



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/23/3710

Re: Property at Rowan cottage, Drumsmittal, North Kessock, IV1 3XF (“the Property”)

Parties:

Rosscroft Properties, Culbin, Drumsmittal, North Kessock, IV1 3XF (“the Applicant”)

Mr Mark Rodgers, 17/45 Johns Place, Edinburgh, EH6 7EN (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicant in the sum of EIGHT HUNDRED AND EIGHTY SIX POUNDS (£886) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

- 1. This is an action for recovery of damages raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**
- 2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 7 February 2020, a list of damages, various invoices relating to the Applicant’s claim together with photographs**

dated 4 August 2023 and correspondence between the parties and from My Deposits Scotland.

3. The Respondent lodged written submissions denying liability of the matters set out in the application except for a reasonable sum in relation to gardening work. He also lodged photographs dated 28 July 2023.
4. The Tribunal proceeded with a Case Management Discussion on 24 January 2024. The Applicant was represented by Martin Smith from South Forrest, solicitors. Mrs Ross the Applicant was also in attendance. Mr Rodgers appeared on his own behalf.
5. Mr Smith moved the Tribunal to grant an order for payment of £4785 for damage to the Property during the period of the tenancy between 7 February 2020 to 28 July 2023 caused by the Respondent and explained the Applicant was not making any claim in respect of the kitchen, the costs of which had been fully recovered under the Applicant's insurance. Mr Smith went through the list of damages for which the Applicant held the Respondent liable including internal and external painting, a broken fence and sign, garden work, costs of emptying the septic tank, removal of rubbish and cleaning costs.
6. Apart from offering £300 of the £780 claimed for gardening costs, Mr Rodgers did not accept liability for any of the other heads of claim. He referred to photographs taken by him just before he vacated the Property on 28 July 2023 which he submitted showed the Property was left in a clean and tidy condition. It did not need redecoration beyond fair wear and tear. He disputed he was liable for any dampness and mould as these related to the structure of the Property which was the Applicant's responsibility to maintain. There were no visible signs of dampness. He submitted the Applicant had lodged no evidence to substantiate her claim by way of a structural survey or any evidence of meter readings showing the Property was damp. He denied damaging the fence and submitted that it did not form part of the subjects let to him which had been accepted by the Applicant in other proceedings before the Tribunal. The Applicant's "invoice" for the disposal of rubbish was unjustified. He submitted he had paid for the septic tank to be emptied once during the tenancy which should have been enough.
7. As there was a dispute as to the facts, the Tribunal continued the matter to an in person Hearing for evidence to be led to establish whether any damage had been caused by the Respondent leading to loss by the Applicant. The Tribunal produced a Note of the CMD which was passed to parties. A Hearing was subsequently fixed to proceed in person on 20 May 2024.
8. On 18 April 2024 Mr Smith advised the Tribunal he was not available to attend the Hearing but that the Applicant would conduct the Hearing herself
9. On 9 May 2024 the Applicant made further extensive submissions in support of her application. She indicated she would have one witness namely Mr

McLennan. These submissions were passed to the Respondent. In addition the Applicant lodged further photographs dated 17 and 19 November 2022, plans and floor plans of the Property, further photographs of the Property, photographs dated the 24, 25 and 26 May 2023, a letter dated the 9 August 2023 from Sedgwick loss adjusters with photographs, an invoice from Inverness Emergency Plumbers dated August 2023 for £141, photographs taken by Mr Rodgers, further photographs dated the 4 August 2023, an invoice from NRC dated the 27 February 2020, a invoice dated the 24 May 2021 for £240, an invoice from Highland Septic Tank Services Limited dated the 11 August 2023 for £260, photographs of a manhole cover, emails between the parties dated the 20, 24, 26, 27, 29 May and 6th June 2021, a Note of Inspection dated the 8 July 2022, emails between the Applicant and Octopus Energy dated the 31 July and 7 August 2023, an email dated the 7 July 2023 from the Respondent to the Applicant, an email dated the 6 July 2023 from the Applicant to the Respondent, an invoice dated the 28 August 2023 from Mr Sparkles Cleaning Company for £140, further photographs dated the 4 August 2023, Certificates of Lawful Use or Development from Highland Council dated 5 May 2023, planning permission from Highland Council dated the 27 June 2023, an email dated the 6 July 2023 from the Respondent to the Applicant, an email dated the 6 July 2023 from the Applicant to the Respondent, a letter dated the 30 November 2023 from NHS Highland addressed to the Applicant and a statement from Robert Scott painter and decorator. These were also passed to the Respondent.

