



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/23/1871

Re: Property at BALIDE, Crosshill, by Maybole, South Ayrshire, KA19 7QE (“the Property”)

Parties:

Mr Carlos Gayubas Urresti, 12 Evesham Close, Reigate, Surrey, RH2 9DN (“the Applicant”)

Mrs Julia Whitaker, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Sara Hesp (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment for £2250 (TWO THOUSAND TWO HUNDRED AND FIFTY POUNDS ONLY)

Background

1. An application was received by the Housing and Property Chamber dated 7th June 2023. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments.
2. On 8th November 2023 all parties were written to with the date for the Case Management Discussion (“CMD”) of 18th December 2023 at 11.30am by teleconferencing.
3. On 13th November 2023, the Respondent emailed the Housing and Property Chamber with a response to the Applicant’s submission.

4. On 11th December 2023, the Respondent emailed the Housing and Property Chamber with a further submission.

The Case Management Discussion

5. A CMD was held 18th December 2023 at 11.30am by teleconferencing. The Applicant was present and represented himself. The Respondent was present and represented herself. The Applicant said that he was seeking three months rent arrears which totals £4500. The tenancy ended on 8th April 2023. There have been no offers of payment. He would like to come to an arrangement regarding repayment. The Respondent said that the outstanding amount was for January and February 23. The Respondent said that March 23 has been included but she had sent a message to the Applicant to say that he could use the deposit for the rent for that month. She had withheld her rent of those months until the sewage issue had been dealt with. She gave the Respondent notice that she was to withhold her rent. She did not consider that she was able to fully use the Property during this time. She did not stay in the Property much as she could not use her shower and she could not use her cooker. She returned to the Property regularly to look after her horses. The Respondent did not contact the Housing and Property Chamber regarding the repairs issues. The Respondent said that she had not pursued that. She had been served a Notice to Leave once she had raised the issues. She had said that there was a handyman who was a mutual friend who might have been able to address the issue. She had not sought any advice on the situation. She had taken time off work so that she could let any trades people in to have access. She considers that she was being cooperative to try to solve the problem. The Applicant said that he had heard that the Respondent needed to leave her former country property through a mutual friend. It has always been his intention to sell the Property but he let the Property to the Respondent as a short term measure. He had wanted to put it on the market in December 2022. As soon as the notice was served all payments stopped. The Property went on the market in May 2023 once he had sorted out the Property. He had a survey done for the sale of the Property. The Tribunal noted that it would like to see that report. The Applicant is willing to lodge it. He was willing to get the blockage resolved. He said it would only take £150 to repair. He said the Respondent wanted the septic tank emptied which was a much larger job. This was undertaken and did not resolve the situation. The Tribunal noted that his will need to be evidenced. Both parties were in dispute as to exactly when the Notice to Leave was served. The Tribunal said that this was a matter of evidence for both of them. The Applicant said that the deposit scheme had returned the deposit to him for the damage that had been cause to the Property. This meant that there was still three months due to him in rent arrears. The Respondent said that the deposit had been returned for arrears and not to pay for damage. The Applicant said that he had not been aware that the deposit scheme had been returned for rent arrears. He will amend the claim by reducing it by one month's rent payment. As matters were of dispute the Tribunal was bound to proceed to a hearing to allow evidence to be presented. The Ordinary Member would be a surveyor member. The Tribunal was issued a direction. Both parties would need to lodge

any evidence that they feel will support their position. The Tribunal noted that parties could continue to negotiate if they consider it to be appropriate. The Respondent noted that she was content to be contacted by her email address. The case was adjourned to a hearing to allow both parties to provide evidence to support their case. A surveyor member will be appointed as Ordinary Member. A direction will be issued to both parties.

