



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/24/1400

Re: 63 Gillbrae Crescent, Georgetown, Dumfries DG1 4DJ (“the Property”)

Parties:

Rebecca Bradbury, 19 Twiname Way, Heathall, Dumfries DG1 3ST (“Applicant”)

James McGarva, 1 Horseclose Cottage, Cummertrees DG12 5PZ (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member) Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £475 should be made.

Background

1. The Applicant sought an order for payment of £475 in respect of a deposit paid by the Applicant to the Respondent. The Applicant had lodged Form F along with a private residential tenancy agreement between the Applicant and the Respondent which commenced on 21 November 2019.
2. A case management discussion (“CMD”) took place on 1 July 2024. Reference is made to the note of the CMD and to the direction issued.
3. At the conclusion of the CMD the Tribunal noted that the following was agreed:
 - the tenancy commenced on 21 November 2019 and ended on 22 January 2024;
 - the Applicant paid a deposit of £475 to the Respondent on or about 22 November 2019;
 - the deposit was not returned to the Applicant at the end of the tenancy and the deposit was not placed in an approved scheme.

The Tribunal noted that the following was in dispute

- whether the Applicant caused damage to the Property;
- the extent of costs incurred by the Respondent as a result of damage allegedly caused by the Applicant to the Property
- whether the Respondent was entitled to withhold all or part of the deposit in respect of the Applicant failing to take reasonable care of the Property.

Documents

4. The documents produced by the Applicant were :

- A private residential tenancy agreement between the Applicant and the Respondent which commenced on 21 November 2019 (“Tenancy Agreement”)
- Screenshots of text messages between the Parties regarding the need for a repair to the toilet in July 2021 and April 2023 and regarding mould in the Property in December 2021 and April 2023
- Photographs of mould in the Property

5. The documents produced by the Respondent were :

- An undated invoice from Pethericks Plumbing and Building Services in the sum of £404 for the replacement of a toilet and basin at the Property
- An invoice dated 2 February 2024 in the sum of £1560 for the full redecoration of the Property
- A check out report for the Property dated 23 January 2024

Hearing

6. A Hearing took place by conference call on 25 November 2024. Both Parties were in attendance. The Tribunal noted the matters that had been agreed at the CMD and what was in dispute and required to be resolved at the Hearing
7. The Tribunal asked Mr McGarva to explain why he took the view that he was entitled to retain the deposit paid by Ms Bradbury. Mr McGarva said that the checkout report showed the condition at the start and the end of the tenancy and showed that the Property had been left in a disgusting condition. He said that after Ms Bradbury left the Property he re-let it to an individual who had

rented the Property before Ms Bradbury. The Tribunal asked Mr McGarva to specify the defects in the Property at the end of the tenancy and to point the Tribunal to the pages in the checkout report which supported his position.

8. Mr McGarva listed the defects in the Property as follows : poor quality painting as shown at pages 10-19 of the checkout report; carpets disgusting and had to be cleaned; work top in kitchen chipped; toilet broken as shown at pages 42-43 of the checkout report and light switches hanging off.
9. Mr McGarva said that he has not yet replaced the kitchen worktop as the current tenant does not want the work done at this time. He said he had a quote for the work. He said that he cleaned the carpets himself. Mr McGarva told the Tribunal that he had the entire Property painted at the end of the tenancy. He said that he would not expect to paint the whole property at the end of a tenancy of this length. Mr McGarva said that the toilet had been in the Property for about 10 years. He said repairs to the flushing mechanism of the toilet were carried out during the tenancy. He said the cistern was cracked at the end of the tenancy. He said the sink was cracked at the end of the tenancy. Both the toilet and sink were replaced. The Tribunal noted that the checkout report did not refer to the sink being cracked. Mr McGarva said the plumber told him it was cracked.
10. The Tribunal noted that Ms Bradbury had lodged photos showing mould in the Property. Mr McGarva said that the damp was due to lack of airflow in the Property. He said Ms Bradbury needed to keep windows open and not dry laundry in the Property. He said new vents were installed in the roof. He said there had been no issues with damp since the new tenant had moved in. The Tribunal questioned whether the Property would require to have been painted anyway because of the damp. Mr McGarva said the entire Property would not have needed to be painted.
11. The Tribunal asked Ms Bradbury about the bathroom. She said that she had complained about the bathroom a lot. She said that the flush mechanism was fixed a number of times. She could not say how many times or over what period of time. She said repairs were carried out by a handyman called Tony. She said the cistern was rusty inside and leaking. She said that Tony said the toilet needed replaced. Ms Bradbury said the condensation in the bathroom was bad and she kept the window open at all times. She said that the cistern lid was tight and the crack in the cistern was caused one of the times she had to lift the cistern lid to deal with the flushing mechanism. She said that there was no crack in the sink.
12. As regards painting the Property, Ms Bradbury said that she asked Mr McGarva if she could paint the Property at the start of the tenancy and he gave his

