



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/23/3356

Re: Property at 46 Parkdyke, Stirling, FK7 9LS (“the Property”)

Parties:

Mr Adam Kindreich, 3 rua Nossa Senhora do Carmo, Almoester AVZ, Bemposta, 3250-024, Portugal (“the Applicant”)

Mr. Craig Haire and Mrs Nicole Haire, residing together at 20 Borrowlea Road, Stirling, FK7 7SF (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the sum of £707.98 was lawfully due by the Respondents and granted an order for payment of that sum by the Respondents to the Applicant

Background

1. The Parties had entered into a Tenancy Agreement in relation to the Property. That agreement had commenced on 6th March 2020.
2. On 11th January 2023 the Tribunal granted an order for the eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies)(Scotland) Act 2016. That order stipulated it could not be executed prior to 12 noon on 8th March 2023.
3. The Tenancy terminated on 8th March 2023.

4. By application dated 19 September 2023 the Applicant sought an order for payment of the sum of £1017.98. He avers that this sum is due to him under various heads of claim, all of which relate to the former tenancy agreement between the parties.
5. The Applicant seeks payment of the following sums:
 - a. The sum of £311.98, being the costs incurred by the Applicant in instructing Sheriff Officers to serve a charge against the Respondents and to thereafter conduct enforcement of the eviction order, as well as the sum of £306.00 being the costs incurred by the Applicant in instructing a locksmith to change the locks at the Property.
 - b. The sum of £200, claimed as compensation by the Applicant from the Respondents as the Applicant avers that the Respondents breached the tenancy agreement between the parties by installing an unauthorised smart electric meter in the property.
 - c. The sum of £100, claimed as compensation by the Applicant from the Respondents as the Applicant avers that the Respondents breached the tenancy agreement between the parties as the Respondents changed the supplier of electricity to the property without informing the Applicant.
 - d. The sum of £100 claimed as compensation by the Applicant from the Respondents as the Applicant avers that the Respondents breached the tenancy agreement between the parties as the Respondents did not advise the Applicant of a forwarding correspondence address following the termination of the tenancy.

Hearing before the Tribunal

6. The Tribunal convened an evidential hearing by teleconference on the 23rd August 2024. The Applicant joined the telephone conference and gave evidence from Gibraltar. Both Respondents joined the telephone conference and gave evidence to the Tribunal.
7. The Applicant had lodged written submissions for consideration by the Tribunal in advance of this evidential hearing. The Applicant had lodged 31 pages of documentation which included a six-page written submission in support of the various heads of claim under the Application.
8. The Respondents had lodged written submissions for consideration by the Tribunal by email dated 17th January 2024.

Preliminary matters

9. Following the submission of the Application to the Tribunal the Applicant emailed the Tribunal on the 14 November 2023 seeking to amend his application to include a further head of claim in respect of an additional cost which the Applicant avers he incurred as he required to instruct Sherrif officers to trace the current home address of the Respondents. The cost of the sheriff officers trace report was £90. The Tribunal accepted the terms of the Applicants email in this respect as an application to amend the application which raised a new issue, in terms of rule 14 of the Tribunal rules of procedure. That application to amend was intimated to the Respondents and the Respondents have responded to that amendment in their written submissions. The Tribunal accordingly accept the amendment of the application proposed by the Applicant and will consider this head of claim in addition to other matters raised in the application by the Applicant.
10. The Respondents have lodged a written response to the claims made by the Applicant, this response is contained within their email of 17 January 2024. In addition to specific comments in relation to each of the heads of claim made by the Applicant the Respondents have made a general submission that the Applicant is precluded from proceeding with the claims made in the application as he did not claim these sums from the deposit of £1000 which the Respondents had paid at the commencement of the tenancy. The Tribunal noted that claims had been made by the Applicant to the scheme administrator for the tenancy deposit following the termination of the tenancy between the parties. The Tribunal had regard to the adjudication outcome issued by Safe Deposits Scotland in that respect, a copy of which had been lodged with the Application. The Tribunal noted that the issues determined under the adjudication outcome did not include any of the matters claimed by the Applicant in terms of the current Application. The Applicant is not precluded from pursuing the matters raised in the current Application. He did not include such matters within his claims under the deposit scheme. The claims made by the Applicant in the current Application have not previously been considered by any decision making body and there is nothing in law which prevents the Applicant from raising claims which have not previously been considered by such a decision making body.
11. Within the written submission lodged by the Applicant are included details of communications and interactions between the parties under the heading "Tenants behaviours". The matters raised by the Applicant under this heading of his written submission are not relevant to the issues to be determined by the Tribunal under this Application and the Tribunal did not hear evidence in relation to these matters nor did they consider that part of the Applicant's submission when reaching their decision in relation to the application.