6. Both parties lodged further submissions prior to the hearing.

The hearing

7. A hearing was held 8th April 2024 at 10am by teleconferencing. The Applicant was present and represented himself. The Respondent was present and represented herself.
8. The Applicant said that he was still seeking an order for £4500. This was for outstanding rent at a total of £3000 and payment for repairs that he had to undertake as a result of the Respondent occupying the Property which amounted to £1500.
9. The Respondent told the Tribunal that she did not consider that any damages or outstanding rent payments were due. She considered that the Property was inhabitable and insanitary. She did not consider that outstanding rent was due as a result of the condition of the Property. The manhole at the back of the Property was overflowing. This was causing sewage to seep into her ground floor. The shower and toilet had issues as a result. She started to find evidence of rats. She continued to live in the Property as she had nowhere else to go. She could not use her dishwasher and had limited use of her shower and toilet. She said that she had kept the rent back as she wanted to prompt the Applicant into a quick response. She had reported the issue in December 2022 and was aware that there was a rent payment due at the beginning of January so she stopped the payment. She did not withhold the rent by placing it in a bank account to return to the Applicant once the works were done. She had the money to pay over so felt that she did not need to keep it separate. She did not pay the amount over as the works were not completed until she had left the Property. She waited several weeks for the pipes to be cleared. The septic tank was emptied mid-February. The pipes outside needed to be cleared to stop the sewage coming into the Property. The Respondent said that the handyman had keys to the Property and she would have been happy for him to go into the Property for any repairs to be done. She said that a full inspection was not done of the issue it was only what she had reported to the Applicant.
10. The Respondent said that it was a large house. It has an upstairs bathroom, a downstairs wet room and a downstairs toilet. She used the downstairs wet room as she did not go to the upstairs of the Property. The outside drains were approximately 2 foot and 6 foot away from the wet room. The closest one was flooded with sewage and the other would drain but at a slow seeping away rate. The Respondent said that she slept downstairs in the dining room. She has

some physical issues relating to health conditions which meant that going up and down stairs is a problems. She rarely went upstairs in the Property.

11. The Respondent said that she expected to find rats in the grounds of the Property as it was a farm type property. She had had horses for years and would expect to find rats around the horses and livestock. She has not had rats in her house or in her car prior to the sewage problems. The Respondent put shop bought rat killer in her car and around her property. She found evidence of dead rats after that. She did not get her car checked to ensure that the wiring was safe as it was expensive to do that. Her Sat Nav had stopped working. She did find some dead rats after that point. There was a driveway at the Property which she used to park her car.
12. The Respondent said that the Property was clean and tidy when she moved in. It was in good decoration save for some alterations made to the bathroom upstairs and two of the kitchen units. Upstairs there was an old carpet. Downstairs there was a mix of original pine wood floor and oak floors in the new part of the Property. She noted that the floor was uneven in parts. She did not consider that the Property had been redecorated prior to her moving in. The Respondent had left items in the Property when she left. She said that her notice was to the end of May but was told that she had to leave for Good Friday (7th April 2023) as the Applicant needed to be in the Property that weekend. She had hired a van for her items to move them from the Property. It was not big enough. It had been sufficient when she moved in. She had felt that she had to move then and did not have the opportunity to get all of her belongings removed in time. She did not get a removal company to assess how many removal vans she required.
13. The Respondent said that she had found a new property to move into in mid-February. She was not able to move into it until mid-April as there was some small repairs that needed to be undertaken first.
14. The Respondent said that she had lived rurally before and had lived in her previous tenancy for 7 years. The Respondent said that the Applicant was a friend of a friend. The Applicant said that until the Notice to Leave was served he had a good relationship with the Respondent. The Respondent said that she was aware when she started the tenancy that the Applicant intended to sell the Property at some point. She did not know exactly when.
15. The Applicant said that he had tried to get the sewage issues fixed within 24 hours of it being reported. He said that the Respondent would not let the trades into the Property. He said that he was seeking £3000 for two months unpaid rent. He is now claiming £1500 for damages to the Property. He was claiming £4500 for arrears. He has now successfully claimed £1500 from the deposit scheme. This was the full amount that was held. There was no adjudication in this process and the Respondent did not oppose the return of the deposit. He does not know on what basis the deposit was returned to him whether it was rent arrears or for damages. He first noticed that the rent was not paid when it was not in his account. He texted and phoned the Respondent. He has not taken any legal advice on this point. He said that his relationship with the

Respondent was friendly until such time as he decided to sell the house and issue a Notice to Leave upon her. He said that there was no inventory when the Respondent moved into the Property. He had problems with the previous tenants and had fully refurbished the Property. The Property was in a good and clean condition. The lodged survey was conducted on 6th June 2024. It was done after the Respondent had left and works were done to improve the Property. He had lived in the Property for 15 years before the previous tenant lived there.

16. The Applicant did not have a breakdown of the damage incurred or why each costing was relevant. Overall he had costs between £4000 – £5000. The Tribunal noted that he had lodged costs for his travel to Scotland. He said that, as he lives out with Scotland, he needed to travel to Scotland to undertake a lot of the work himself so felt that his travel costs should be reimbursed. The Tribunal noted that he was only seeking for costs for the flooring, cleaning and disposal of the Respondent's items. This was not something that was being considered by the Tribunal. The Tribunal would not have been sympathetic to such a cost given that it was not a direct repair. The Applicant said that he had three skips of items removed from the Property and grounds. He considered it reasonable to be awarded £3000 for the outstanding rent due for the two months that were unpaid and £1500 for replacement flooring and cleaning of the Property.