consent. She said Mr McGarva said he was happy with the painting she had done. She said she painted the hall again about 3 years after she took up the tenancy. She said that at the end of the tenancy she asked decorators to look at the Property and they said they could not paint over the mould.

13. The Tribunal asked Ms Bradbury about the mould. She said it first appeared in her son's room around December 2021 and shortly after that it appeared in her bedroom. She said that there was also mould in the kitchen but that issue was resolved when vents were installed. She said the mould in the bedrooms was never resolved. She said there was also mould in the bathroom and that the Respondent did not take any steps to deal with the mould. She said there was a vent in the bathroom. She said the only work done in the Property by builders was to remove the chimney which was shared with the neighbouring property. She said the Property was in good condition at the end of the tenancy.
14. The Tribunal asked Ms Bradbury if she raised any issues about the checkout report. She said she did not see the checkout report until it was lodged in the Tribunal process.
15. Mr McGarva said that he did agree to Ms Bradbury painting the Property but on the condition that the Property was returned to its original state at the end of the tenancy. He said that "Tony" is a plumber. Ms Bradbury said she disputed that the permission to decorate the Property was conditional on the Property being returned to its original state at the end of the tenancy.
16. As regards the damp and mould, Mr McGarva told the Tribunal that he instructed builders to go to the Property after the problem started. He said they cleaned the airflow vents and installed three vents at the back of the Property at roof level. He said there was already a vent in the kitchen. He said the builder's view was that the damp was due to lack of airflow and drying laundry in the Property.
17. Ms Bradbury said that she lived in the Property with her son. She said she dried clothes outside. She said she had a combination washing machine / tumble dryer in the Property. She said that builders never came to the Property to inspect the dampness. She said builders did remove the chimney but they did not come into the Property regarding the damp.
18. The Tribunal asked Mr McGarva if he received a written report from the builders regarding the damp. He said he did not. He said he spoke to the builder who said he had looked at the damp proof course which was fine. The Tribunal asked Mr McGarva if he inspected the Property regarding damp. He said that he did and he went into the Property with the builders to look at the damp. He

said he saw the mould in various locations. Mr McGarva said he did not suggest cleaning the mould as Ms Bradbury said she would do that.

19. The Tribunal asked Mr McGarva when the builders carried out the work to the Property to deal with the mould and damp. Mr McGarva checked his messages with the builder and said he had an invoice from them dated 27 November 2022 for taking down the chimney and an invoice dated 1 April 2020 for replacing tiles with free flowing vents at the back of the Property and cleaning vents at the front of the Property.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement which commenced on 21 November 2019.
2. The tenancy came to an end on 22 January 2024.
3. The Applicant paid to the Respondent a deposit of £475 on or about 22 November 2019.
4. The deposit was not paid to the administrator of an approved scheme in compliance with the 2011 Regulations.
5. The deposit was not returned to the Applicant at the end of the tenancy.
6. The Respondent consented to the Applicant decorating the Property.
7. The Applicant reported to the Respondent that there was a repair needed to the toilet in the Property on 16 July 2021 and 24 April 2023.
8. Repairs were carried out to the toilet in the Property on more than one occasion.
9. The cistern of the toilet in the Property was cracked at the end of the tenancy.
10. The sink in the bathroom of the Property was not cracked at the end of the tenancy.
11. There was evidence of mould in the Property from December 2021.
12. The Applicant reported to the Respondent that there was mould in the Property on 28 December 2021, 24 April 2023 and 27 April 2023.
13. The Respondent did not take any steps to deal with the mould in the Property after it was reported to him in December 2021.