10. On 13 May 2024 the Respondent lodged further written submissions. These were passed to the Applicant.

Hearing

11. The Hearing proceeded on the 20 May 2024 in person at Inverness Justice Centre. Mrs Ross, the Applicant appeared on her own behalf. Mr Rodgers the Respondent also appeared on his own behalf.
12. The Tribunal had before it photographs lodged by the Applicant dated 17 and 19 November 2022, 24, 25 and 26 May and 4 August 2023, an estimate for external work dated 6 August 2023 for £1780 and for internal works dated 8 August 2023 for £1786 from Robert Scott, Painter and Decorator, an undated invoice for gardening work for £780 and for fence work for £440 from D McLennan, an invoice dated 22 August 2023 for £36 for a sign from Acorn Signs, an invoice dated 31 August 2023 for £60 for rubbish removal prepared by the Applicant, plans and floor plans of the Property, a letter dated the 9 August 2023 from Sedgwick loss adjusters with photographs, an invoice from

Inverness Emergency Plumbers dated August 2023 for £141, an invoice from NRC dated the 27 February 2020, an invoice dated the 24 May 2021 for £240, an invoice from Highland Septic Tank Services Limited dated the 11 August 2023 for £260, photographs of a manhole cover, emails between the parties dated the 20, 24, 26, 27, 29 May and 6th June 2021, a Note of Inspection dated the 8 July 2022, emails between the Applicant and Octopus Energy dated the 31 July and 7 August 2023, an email dated the 7 July 2023 from the Respondent to the Applicant, an email dated the 6 July 2023 from the Applicant to the Respondent, an invoice dated the 28 August 2023 from Mr Sparkles Cleaning Company for £140, Certificates of Lawful Use or Development from Highland Council dated 5 May 2023, planning permission from Highland Council dated the 27 June 2023, an email dated the 6 July 2023 from the Respondent to the Applicant, an email dated the 6 July 2023 from the Applicant to the Respondent, a letter dated the 30 November 2023 from NHS Highland addressed to the Applicant and a statement from Robert Scott painter and decorator. The Tribunal also had photographs lodged by the Respondent on 18 December 2023 and again on 17 January 2024 with metadata and dated 28 July 2023, a copy of a Repairing Standard decision dated 24 April 2023 under case reference FTS/HPC/RP/23/0270 and a copy of the Note from the CMD. The Tribunal considered these documents where relevant.

13. The Tribunal sought clarification from Mrs Ross as to the extent of damages claimed. She confirmed that she was seeking £1786 for internal painting and £1780 for external painting as shown in the invoice from Mr Scott the decorator. She also confirmed she was seeking £780 for gardening and £440 for fence works as shown in the invoice from Mr McLennan. In addition she was seeking £60 for rubbish removal, £260 for emptying the septic tank, £140 for the deep clean and £36 for the sign. The Tribunal pointed out that those totalled £5282. The application was for £4785. Mrs Ross clarified that she had received the deposit in full of £675. After discussion with the parties, it was agreed the sum she sought for damages was £4607, being £5282 minus £675.

External works – painting, gardening and fence

14. The Tribunal heard evidence from Mrs Ross. She explained the garden had not been kept properly in terms of the tenancy agreement. In July 2022 Mr Rodgers had strimmed the grass. The strimmings had piled up and over the concrete skirting of the building as a result of which over time vegetation grew on the wall of the north elevation of the Property. Mrs Ross referred to a photograph lodged by her and pointed out the area showing the grass

clippings over the concrete skirt and vegetation on the wall. She explained the photograph was taken in August 2023. The Tribunal noted the grass trimmings, but queried whether the vegetation was actually growing on the wall or next to the wall and pointed to a gap between the wall and the vegetation at the rhone pipe. Mrs Ross did not agree that there was a gap which showed the vegetation was growing from the ground. Her evidence was that it was growing on the wall itself. She also referred to another photograph showing the west elevation of the Property showing cut grass. She submitted that the grass in the garden was almost at fence post height and was not neat and tidy. The garden had been like that since 2022 and the photograph showed years of growth. It was not like that now. She explained that the work done to the garden that she had to pay £780 for to Mr McLennan was not just for cutting the grass but to locate the paths due to overgrown grass and also the septic tank manholes. She explained that Mr McLennan her witness could confirm that.