Findings and reason for decision

17. A Private Rented Tenancy Agreement commenced 1st January 2022. The rent charge was £1500 per month with payments due on the third day of each month.
18. The Respondent did not pay her rent charge for the period January 2023 to March 2023.
19. A deposit was paid by the Respondent to the Applicant for £1500. This was lodged in a deposit scheme. At the end of the tenancy the Applicant applied for the deposit back. The return of the deposit by the deposit scheme was not disputed by the Respondent. No adjudication took place regarding the return of the deposit.
20. The Applicant had claimed £1250 for replacement carpets and flooring. The evidence that was presented did not show why this was actually done. The invoice provided was a handwritten note that was not on headed paper and not supplied with receipts. There was no evidence provided that this was actually needed. There was no evidence of whether this was required as a result of the sewage problem or if it was simply wear and tear. The Tribunal did not consider that, on balance of probabilities, it had been shown that the amount of £1250 for replacement flooring should be awarded. There was no evidence of the state of the Property when the Respondent moved into the Property.

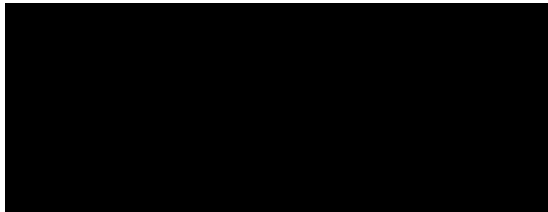
21. The Respondent admitted that she left items that belonged to her behind in the Property when she left it. She had not been able to clean it as a result. She said that she would have had to hire another van to remove these items. The Applicant had said that he had to hire skips to remove items that belonged to the Respondent. The Applicant had sought £1500 in damages. He submitted a handwritten note that pertained to the flooring for £1250. It is reasonable to conclude, on balance, that the remaining amount of £250 that he is seeking relates to the cleaning and uplift of the Respondent's belongings. Given that the Respondent has admitted this point the Tribunal considered it reasonable to make an award for this point for £250.
22. It is admitted by both parties that there was an issue with sewage. The drain near the back of the house was overflowing. The septic tank and drains needed to be cleared to resolve the problem. Parties are in dispute about why it took so long to resolve the issue. During that period there was an issue with the Respondent's full occupation of the Property. However, the Respondent admits that she did remain in the Property until she had moved into her new property in mid-April. She had occupation of the property to some extent. There were no environmental health pest control reports submitted. The Tribunal considered that she did not get the full occupation of the Property in terms of what she was paying per month. The Tribunal found it reasonable to determine that there should be a third deduction for the months of January and February. Regardless of the situation the Respondent did not challenge the return of the full deposit to the Applicant. The Applicant claimed £3000 in rent arrears. The Tribunal found that a third deduction was appropriate and awarded the Applicant £2000 in terms of the rent arrears.
23. The Respondent still occupied the Property for the time that she did not pay rent. There were issues with sewerage to a limited part of the Property. However, she was still able to occupy a large proportion of the Property whether she chose to use it or not. The Respondent did not withhold rent by notifying the Applicant and keeping the money in a bank account. She said that she had the money to hand over so did not keep it in a bank account. She did not hand over any monies to the Applicant other than not returning the deposit. The Respondent did not contest the return of that month's rent. Given that she did occupy the Property and was able to use the majority of it but that there were limitations to the use of the Property, the Tribunal considered that she did owe rent to the Applicant for two months that were outstanding. Tribunal considered that a discount was appropriate to be applied given the limitations that she had. The Tribunal considered that a third discount was fair, reasonable and proportionate.
24. The Tribunal noted that the Respondent had an infestation of vermin in her car. This is not within the scope of this application. It was not clear why the rats were in her car. It is not clear that this was directly arising from the sewage issues. It is accepted that this is a rural property where it is likely that there will be rats or other vermin around.

Decision

25. The Tribunal found that the Applicant was entitled to be granted an order for payment from the Respondent amounting to £2250 (TWO THOUSAND TWO HUNDRED AND FIFTY POUNDS).

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.



Gabrielle Miller

Legal Member/Chair

8th April 2024

Date