



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 2016

Chamber Ref: FTS/HPC/CV/24/0020

Re: Property at 3 Station Path, Newport-on-Tay, Fife, DD6 8JR (“the Property”)

Parties:

Mr Karl Mooney, 4 Hill Street, Newport-On-Tay, Fife, DD6 8JS (“the Applicant”)

Ms Donna Vincent, 44C King Street, Newport-On-Tay, Fife, DD6 8BE (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.

Background

1. By application dated 1 November 2023 the Applicant applied to the Tribunal for an order for payment in respect of a claim for the cost of replacement carpets arising from an alleged breach of a term of the Respondent’s tenancy agreement. The Applicant submitted a copy of the tenancy agreement, a quote for the cost of replacement carpets, copies of emails and written representations in support of the application.
2. By Notice of Acceptance dated 12 March 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (CMD) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 19 July 2024.

4. By email dated 9 August 20 24 the Respondent submitted written representations to the Tribunal.
5. By emails dated 13 and 18 August 2024 the Applicant submitted further written representations to the Tribunal.

The Case Management Discussion

6. A CMD was held by teleconference on 21 August 2024. The parties attended in person.
7. The Applicant confirmed he was seeking payment from the Respondent the sum of £1757.00 in respect of the Respondent's failure to replace the carpets in the property at the end of her tenancy.
8. The Applicant referred the Tribunal to the terms of Clause 32 of the Private Residential tenancy Agreement between the parties that commenced on 26 May 2018 and provided that at the end of the tenancy the tenant whether before or after the end of 2021 would replace to the original standard all carpets within the let property. In response to a query from the Tribunal the Applicant further explained that this meant that the Respondent was obliged to fit new carpets in the property of the same quality and standard as the existing carpets at the end of the tenancy and not simply to ensure that the carpets were in the same condition at the end of the tenancy as they were at the beginning.
9. The Tribunal noted from the Respondent's written submissions that it was suggested that the Applicant had sold the property without replacing the carpets and asked the Applicant if that was the case. The Applicant confirmed that this was correct. The Tribunal queried with the Applicant what loss he had suffered if he had not been put to the expense of replacing the carpets before selling the property. The Applicant submitted that the Respondent was in breach of contract as she had not replaced the carpets as she was obliged to do and therefore he was entitled to recover the cost of new carpets even although he had not purchased them. The Applicant submitted that the claim was entirely analogous to the situation where a customer hires a car with the condition that at the end it will be returned with a full tank of fuel. When the tank is not full the rental company will require the deficit to be paid for by the customer as per the lease regardless of what subsequently happens to the car.
10. The Respondent referred the Tribunal to her written representations and opposed the order being granted.

Findings in Fact

11. The parties entered into a Private Residential Tenancy that commenced on 26 May 2018 and ended on 25 June 2022.

12. Clause 32 of the tenancy agreement provided that the Respondent was obliged to fit new carpets in the property of the same quality and standard as the existing carpets at the end of the tenancy.
13. The Respondent failed to replace the carpets at the end of the tenancy.
14. The Applicant obtained a quote from the Dundee Carpet Shop in the sum of £1757.00 to replace the carpets at the property.
15. The Applicant sold the property without replacing the carpets.

Reasons for Decision

16. The Tribunal was satisfied from the Written representations of the parties and their oral submissions that the Applicant let the property to the Respondent in terms of a Private Residential tenancy that commenced on 26 May 2018 and ended on 25 June 2022.
17. The Tribunal was also satisfied that it was intended that the Respondent should have replaced the carpets in the property at the end of her tenancy with carpets of the same quality but that she did not do this. The Respondent was therefore in breach of contract. That being the case the Applicant was entitled to claim damages from the Respondent for any loss incurred as a result of the Respondent's breach. The Applicant sought to recover the cost of replacing the carpets as a measure of his loss and provided the Tribunal with a quote from the Dundee Carpet Shop in the sum of £1757.00. However, the Applicant did not replace the carpets but sold the property with the existing carpets following the end of the subsequent tenancy. The Applicant's analogy with hiring a car and returning it with less fuel is entirely misplaced as the car hire company has clearly suffered a loss as it has paid for the fuel used by the customer. The Applicant did not submit any other argument as regards loss and given that he did not incur any expenditure in replacing the carpets or suggest that he had suffered any other financial loss the Tribunal was not satisfied that the Applicant had incurred a loss or that there was any merit in the Applicant's claim.

Decision

18. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing refuses the application.

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.

G.Harding

Legal Member/Chair

22 August 2024
Date