



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 Private Rented Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/3912

Property at 32 Craigash Quadrant, Milngavie, G62 7BX (“the Property”)

Parties:

Miss Erin Courtney, Golf Promenade, Damac Hills, Dubai, United Arab Emirates (“the Applicant”)

Mr Johnathan Freeman, 105 Friars Croft, Kirkintilloch, G66 2AU (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)

Decision – in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the sum of £3541.19 should be granted in favour of the Applicant.

Background

- 1.** The Applicant seeks a payment order in relation to unpaid rent and the cost of re-instating the property at the end of the tenancy. A tenancy agreement, check in report, checkout report, invoices and photographs were lodged with the application.
- 2.** The application was served on the Respondent and both parties advised that a CMD would take place by telephone conference call on 18 June 2024. The Applicant was represented by her parents, Mr and Mrs Rice. The Respondent participated.
- 3.** The Respondent confirmed that all parts of the claim are disputed. The Respondent also challenged the information provided by the Applicant in relation to the tenancy deposit. The Legal Member determined that the

application should proceed to a hearing and parties were advised that they should lodge the names of witnesses and any documents they intended to rely on.

4. The parties were notified that a hearing would take place by telephone conference call on 5 December 2024 at 10am. Prior to the hearing the Applicant notified the Tribunal of one witness who would participate. Neither party lodged any further documents.
5. The hearing took place on 5 December 2024. The Applicant was again represented by Mr and Mrs Rice. The Tribunal also heard evidence from Mr McLernon. The Respondent did not participate and did not contact the Tribunal in advance of the hearing.

The Hearing

6. At the start of the hearing Mr and Mrs Rice told the Tribunal that the Applicant still seeks a payment order for the sum of £5336.90. The Tribunal noted that there are a number of undated photographs with the application paperwork. Mr and Mrs Rice stated that they had taken the photographs just after the Respondent had moved out. The Tribunal also noted that there are two letting agent inventories with the application. The first is dated May 2022. Mrs Rice said that this shows that the property had been re-decorated before the Respondent moved in. The second is dated September 2023, prepared after the remedial work was carried out at the property after the tenancy had ended in July 2023. The Tribunal also asked for clarification of the tenancy deposit adjudication. Mrs Rice explained that the remedial work had cost more than the deposit. As a result, they had restricted their claim for both the decorating and gardening because their claim could not exceed the amount of the deposit. They were awarded the whole deposit with no deductions.

Mr McLernon's evidence

7. Mr McLernon confirmed that he runs M & J Decorators and that he re-decorated the property in 2023, after the Respondent had moved out. He said that the walls at the property were grubby and damaged, and he had to repair them before painting. He stated that there were greasy marks on most of the walls. There were also a number of holes. In response to a question about the water marks on the ceilings referred to in his invoice, he said that these were underneath the bathroom. He had to spray these with a damp proof spray before painting. As he recalls all rooms needed to be painted and most walls had holes in them. He stated that he does a lot of pre-tenancy decoration, and the property was not fit to be re-let until he had re-decorated. In his view the work required was not due to wear and tear but was caused by damage and neglect.

Mr and Mrs Rice's evidence

8. Mr and Mrs Rice said that the walls were extensively damaged. There were holes, food stains and dirt on the walls. They said that the water marks on the ceilings were possibly due to blockages in the sink and shower. The Respondent did not report any leaks, and they did not have to arrange for a plumber to attend to fix anything. Possibly the sink had overflowed because it was blocked. The Tribunal was also told that the smell from the property was awful.
9. The Tribunal was told that the rent arrears shown on the statement are still outstanding. When the Respondent first incurred arrears in December 2023 the Applicant contacted him by email to try to sort out a payment arrangement. However, he stopped paying rent in March 2023 and the sum of £2788.45 remains unpaid.
10. In relation to the claim for an additional two months rent, Mr and Mrs Rice said that they could not re-let the property until the work was done. Usually, a property can be viewed during the notice period and this property is in high demand and generally re-let very quickly. However, the Respondent would not allow access during the notice period and was verbally abusive when this was requested. In response to a question from the Tribunal Mrs Rice said that the decorator was in the property for 2 days.
11. In relation to the claim for postage, Mrs Rice said that the Respondent had failed to pay utilities and Council tax and had other debts. Sheriff Officers and debt collectors kept coming to the property to look for him and there was a lot of mail from people who were owed money. The Applicant was concerned about the effect of this on the new tenant, so they sent all the mail to the Respondent's father's address. They also notified the creditors that he had moved. This was time consuming. The only claim is the cost of postage.
12. In relation to the gardening costs, Mr and Mrs Rice said that the garden had been neglected throughout the tenancy and damage had been caused. The required work included putting down grass seed to replace grass which had been damaged by bins and toys and other items being left on the lawn and the Respondent not cutting the grass at any point during the tenancy.
13. Mr and Mrs Rice said that they had to hire a van to remove all the Respondent's possessions and take them to his new address. He gave notice to end the tenancy on 9 July 2023. When they arrived to do the checkout inspection, he was not there and appeared to have abandoned the property. However, all his possessions, including clothes, shoes and toys were all still there. They had to hire a van to take all of these to his new address.

Final remarks

14. The Tribunal asked for clarification of the legal basis for the claims for postage and the additional two months rent. Mrs Rice said that they had to incur the cost

of postage for the sake of the new tenant. She also said that they had experienced a great deal of inconvenience. She referred to clause 21 of the tenancy agreement which prohibits antisocial behaviour.