15. Mr Rodgers put it to Mrs Ross that she was misrepresenting what the photographs she had referred to showed. He challenged her that the photograph showed nothing growing on the wall. The Applicant did not agree. Mr Rodgers queried whether Mrs Ross had obtained any other quotes for the gardening work. She explained that she had a good working relationship with Mr McLennan and did not think it necessary to get any other quotes. Mr Rodgers referred to a previous arrangement he had had with Mrs Ross where he paid her £50 per month to get the grass cut twice per month and put it to her that the sum of £780 charged by Mr McLennan was excessive. Mrs Ross argued that she did not have such an arrangement with him and that she simply accepted payment from Mr Rodgers for the grass to be cut and passed it onto the gardener. After some argumentative exchanges as to whether this was a “contract”, “service charge” or “arrangement” parties accepted that during the pandemic the gardener attended at the Property twice a month for which Mr Rodgers paid £50 into Mrs Ross’ bank account as shown in his email of 6 June 2021 and Mrs Ross’ response. Mr Rodgers submitted that the sum of £770 for gardening was excessive and that he felt his offer of £300 towards the gardening which under the previous “arrangement” would have covered 12 cuts was reasonable. Mr Rodgers again offered to pay £300, but this was refused by Mrs Ross.

16. Mrs Ross then gave evidence about the external state of the Property. Her evidence was that Mr Rodgers had trimmed the grass “violently” in July 2022 which had scattered the grass seeds up the wall. The seeds had become embedded in the harling. The grass was high and encroached the Property manifesting as black mould. She referred the Tribunal to photographs showing some black marks above a window.

17. Mr Rodgers in questioning Mrs Ross asked whether the seeds were actually embedded in the harling and would not just be blown away. Mrs Ross did not accept that. He suggested to her that as her own field bounded the Property to the north and was cut by a tractor which threw grass clippings and cow excrement onto the north elevation she could not say for certain that if there was any mould on the external wall, which he did not accept, that it was caused by him. Mrs Ross in response stated the mower simply topped the grass in the field, had a cover and laid the grass in rows. She disputed there was any splatter from the field onto the Property. Mrs Ross also stated she had taken this up with him on 8 July 2022 and referred to an inspection report lodged which referred to her concerns about the grass strimmings.
18. Mr Rodger's evidence was that he accepted he was due to pay for the gardening work but disputed that in light of their previous arrangement, £780 was reasonable. He had always accepted that as he had difficulties carrying out this work due to a bad back. However he did not accept that the lack of grass cutting or the grass cutting that he had carried out had caused any black mould. He felt he was damned if he did cut the grass or damned if he did not. His evidence was that there was nothing before the Tribunal to show the cause of any black marks. There was no independent structural or dampness survey from a suitably qualified surveyor to show that there was any mould or dampness either inside or out and if so the cause of that dampness or mould. He was of the opinion that Mrs Ross was trying to get him to pay for painting the whole of the external Property, as shown in Mr Scott's invoice for £1780 when it did not need repainting. Mr Rodgers referred the Tribunal to the tenancy agreement which showed that Mrs Ross was liable to maintain the structure of the Property.
19. Mr Rogers explained he was a member of the Chartered Institute of Housing, a member of the Chartered Institute of Building, an associate member of the Royal Institute of Chartered Surveyors and had a BA in Housing Policy and Management. He did not have an explanation for any alleged dampness or mould. Any black marks shown in the photograph were minor and very high up above a window. It was for Mrs Ross to prove a direct causal link. He did not think she had met that standard. He accepted liability of his failure to cut the grass but disputed quantum, hence his offer of £300.
20. In response Mrs Ross did not agree that Mr Rodgers had not caused the mould to appear. Her position was that he was liable to meet the costs of £1780 for painting the Property and that his actions in strimming caused splattering up the wall leading to mould growth. The seed mould caused by bits of grass was stuck on window frames too. This all had to be removed.

They could not have come from the field as she had let the Property since 1995 and had had no issues until now.

