FTS/HPC/CV/23/1576

Re: Property at 99 Clarkwell Road, Hamilton, ML3 9RQ (“the Property”)

Parties:

Zabriskie Property Limited, 4 Nursery Park, Innerleithen, EH44 6JB (“the Applicant”)

Mr Kieran McLuckie, Mrs Heather Flannigan, 12 Hallside Crescent, Glasgow, G72 7DY; 6 Hallside Crescent, Cambuslang, G72 7DY (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Mary Lyden (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the Application and made a Payment Order against the Respondents in the sum of £3,189.00.

Background

[2] The Applicant seeks a Payment Order in respect of arrears of rent and the costs of making good damage resulting from the First Respondent, Mr Kieran McLuckie’s occupation of the Property. The Second Respondent, Ms Heather Flannigan is convened to the Application as a Respondent consequent to her status as a guarantor of Mr McLuckie’s obligations under the tenancy.

[3] There are four heads of claim advanced in the Application:

- I. Rent arrears of £2,400.00;
- II. Replacing and installing smoke alarm £132.00;
- III. Repainting £720.00;
- IV. Deep clean of property £228.00;
- V. Uplift of rubbish left. £84.00;

[4] The deposit of £375.00 paid by the First Respondent had been retained by the Applicant following on from the ending of the tenancy, meaning that the balance sought by the Applicant was the sum of £3,189.00.

The Hearing

[5] The Application called for a Hearing at 10 am on 10 January 2024 at Glasgow Tribunal Centre. The Tribunal heard evidence from Ms Joey Lawrie from Homes for Good (Scotland) CIC who represented the Applicant and her witness, Mr Patrick Murray from Murray Maintenance Services. Mr Kieran McLuckie gave evidence on behalf of the Respondents. The Second Respondent, Mrs Heather Flannigan was present but elected not to give evidence.

[6] The Applicant had lodged comprehensive documentary evidence in support of their claim including emails, invoices, and written representations. The Respondents had also submitted some documentation in support of their argument that the sums claimed were not lawfully due as a result of damp and repairing issues at the Property. At the outset of the Hearing, Mr McLuckie confirmed that he disputed all aspects of the claim.

[7] Having heard evidence from witnesses and having considered all the documentary evidence before it, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicant let the Property to the First Respondent, Mr Kieran McLuckie, by virtue of a Private Residential Tenancy Agreement. By virtue of that Tenancy Agreement, the Second Respondent, Mrs Heather Flannigan contracted to act as a guarantor for Mr McLuckie's obligations under the tenancy.*
- II. *The Respondent vacated the Property with arrears of rent lawfully due to the Applicant in the sum of £2,400.00.*
- III. *The Respondent dismantled a smoke alarm and placed it in a drawer without informing the Applicant. The Applicant incurred a cost of £132.00 for purchasing and installing a replacement smoke alarm. This wouldn't have been necessary if Mr McLuckie had either, not interfered with the smoke alarm in the first place, or*

at least had told the Applicant what he had done and where the smoke alarm could be located. The Respondents are liable to repay this sum under the terms of the tenancy agreement between the parties.

- IV. *At the end of the tenancy, the Property required a deep clean to restore it to the condition it was in at the commencement of the tenancy, even allowing for fair wear and tear. The Applicant incurred a cost of £229.00 for this deep clean. The Respondents are liable to repay this sum under the terms of the tenancy agreement between the parties.*

- V. *The Respondent left a bed and a cupboard in the Property despite it being let to him unfurnished and having been reminded that he was obliged to return the Property similarly unfurnished. The Applicant incurred a cost of £84.00 in having these items collected and disposed of. The Applicant wouldn't have had to incur this cost if Mr McLuckie had adhered to the terms of the tenancy. The Respondents are liable to repay this sum under the terms of the tenancy agreement between the parties.*

- VI. *The Applicant has fairly calculated that the Respondents are liable for the sums of £720.00 for repainting and decorating after the ending of the tenancy. The Applicant wouldn't have had to incur this cost if Mr McLuckie had adhered to the terms of the tenancy. The Respondents are liable to repay this sum under the terms of the tenancy agreement between the parties.*

- VII. *There is no merit in the Respondent's contention that the rent arrears are not lawfully due on account of any alleged repairing issues in the Property.*

Evidence

[8] The Tribunal assessed the evidence heard as follows.

Ms Joey Lawrie

[9] Ms Lawrie is a Head of Tenancy Support and Partnerships for Homes for Good (Scotland) CIC. She was extremely well prepared for the Hearing and was an impressive witness. She had a thorough command of the history of the case and took the Tribunal through the large volume of documentary evidence that supported her position. The Tribunal found her to be entirely credible and reliable as her evidence was corroborated by contemporaneous notes and emails.

[10] She described the Respondent's ongoing difficulties with the rental payments. She comprehensively addressed Mr McLuckie's position that the rent was not properly due because of damp issues. She showed the Tribunal a written agreement entered into with

the Respondent in which he clearly acknowledged the existence of rent arrears and entered into a repayment plan. Ms Lawrie took the Tribunal through the various repairing issues raised by Mr McLuckie throughout the tenancy and was able to account for all actions taken to address any issue, in a highly impressive manner.

[11] Ms Lawrie took the Tribunal through an extremely detailed and comprehensive check out report which recorded the condition of the Property at the ending of the tenancy and which contrasted this with its condition at the outset. Ms Lawrie spoke to the expenses incurred by the Applicant to make good the damage caused by Mr McLuckie and the particular heads of claim advanced in the Application. She explained that the painting cost was calculated by attributing a percentage of the total costs actually incurred which was then reduced to account for Mr McLuckie being responsible for two years' worth of the redecorating costs. This did not seem unreasonable to the Tribunal.