Findings in Fact

15. The Applicant was the tenant of the property between June 2022 and 9 July 2023.
16. The Respondent owes the Applicant the sum of £2988.45 in unpaid rent.
17. Prior to the start of the tenancy the property had been cleaned to a high standard and re-painted.
18. After the Respondent had vacated the property in early September 2024, the letting agent and the Applicant's parents carried out an inspection. Photographs were taken.
19. During the Respondent's occupation, the internal walls and ceilings at the property were marked and damaged. The damage included holes, food stains and water damage.
20. The Respondent failed to maintain the garden to a reasonable standard during the tenancy.
21. The Respondent failed to leave the property in a clean and tidy condition at the end of the tenancy.
22. The tenancy deposit of £1950 was recovered in full by the Applicant from the tenancy deposit scheme
23. The Applicant required to instruct contractors to re-instate the property before it could be re-let. The sum paid by the Applicants to contractors after deduction of sums covered by the deposit was £328.45
24. The Respondent left a large number of belongings at the property including clothes, shoes and toys.
25. The Applicant hired a van at the cost of £75 to take the Respondent's possessions to his new address.
26. The property was not re-let until September 2023.

Reasons for Decision

27. The Tribunal notes that the Respondent signed a standard model PRT which includes the usual provisions about paying rent, taking care of the property, keeping it clean, not causing damage and maintaining the garden. There is also a clause which stipulates that the tenant will remove all their possessions at the end of the tenancy. The Respondent indicated that all aspects of the application were opposed when he attended the CMD. However, he did not participate in the hearing and the Tribunal did not hear evidence from him about the specific aspects of the claim. However, based on the information provided at the CMD, it was established that he did not deny that he was the tenant of the property between June 2022 and July 2023 or that the tenancy agreement lodged with the application had been signed by him at the start of the tenancy.
28. The Tribunal found the Applicant's witnesses to be generally credible and reliable. They gave their oral evidence in a straightforward manner, and it was consistent with the documentary evidence that had been lodged.

Postage £45 and lost rent £1900

29. The Tribunal is satisfied that the Respondent's tenancy agreement required him to pay rent, look after the property, keep the property clean, maintain the garden and remove his belongings at the end of the tenancy. However, the Tribunal is not persuaded that the contract required the Respondent to notify all his creditors that he had moved out of the property or provide them with a new address. Clause 26 only required him to notify the Local Authority that the tenancy had ended, in relation to Council Tax. Clause 27 required him to pay his utility bills. But the Tribunal is not satisfied that the tenancy contract entitles the Applicant to re-charge the postage costs incurred by her when she re-directed mail or contacted creditors. She was not obliged to incur this cost. Mail could simply have been returned to the post office marked "no longer at this address" and Sheriff Officers and debt collectors advised by the new occupant that the Respondent had moved. The Applicant is not entitled to a payment order for the postage charge of £45.
30. The Tribunal is also not persuaded that there is anything in the tenancy contract which entitles the Applicant to seek lost rent from the Respondent. It is not disputed that he gave written notice and that the property was recovered on the due date. It is usual for a property to remain unoccupied while a new tenant is found and, during this period, the landlord often carries out work to make the property ready to be re-let. Even if the contract did specifically stipulate that the Applicant could claim for lost rent if the property had been damaged or neglected and this caused delay, the Tribunal is not satisfied that a period of two months was excessive for the property to be re-let or that the delay was wholly attributable to the Respondent's actions. The decorator only took two days to complete his work. Presumably the cleaner and gardener only took a day or so to carry out their parts of the re-instatement. Although the property was recovered on 9 July, the van to remove the Respondent's possessions was not hired until a month later. The Tribunal is therefore not satisfied that the

Applicant is entitled to an order for £1900 for lost rent.

Decoration and gardening

31. The documents lodged and the oral evidence of the witnesses established that the Respondent had not looked after the property and that it required to be re-decorated throughout. He had damaged and marked the walls. These had to be repaired and painted. He had also allowed water to escape from the bathroom which caused water marks on the ceilings. The decorator confirmed that the property had not been in a fit condition to re-let. The Respondent also failed to maintain the garden. The Tribunal is satisfied that the Applicant is entitled to a payment order for the remainder of the decorator's invoice, £300 and the gardener's invoice, £28.45.

Van hire

32. The tenancy agreement requires the Respondent to remove his possessions from the property at the end of the tenancy. The evidence established that he failed to do so. The Applicant could have disposed of the items and sought to recover the costs of doing this. Instead, her parents returned the items to the Respondent. They incurred the cost of van hire in order to do this. The Tribunal is satisfied that the Applicant is entitled to a payment order for the sum of £75.

Rent arrears

33. From the evidence provided at the hearing the Tribunal is satisfied that the Respondent incurred rent arrears of £2988.45 and that the Applicant is entitled to a payment order for this sum. The Respondent had disputed all aspects of the claim at the CMD, including the arrears. However, he failed to attend the hearing or submit any evidence that the rent had been paid.

Inconvenience

34. Throughout the application paperwork and at the CMD and hearing, the Applicant's representatives spoke about the inconvenience experienced because of the Respondent's breach of the tenancy contract. The Tribunal is satisfied that the Applicant was put to considerable inconvenience – clearing out the property, taking the Respondent's possessions to his new address and instructing various contractors to carry out the required remedial work. The Tribunal is satisfied that the Applicant is entitled to an additional sum of £150 for the inconvenience caused by the breach of contract.

Decision

35. The Tribunal determines that an order for payment should be granted against the Respondent.

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.

J Bonnar

Josephine Bonnar, Legal Member

5 December 2024