21. There was then some acrimonious exchanges between the parties as to the width of the garden to the north of the Property which varied from 1.5 meters – 3.5 meters.
22. Mr McLennan then gave evidence for the Applicant. He spoke about the gardening work and the fence work. He gave his full name as Donald Craig Brech McLennan. He was a fencing contractor. He explained when he came to have a look at the garden in August 2023 the grass was about 3-4 feet high. He used a bladed strimmer to cut the grass a couple of times and then mowed the grass. He also explained he had to clear grass from the paths and sprayed the weeds. He had also dug out stone chips at the drainage cover and laid new stones on top. He had a qualification in Horticulture from Edinburgh College and felt his estimate of £780 for the gardening work was fair. He charged £40 per hour for man and machine and estimated the work in total took about 15 hours. He explained that Mrs Ross had wanted an invoice straight away but there had been an issue with his computer hence the date on the invoice of 1 April 2024 which he had printed off for the Tribunal. He referred to his handwritten quote which showed the breakdown of his work and the invoice of 1 April 2024 which the Tribunal allowed to be lodged in support of his evidence.
23. Mr Rodgers cross examined Mr McLennan and pointed out Mr McLennan had charged 2.25 hours and then 2 hours for the strimming. Mr McLennan explained they were only estimates. He was asked about the width of the garden to the north and estimated that to be 2 meters. In cross examination Mr McLennan also stated that there was a gate from the garden to the field to the north. That was there when Mrs Ross asked him to do the work to the wooden fence.
24. The Tribunal asked Mr McLennan to refer to the quote he had given for the fence repair of £440. He explained that he had to repair about 7 meters of the fence that had been broken down with about 5 meters to the side. He had stripped out about 12 meters in total. Mr McLennan's evidence concluded and the Tribunal thanked him for his time.
25. Mrs Ross' evidence was that she had watched Mr Rodgers from her garden crash into the wooden fence on 19 November 2022 at about 2.15pm. She waited two weeks to see if he would speak to her about it. He did not. She then reported the damage to the Police. They called to the Property and told her Mr Rodgers would come and see her about it, but he did not. Mr Rodgers was in complete denial. She did not feel she could raise it with him at the time

as their relationship had broken down. He had also damaged the cornerstone and fence sign. She took photographs on 19 November 2022 which she referred the Tribunal to showing the damaged fence and the gate to the field. She explained she had since taken that gate away.

26. Mr Rodgers in response admitted he had damaged the fence. It had not been deliberate; the car had skidded on the gravel when he was stopping. He stated that the top two slats and sign had been damaged but there was no need to replace all the slats. He queried what loss Mrs Ross had suffered. After the fence was damaged he explained there was a gap left. She then installed a metal gate on the north boundary to her field for access opposite the gap which remained throughout the tenancy. It was a matter for Mrs Ross what she chose to do after he left the Property. His position was that if she then decided to take that gate away and then replace the fence that was her decision but that he should not have to pay for that as she had clearly used the opportunity to install a gate to suit her own needs by taking advantage of the gap in the fence whilst he was still a tenant.

27. Mr Rodgers offered to pay £36 for the replacement sign, the amount being minimal.

Sceptic Tank

28. Mrs Ross then gave evidence about the sceptic tank and referred the Tribunal to the tenancy agreement in terms of which Mr Rodgers was responsible for emptying it. She explained that she had had the tank emptied in February 2020 before the tenancy. In May 2021 Mr Rodgers complained that the sceptic tank was bubbling over and smelling. However she gave evidence that it was not the sceptic tank cover he had identified but a manhole cover. There was a blockage between the manhole and bathroom. She arranged for the tank to be emptied and referred to the waste ticket dated 24 May 2021. Mr Rodgers paid the £240 for tank to be emptied.

29. Mr Rodgers challenged Mrs Ross that the sceptic tank needed emptying on the termination of the tenancy in July 2023. He was a single man who lived in the Property alone. He put it to her that as the tank had been emptied once during the tenancy that should have been sufficient. He put it to her she was simply passing the costs of emptying the tank to him when there was no need for it to be emptied. The Tribunal were referred to the invoice for £260 from Highland Sceptic Tank Services dated 11 August 2023 which showed that the drain was blocked to the manhole. Mrs Ross also referred the Tribunal to a photograph which showed some rubble from the sceptic tank.

30. Mr Rodgers position was that the tank did not need emptied when he left the Property. It was not clear from the invoice how much waste had been emptied. There had been issues with the drainage at the Property as was evident from the Repairing Standard Enforcement Order issued by the Tribunal in April 2023. He could not be responsible for those issues.

Rubbish Removal

31. The Tribunal then asked Mrs Ross to speak to the invoice she had produced for the removal of rubbish of £60. She explained he had left a heater and a steam cleaner which she had taken to the dump. The invoice covered her diesel costs and time.