Mr Patrick Murray

[12] Mr Murray is an independent contractor who the Applicant had instructed to assess the Property with a view to addressing various repairing issues raised by the Applicant. This included the suggestion that there was damp affecting the Property. Mr Murray is the principal of Murray Maintenance Services. He had been in the Property and had direct communications with Mr McLuckie.

[13] Again, the Tribunal considered Mr Murray to be a most impressive witness. He was extremely well prepared and had a thorough understanding of the issues in dispute. He gave his evidence in a straightforward and compelling manner. He spoke authoritatively about his interactions with Mr McLuckie. He spoke about his findings when he was in the Property. He spoke about how he had assessed the Property for damp and effectively dismissed Mr McLuckie's position that somehow the Property had a serious damp problem. He also spoke to how Mr McLuckie had been difficult to pin down to allow access to the Property and had even missed appointments. This was denied by McLuckie. The Tribunal preferred the evidence of Mr Murray. Mr Murray was an impressive witness, whilst for reasons further described below, Mr McLuckie was not. Mr Murray gave evidence that Mr McLuckie did not act like someone who was particularly concerned about the alleged damp issues at the time. The Tribunal accepted that evidence. It added to the body of evidence which undermined Mr McLuckie's position.

Kieran McLuckie

[14] The Respondent came across as disorganised, badly prepared and unfamiliar with his own case. His evidence about the rent arrears was disorganised and unconvincing. It was apparent that he hadn't really looked at the relevant rent statements. He seemed to focus on the Applicant getting "covid money" towards his rent arrears. By this he meant

that he had himself had applied for public funding to pay a contribution towards his rent arrears. But that was irrelevant as it had no bearing on how the figure claimed as rent arrears by the Applicant had been calculated. He also seemed to act like the Applicant had somehow been lucky in securing any such grant- he was entirely ignorant of the fact that he had secured government funding towards his own rent arrears and that he had failed comprehensively over the course of the tenancy to meet his financial obligations under the tenancy. His explanations for failing to pay any rent at all for the last several months of his tenancy because of damp in the Property was again entirely unconvincing. He had no expert evidence or any objective third-party evidence at all that might support his position. He had done nothing to apply his mind to what impact, if any, the existence of damp in the property might have on the precise sums due. He seemed to presume this would mean he didn't have to pay any rent at all. That approach again seemed entirely misguided to the Tribunal.

[15] Similarly, Mr McLuckie's evidence was that the Property didn't require redecoration. Again, the Tribunal preferred the evidence of the Applicant which was premised on reliable and professionally prepared check in and check out reports.

[16] Mr McLuckie's evidence about the cleaning fees for the Property was that he kept the Property in a clean condition. The Respondents had submitted photographs which they said showed the Property in a clean condition. These photographs included images uploaded to Instagram. The Tribunal preferred the evidence of the Applicant which was linked to comprehensive check in and check out reports. It was more reliable than taking Mr McLuckie's word and attaching weight to some photographs uploaded to Instagram.

[17] The Tribunal did not accept what Mr McLuckie had to say about the smoke alarm. He admitted removing it and putting it in a drawer without telling the Applicant. The Respondents cannot then act surprised when the Applicant is required to incur an expense in having the smoke alarm purchased and installed. Mr McLuckie seemed aggrieved that the smoke alarm featured in the background in a photo produced by the Applicant. The Tribunal did not agree that this somehow meant the Applicant was supposed to know where the smoke alarm was. In any event, the smoke alarm would still require to have been reinstalled and given how important fire protection is, the Applicant is entitled to have had it professionally re-installed in any event.

[18] Mr McLuckie acknowledged that he had left a bed and a cupboard in the Property and that he was expected to return the Property unfurnished. His evidence was that as he was leaving the Property, he had said to Ms Irvine, who also works for Homes for Good (Scotland) CIC, that he had left the bed and the cupboard and that she had said something along the lines of "*fine*" or "*ok*". The Tribunal did not accept this as likely to be accurate. The fact that Mr McLuckie appears to suggest that he said this as he was leaving the Property, again suggests that Mr McLuckie did not have a high regard for his obligations under the tenancy. The Tribunal found Mr McLuckie's evidence to be neither credible nor reliable and had considerable doubts about whether such an

interaction occurred. It seemed extremely far-fetched that even if such an encounter had happened, that it would be as described by Mr McLuckie.

[19] It was also noteworthy that the deposit paid by Mr McLuckie appeared to have been awarded to the Applicant in full. Mr McLuckie gave a confusing account of why that might be that didn't make much sense. The Tribunal found it difficult to attach much weight to anything Mr McLuckie said.

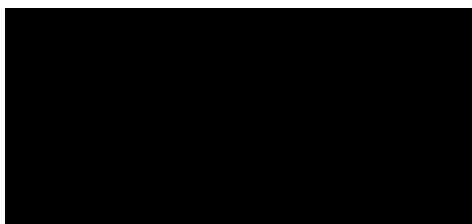
[20] At the conclusion of evidence each side got an opportunity to sum up why the Tribunal should find in their favour and each party had the right to cross-examine each witness.

Decision

[21] Having made the above findings in fact and having assessed the evidence heard as outlined, the Tribunal noted that the Second Respondent was the guarantor and was therefore jointly and severally liable for Mr McLuckie's responsibilities under the tenancy. The Tribunal therefore granted the Application and made a Payment Order against both Respondents in the sum of £3189.00 . The Applicant did not seek interest and so no award of interest was made.

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

25 January 2024

Date