Reasons for the Tribunal's decision in relation to each part of the Applicant's claim.

12. The Applicant claims the sum of £311.98, being the costs incurred by the Applicant in instructing Sheriff Officers to serve a charge against the Respondents and to thereafter conduct enforcement of the eviction order, as well as the sum of £306.00 being the costs incurred by the Applicant in instructing a locksmith to change the locks at the Property.

The Tribunal finds the following facts to be established in relation to this head of claim: -

- a. The parties had entered into a private residential tenancy agreement in relation to the Property which commenced on 6th March 2020.
- b. Paragraph 37 of the tenancy agreement states that 'The tenant agrees to pay the reasonable costs incurred by the Landlord, or his Letting Agent or professional advisors, in successfully enforcing or remedying a failure to comply with the obligations of the tenant under the agreement'.
- c. Paragraph 71 of the tenancy agreement stipulates that: 'At the end of the tenancy the tenant agrees to return all keys to the premises to the Landlord or Letting Agent promptly on the last day of the tenancy.'
- d. On 2 April 2022 the Applicant served a Notice to Leave upon the Respondents under ground 1 of schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016 as the Respondent wished to sell the Property. That notice required the Respondents to leave the Property by 28 June 2022.
- e. The Respondents did not leave the Property by the date specified in the Notice to Leave.
- f. On 28 June 2022 the Applicant applied to the Tribunal for an order for the eviction of the Respondents from the Property.
- g. On 11 January 2023 the Tribunal granted an eviction order in respect of the Property. The eviction order was not to be executed prior to 12 noon on 8 March 2023.
- h. On 9 February 2023 the Applicant emailed the Respondents in the following terms: - "Following the tribunals order (attached), please be informed I'm arranging for your eviction from the property on 8th March with sheriff officers Scott & Co. They will be in touch shortly to serve you with the relevant pre-action notices. I will be claiming from you the cost of the eviction and changing the locks, running to several hundred pounds".
- i. The Applicant instructed Messrs Stirling Park, Sheriff Officers to serve a charge against the Respondents, and to thereafter evict the Respondents from the Property. The Applicant paid the Sheriff Officers the sum of £311.98 for these services.
- j. The Respondent instructed AL Security Limited to change the locks of the Property at the time of the Respondents eviction. The Respondent paid the sum of £306.00 for these services.

- k. The costs incurred by the Applicant are reasonable costs incurred by the Applicant in successfully enforcing the order of eviction against the Respondents.
- l. The Respondents did not advise the Applicant of their proposals for returning the keys of the Property in advance of the date set for the eviction. The Respondents left the Property on, or before, the date set for the eviction on 8 March 2023. The Respondents did not advise the Applicant of their intention to voluntarily leave the Property by that date. The Applicant incurred reasonable costs in instructing the change of the locks at the Property.

The Respondents admit, in their written submission, that they were advised by the Applicant by email dated 9 February 2024 that he was arranging for sheriff officers to evict them and that he would be “looking to recover all costs.” The Respondents stated to the Tribunal in their evidence that they considered the eviction as a “foregone conclusion”. They did not believe that there was any “no cost” alternative to the intent of the Applicant to instruct sheriff officers. They continued to pay rent for the Property up to the date of the eviction. They returned all keys to the Property by leaving the keys in the Property by the date of the eviction as well as handing a set of keys to the Sheriff Officers. They did not attempt to communicate with the Applicant to determine how they might avoid the sheriff officer costs. They did not communicate with the Applicant to make proposals for the return of the keys for the Property.

The Applicant considers that he is entitled to recover the cost of instructing the Sheriff Officers and the lock change as these were costs reasonable incurred by him in enforcing the eviction.

The Tribunal have determined that the Respondents are liable to pay the Applicant the costs of instructing Sheriff officers to serve a charge and to carry out an eviction. This cost of £311.98 was incurred by the Applicant as a reasonable cost in enforcing a previous order granted by the Tribunal.

The Tribunal have further determined that the Respondents are liable to pay the costs of changing the locks at the Property at a cost of £306.00. Although the Respondents left the keys in the Property by the date of the eviction they failed to communicate with the Applicant in that respect. It was reasonable for the Applicant to consider that he would require to change the locks at the Property at the eviction date as he had not been informed of the Respondents intention to leave keys in the Property. As the Respondents had failed to confirm their intention to return keys it was reasonable for the Landlord to instruct a lock change to ensure the future security of the Property.