32. In response Mr Rodgers did not want to continue to argue over such a small amount and offered to pay £10 towards Mrs Ross for her diesel. Mrs Ross explained she did not want this and asked that Mr Rodgers pay this amount to a local hospice. Mr Rodgers was happy to do so and confirmed with the Tribunal he would arrange for that money to be paid in the lunch break. The Tribunal then adjourned for lunch.

Internal works- painting and cleaning.

33. After the adjournment for lunch Mr Rodgers confirmed he had transferred £10 to the hospice and would send the receipt to the Tribunal.

34. The Tribunal heard evidence on the internal damage and cleaning. Mrs Ross stated that the Property had been left in a terrible state. There were holes in the walls and ceilings, the paintwork had dried out, there were damp patches and the carpets were filthy. The white paint on skirting boards had a sticky residue on them and had to be sanded. When the hall cupboard was emptied she found the corner of the heater had gone through the wall.

35. The main thrust of Mrs Ross' evidence was that the photographs lodged by Mr Rodgers did not show the state of the Property on 28 July 2023 when he left. She claimed that although there was metadata showing the time and the dates of the photographs, purported to be taken on 28 July 2023, she claimed Mr Rodgers had tampered with the metadata and that accordingly the photographs were "false".

36. She referred to photograph 11 lodged by Mr Rodgers on 17 January 2024 with his submissions before the CMD. This was of the lounge. She referred to a close up of that photograph lodged by her. She pointed out a faint green light to the top right of the lampshade shown in the photograph. She explained

this was the emergency light. What the close up also showed was a hole in the lounge ceiling.

37. Mrs Ross then referred to photograph 5 also lodged by Mr Rodgers on 17 January 2024, previously lodged as photograph 27 without the metadata by Mr Rodgers on 18 December 2023. This photograph showed the same lampshade in the hallway looking down to the lounge with two marks on the ceiling and was shown as being taken on 28 July 2023. Photograph 5 was taken one minute after photograph 11 but did not show the green light shown in her close up photograph of photograph 11. Accordingly she was of the opinion the metadata had been falsified. She gave evidence that the emergency green light had been installed on 1 November 2022. It was her evidence that photograph 5 must have been taken before 1 November 2022. She also referred to a photograph taken by her on 4 August 2023 which showed holes in the ceiling with the smoke alarm and the same lampshade in the hallway with the smoke alarm.
38. Mrs Ross also referred to photograph 4 lodged by Mr Rodgers on 17 January 2024. This showed the smoke alarm but not the hole in the ceiling as shown in her photograph. Photograph 4 was also falsified. She also queried the descriptions of the photographs lodged by Mr Rodgers which did not match the photographs and pointed out the photographs all showed they had been edited on 17 January 2024.
39. Mr Rodgers vehemently denied falsifying the photographs with the metadata lodged by him on 17 January 2024. He explained the photographs had been taken on his phone on 28 July 2023 at various times up to 12 noon. They had been uploaded to the cloud. The photographs showed they had been downloaded on 18 December 2023 when he had originally lodged them and then again on 17 January 2024 when he had lodged them with the metadata included, hence the dates on the photographs. The metadata was accordingly correct.
40. Mr Rodgers gave evidence that the angles he had taken the photographs did not show the holes or the green light. He accepted the holes were in the ceiling but claimed they had been left by Mrs Ross' contractors when they installed the new alarms. Mr Rodgers gave evidence that what his photographs showed was the Property was left in a clean and tidy state when he left. There was no evidence of dampness. Mrs Ross had in her submissions claimed he did not heat and ventilate the Property, which he denied. With reference to another photograph lodged by Mrs Ross on 4 August 2023 which showed plasterwork on the floor he submitted that it was highly unlikely that even if the Property had been damp that it would have come away to that extent in the period between 28 July to 4 August 2023. He

reminded the Tribunal that he had had to take Mrs Ross to the Tribunal regarding her failure to carry out repairs to the drainage of the Property. His position was that even if there was dampness in the Property the only evidence from Mrs Ross was her assertion that over £3500 of damage caused by dampness was down to him. There was no evidence of any dampness or the cause of that dampness. If Mrs Ross was prepared to make such allegations against him she should have lodged evidence to show he had caused that dampness. It was Mrs Ross' obligation to keep the property free from serious disrepair. Just over three months before the end of the tenancy the Tribunal had made a Repairing Standard Enforcement Order against her requiring her to carry out repairs to the drainage which she had then done in May 2023. It was his position that had the Property been full of damp as she claimed the Tribunal would have noticed that. It was inconceivable that damp would have appeared over the summer months between April 2023 when the Tribunal attended at the Property and when he left on 28 July 2023.

41. Mrs Ross disputed Mr Rodgers' evidence. She claimed the Tribunal had only been in the lounge and had not been throughout the Property and would not have seen the dampness.
42. Mr Rodgers submitted that there was a multiplicity of causes as to why dampness may occur in a Property and the onus was on the Landlord to show that this was the Tenant's fault. There was no causal link that Mrs Ross could point to to show that any dampness was caused by him. She had no objective evidence to support her assertion that the Property was damp and if it was, that this was caused by him, whether that be by grass cuttings or by a failure to heat and ventilate. He had left it in a reasonable condition.
43. Mrs Ross again denied that he had left the Property in a reasonable state. She submitted she had spent a lot of money on the Property and that should be repaid by Mr Rodgers. The evidence concluded.
44. The Tribunal asked parties if there was any room for a compromise. Mr Rodgers stated that he could provide original copies of the photographs he had taken on his phone should the Tribunal require these. The Tribunal explained that as evidence had concluded that would not be necessary. Mr Rodgers also offered £500 to be paid within 7 days to dispose of the matter. Mrs Ross refused this offer and that the least she would be willing to settle the action for was £3000. Mr Rodgers confirmed he was not willing to offer that and asked that the Tribunal make a decision.

Findings in Fact

45. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement dated 2 February 2020 and commencing on 7 February 2020. The tenancy terminated on 28 July 2023.
46. In terms of Clause 17 of the Tenancy Agreement the Respondent agreed to take all reasonable steps to heat and ventilate the Property.
47. In terms of Clause 18 of the Tenancy Agreement the Applicant is responsible for ensuring the Property meets the Repairing Standard. Clause 18 further provides that the structure and exterior (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order and that the Landlord is responsible for keeping in repair the structure and exterior of the accommodation.
48. In terms Clause 30 of the Tenancy Agreement the Respondent is responsible for keeping the garden in a reasonable manner.
49. In terms of Clause 37 of the Tenancy Agreement the Respondent is responsible for the reasonable costs of emptying the septic tank.
50. The Property is a harled white bungalow comprising a kitchen, bathroom, 2 bedrooms and a living room. To the north, west and south there is garden ground comprising grass and to the east there is a gravel driveway. A wooden fence separates the end of the driveway from the garden ground to the north. The north of the Property is bounded by a field owned by the Applicant and separated by a post and wire fence.
51. In February 2020 prior to the commencement of the tenancy the Applicant emptied the septic tank which served the Property.
52. In May 2021 the Respondent complained that the septic tank was bubbling over and smelling. The Applicant arranged for the septic tank to be emptied on 24 May 2021 at a cost of £240. This was paid by the Respondent.
53. Parties had a previous informal arrangement whereby a gardener would attend at the Property twice a month to cut the grass. The Respondent paid £50 per month into the Applicant's bank account. The Applicant then paid the gardener. This arrangement came to an end at some stage.
54. The Respondent strimmed the grass to the north of the Property in or about July 2022. He left the grass strimmings where they lay until the end of the tenancy. The grass strimmings covered the concrete skirt of Property. Weeds grew in places at the bottom of the north facing wall to the Property. The Respondent failed to maintain the garden in a reasonable state and was in breach of Clause 30 of the tenancy agreement.