The Tribunal have determined to order the Respondents to make a payment of £617.98 under this heading of the Application.

13. The Applicant claims the sum of £200 as compensation from the Respondents as the Applicant avers that the Respondents breached the tenancy agreement between the parties by installing an unauthorised smart electric meter in the property.

The Respondents have confirmed in their written submission that an energy smart meter was installed at the Property during their period of occupation under the tenancy agreement between the parties. The Respondents had been concerned about the cost of electricity at the Property and had been advised to install the smart meter by the utility company which supplied the electricity.

The Tribunal have determined that no award of compensation should be made to the Applicant in relation to this matter. The Applicant has suffered no loss because of the Respondents actions. It was reasonable for the Respondents to install the smart meter to allow them to monitor their electricity usage. The Applicant considers that the installation of the smart meter provides a considerable loss of control to the consumer. The tribunal note that the Applicant sold the property shortly after the tenancy between the parties was terminated. The Applicant has suffered no direct financial loss because of the Respondents actions and no appreciable indirect loss through inconvenience or otherwise.

The Tribunal have therefore determined to refuse to grant this part of the Applicant's claim.

14. The Applicant claims the sum of £100 compensation from the Respondents as the Applicant avers that the Respondents breached the tenancy agreement between the parties as the Respondents changed the supplier of electricity to the property without informing the Applicant.

The Respondents have confirmed in their written submissions to the tribunal that the energy supplier to the property ceased trading in 2021. At that time the energy supplier was transferred by OFGEM to a new energy supplier.

The Applicant maintains that the Respondents were required to inform him of the change of energy supplier. As the Respondents did not inform the Applicant of the change of electricity supplier the Applicant considers that he is entitled to £100 by way of compensation.

The tribunal have determined that no award of compensation should be made to the Applicant in relation to this matter. The energy supplier was changed due to circumstances out with the control of the Respondents.

The Applicant has suffered no direct financial loss because of the Respondents actions and no appreciable indirect loss through inconvenience or otherwise.

The Tribunal have therefore determined to refuse to grant this part of the Applicant's claim.

15. The Applicant claims the sum of £100 claimed as compensation from the Respondents as the Applicant avers that the Respondents breached the tenancy agreement between the parties as the Respondents did not advise the Applicant of a forwarding correspondence address following the termination of the tenancy. Following the amendment of the Application the Applicant also claims the cost of a sheriff officers trace report in the sum of £90.

In their written submissions to the Tribunal the Respondents have submitted that they did not disclose their forwarding address to the Respondent as relations between the parties had broken down and the Respondents wished to end all dealings with the Applicant at the end of the tenancy. The Respondents also refer to an earlier decision of the Tribunal from which they understood they were not obliged to provide the applicant with a forwarding address. The Tribunal do not have a copy of such a decision and can not make comment on that contention.

The Applicant refers to paragraph 75 of the tenancy agreement which obliges the Respondents to provide the Applicant, by the end of the tenancy, a forwarding or corresponding address for ease of administration and communication.

The Respondents accept they did not provide a forwarding address though they considered it unfair that they should be expected to do so in the circumstances and given all previous correspondence had been by email. Although the Respondents have highlighted that the applicant was aware of their business address the tribunal do not consider that such an address could be used to by the Applicant without the formal written consent of the Respondents for that purpose.

In the course of raising this application the Applicant was advised by the Tribunal administration that he would require to provide a correspondence address in order for this Application to proceed. The Applicant incurred the cost of £90 in instructing sheriff officers to trace the current residential address of the Respondents. That cost arose directly because of the Respondents failure to provide a correspondence address. Accordingly, the Applicant is entitled to recover the sum of £90 from the Respondents in that connection.

The Applicant has not suffered any further direct financial loss because of the failure of the Respondent to provide a forwarding address. The Applicant has further not suffered any appreciable loss arising from the frustration or inconvenience of the lack of a forwarding address for the Respondents.

Decision

16. For the above reasons the Applicant is entitled to payment of the following sums from the Respondent.

The costs incurred by the Applicant in instructing sheriff officers to carry out the eviction process (£311.98)
The costs of instructing a lock change at the Property (£306.00) and
The cost of instructing sheriff officers to trace an address for the Respondents (£90.00)

17. The Tribunal have accordingly determined that that the sum of £707.98 is lawfully due by the Respondents and granted an order for payment of that sum by the Respondents to the Applicant.

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.

Andrew Cowan

23 August 2024

Legal Member/Chair

Date