55. On 1 November 2022 the Applicant installed a new fire alarm system at the Property. The Applicant's contractor left holes in the ceiling when they fitted the new alarm system.
56. On 19 November 2022, the Respondent accidentally drove into the wooden fence damaging it, a sign and a cornerstone leaving a gap between the driveway and the garden to the north. By this stage the relationship between the parties had broken down and neither party raised the issue of the fence with the other. The Applicant reported the incident to the Police. The Applicant thereafter installed a gate for access between the garden ground to her field to the north in line with the post and wire fence that separated the garden from her field. The gate remained in situ at the end of the tenancy. The wooden fence was not repaired before the end of the tenancy. The wooden fence was repaired in August 2023.
57. At the end of the tenancy, the Applicant employed Mr McLennan, fencing contractor to carry out garden works at a cost of £780 and fence works at a cost of £440. Mr McLennan found the grass to be high and gave the grass two cuts with a bladed strimmer and mowed the grass and treated the gravelled areas with weedkiller. He estimated he had spent about 15 hours doing this work at the rate of £40 per hour. He also carried out some works to reinstate a pathway. He disposed of the damaged wooden fence and installed a new fence.
58. The Applicant purchased a new sign at the cost of £36. The Respondent offered to pay for the cost of the sign.
59. On 24 April 2023 the Tribunal made a Repairing Standard Enforcement Order under case reference FTS/HPC/RP/23/0270 regarding a drain at the front of the Property following an inspection on 20 April 2023. Otherwise, the Tribunal found the Property met the tolerable standard.
60. The Respondent left the Property on 28 July 2023 in a clean and tidy state, fair wear and tear excepted. The Applicant employed a cleaning company to clean the Property at a cost of £141.
61. The Respondent left a heater and a steam cleaner in the Property. There was a hole in the hall cupboard next to where the heater was left. The Applicant disposed of these items at the local dump.
62. On 4 August 2023 there was some isolated black colouring above a window on the north elevation.
63. In August 2023 the Applicant employed Robert Scott painter and decorator to paint the whole of the exterior of the Property at a cost of £1780 and the interior at the cost of £1786.
64. In August 2023 the Applicant arranged for the septic tank to be emptied by Highland Sceptic Tank Services at a cost of £260. Rubble was removed from

the septic tank. These costs are reasonable. The Respondent is liable to pay these cost in terms of Clause 37 of the tenancy agreement.

Reasons for Decision

65. The relationship between the parties is acrimonious. The majority of the Applicant's claim was disputed. Where the evidence was conflicting, the Tribunal preferred the evidence of the Respondent to that of the Applicant's which was best characterised as assertion or exaggeration, except where set out below.
66. In relation to the garden works, the Respondent accepted liability for the garden works, but disputed the quantum. The Tribunal accepted the evidence of Mr McLennan that he spent about 15 hours in total tending to the grass and weeds at the Property at a rate of £40 per hour. Despite there being some sort of previous arrangement between parties that the grass was cut twice per month at a cost to the Respondent of £50, the Tribunal did not accept the Respondent's position that £300 was a reasonable sum for cutting the grass at termination being the cost of twelve cuts under the previous arrangement. What Mr McLennan was presented with at the termination of the tenancy was not grass which had been regularly cut, but grass which had not been cut for a year. The task of cutting that down to a reasonable height involved considerably more work than a normal regular twice monthly cut. The Respondent is accordingly liable to meet the costs of £600 for the grass cutting and weed control.
67. The Tribunal accepted the Applicant's evidence that the septic tank needed to be emptied at the end of the tenancy. The Applicant provided supporting evidence by way of the invoice from Highland Septic Tank Services that the tank was emptied at the end of the tenancy at a cost of £260. The Tribunal has no reason to doubt that. Whilst the Tribunal accepts that the Respondent felt that as he had paid for the septic tank to be emptied once in May 2021 and that the tank should not need emptying again during the tenancy, there was no evidence before the Tribunal as to the size of the tank and how regularly such a tank should be emptied. That is simply an assertion that is not substantiated. The obligation in terms of the tenancy is for the Respondent to pay the reasonable costs of emptying the tank. On the basis of the previous sums involved for emptying the tank, the last sum being £240 in May 2021, the sum of £260 for emptying the tank over two years later in August 2023 is a reasonable sum for which the Respondent is liable to pay the Applicant.
68. Despite the Respondent admitting he accidentally drove into the wooden fence at the end of the driveway, the onus is on the Applicant to show the causal connection between that damage and her loss. The loss must be reasonably proximate to the act complained of. In this case, there was undisputed evidence that although the fence was damaged by the Respondent, it was not repaired until after the Respondent vacated the Property. Further there was undisputed evidence that the Applicant had

installed a gate at the north side of the garden on the boundary with her field at the point behind where the fence was damaged. The Applicant is at liberty to do as she pleases with her Property, but her actions and the delay have broken the causal link for which the Respondent cannot be held liable.

69. The Respondent offered to pay £36 for the sign as the sum involved was small. The Tribunal therefore will make an order against the Respondent for that sum.
70. Parties agreed that the Respondent would donate £10 to a local charity of the Applicant's choice to cover her diesel costs in taking the two items left in the tenancy to the local recycling centre. The Tribunal makes no order, being satisfied the Respondent transferred the money as promised.
71. There was no evidence before the Tribunal that the Property was damp either internally or externally. Even if there had been evidence of dampness the onus is on the Applicant to prove the cause of that dampness. In this case the Applicant made assertions that there was dampness in the Property internally caused by the Respondent's failure to heat and ventilate and that there was external dampness caused either by grass strimmings left on the concrete skirt or by grass seeds becoming embedded in the harling leading to mould and dampness. Whilst the Tribunal had been referred to a photograph of black staining above a window on the north elevation the Tribunal was not satisfied that was caused by seeds or grass strimmings. The Tribunal had also been referred to a photograph taken by the Applicant on 4 August 2023, which the Applicant claimed was plaster which had dried out and fallen on the floor. The Respondent's photographs on the other hand showed a very different picture of the Property being left in a clean, tidy and reasonable state on termination with no evidence of crumbling plaster on the floor. The Applicant lodged no other photographs of the interior of the Property which showed the dampness or mould that the Applicant complained about. The Tribunal found the Applicant's evidence on these matters to be exaggerated, bordering on incredible. Her evidence was no more than unsubstantiated assertions, fuelled by the bad feeling between the parties. On the other hand, there was evidence before the Tribunal that another Tribunal had inspected the Property approximately 3 months before the end of the tenancy. The issue before that Tribunal was a lack of repair to drains and although a Repairing Standard Enforcement Order was made, that Tribunal found the Property met the tolerable standard. Accordingly, there was evidence before the Tribunal that the Property was substantially free of dampness three months before the termination. The Tribunal preferred the Respondent's evidence that there are numerous causes of dampness and that it was unlikely that dampness would have developed over the three intervening spring and summer months between that Tribunal being at the Property and the end of the tenancy. The issue of dampness and its causes is technical and complicated. The Tribunal would have benefitted from an expert report to address these issues. It is for the Applicant to prove her case. In the absence of such a report the Tribunal cannot find that the Property was damp and more importantly for the Applicant, that any such dampness was caused by the fault or negligence of the Respondent. Without that evidence the Tribunal is of the opinion that the

Applicant cannot avoid her responsibility in terms of the tenancy agreement for maintenance and repair of the structure and exterior of the Property and as such will have to bear the costs of doing so.

72. The Tribunal preferred the evidence of the Respondent that the photographs he had lodged were taken just as he was vacating the Property on 28 July 2024 as shown in the photographs. The Applicant asserted that they were taken at an earlier date and did not show the Property in the state it was left in. She relied on a close up of a photograph lodged by Mr Rodgers which she claimed did not show the green alarm light shown in her close up photograph of the same light. She also relied on another photograph which the Respondent had lodged which did not show holes in the ceiling as shown in her photographs. The Tribunal accepted the Applicant's evidence that the new fire alarm system had been installed on 1 November 2022. However, the Tribunal formed the opinion that there was a slight glimmer of green in the Respondent's photograph and that as the photographs had been taken at different angles, they would not necessarily capture the same picture. Another of the Respondent's photographs clearly showed the fire alarm system. The Tribunal preferred the evidence of the Respondent that the holes were caused by the Applicant's contractors when they installed the new system and that the photographs showed the overall clean and tidy state he left the Property in. He was not obliged to do a deep clean. If the Applicant wanted to do so that was a matter for her. The Tribunal accepted his evidence in that regard. Further the Applicant questioned the description of the photographs which did not always match what was shown in the photographs. The Tribunal accepted the explanation from the Respondent that the description was automatic and not one he put in. The Applicant it appeared had gone to great lengths to show that the photographs were "false". The Tribunal was of the opinion that she had failed to do so. The Applicant could have lodged technical evidence on such matters which may have assisted her. However, there was no such evidence. That being the case the Tribunal had to assess the credibility and reliability of the parties' evidence on what was before it and preferred that of the Respondent. As a whole in relation to the state the Property was left in, the Tribunal was of the opinion that the Respondent's evidence was more credible and reliable. The Tribunal was satisfied the Respondent left the Property clean and tidy, fair wear and tear excepted.

73. In any event, even had the Tribunal found that the photographs lodged by the Applicant were false, that would not take the majority of the Applicant's claim any further forward in the absence of a report that the Property was damp and mouldy and that the cause of that damp or mould was the fault or negligence of the Respondent. The Applicant's claim for internal redecoration and cleaning accordingly fails.

Decision

74. The Tribunal makes an order for payment of £886 to the Applicant by the Respondent being £600 of gardening, £260 for emptying the septic tank and £26 for the replacement sign. The decision of the Tribunal was unanimous.

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.

Shirley Evans

29 May 2024

Legal Chair

Date