14. The Respondent consented to the Applicant decorating the Property.
15. The requirement to decorate the Property at the end of the tenancy was due to the presence of mould and ordinary wear and tear.

Findings in Fact and Law

The Tribunal made the following findings in fact and law:

1. The Respondent failed to comply with his obligations under the Housing (Scotland) Act 2006 to ensure that the Property met the repairing standard throughout the period of the tenancy.
2. The Applicant is entitled to recover the deposit of £475 paid by the Applicant to the Respondent at the start of the tenancy.

Reasons for the Decision

20. The Tenancy Agreement sets out the contractual relationship between the Parties. Clause 11 provides that the Respondent must lodge any deposit received with a tenancy deposit scheme within 30 working days of the start of the tenancy. In terms of clause 17 the Applicant agreed to take reasonable care of the Property. In terms of clause 18 of the Tenancy Agreement the Respondent is responsible for ensuring the Property meets the repairing standard in terms of the Housing (Scotland) Act 2006. In terms of clause 25 the Applicant agrees to replace or repair any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the tenant.
21. The Applicant seeks the return of the deposit paid at the start of the tenancy. The Respondent did not lodge the deposit with a tenancy deposit scheme which means the Applicant could not take advantage of the dispute resolution mechanism provided by deposit scheme administrators. The Respondent seeks to retain the deposit to compensate him for costs incurred by him as a result of the alleged failure of the Applicant to comply with her obligations under the Tenancy Agreement.
22. By Direction dated 1 July 2024 the Tribunal directed the Respondent to lodge a copy of any invoices vouching costs incurred by the Respondent in order to rectify damage caused to the Property during the Applicant's tenancy. The Respondent lodged an undated invoice from Pethericks Plumbing and Building Services in the sum of £404 for the replacement of a toilet and basin at the Property and an invoice dated 2 February 2024 in the sum of £1560 for the full redecoration of the Property.

23. In his evidence the Respondent referred to a number of issues which in his view indicated that the Applicant had failed to take reasonable care of the Property during the tenancy but the only costs vouched were the cost to replace the sink and toilet in the bathroom and the cost to decorate the Property. Reference was made to the cost of replacing a worktop but this work had not been undertaken and therefore no cost had been incurred.
24. As regards the bathroom, the Respondent said he replaced the sink and toilet at a cost of £404. He said the sink was cracked. The Applicant said it was not. The checkout report lodged ran to 88 pages and provided helpful detail regarding the state of repair of the Property at the beginning and end of the tenancy. The checkout report made no reference to a crack in the sink in the bathroom and described its condition as “good” at the start of the tenancy and “fair” at the end of the tenancy. In the absence of a reference to the crack in the checkout report or a photo clearly showing a crack, the Tribunal determined that the Applicant did not damage the sink during the tenancy. As regards the toilet, the checkout report contained a photo that showed a crack in the cistern. The Applicant told the Tribunal that the crack occurred on one of the occasions when she required to lift the cistern lid to attend to the flushing mechanism which had been a recurring problem. The Respondent did not dispute that this had been a recurring problem. Had the toilet been properly fixed, which is the obligation of the Respondent under the Housing (Scotland) Act 2006, the Applicant would not have had to lift the cistern lid which caused the crack to occur. In those circumstances the Tribunal determined that the crack in the cistern resulted from the Respondent’s failure to comply with his obligations and was not a sound basis for the deposit being withheld.
25. The checkout report referred to mould present in the Property at the end of the tenancy in the bathroom, in the living room on the ceiling and on the walls and ceiling of both bedrooms. The Applicant lodged photos showing mould in the Property. She also lodged copy text messages reporting mould issues to the Respondent on 28 December 2021, 24 April 2023 and 27 April 2023. The Respondent’s evidence was that builders had looked at the mould and had installed vents to assist. The Respondent did not instruct a damp specialist and did not receive a written report from the builder instructed. The Respondent’s evidence was that the damp and mould was due to lack of ventilation in the Property. The Respondent checked his communications with the builder in the course of the Hearing and told the Tribunal that the invoice from the builder for installing the vents was dated 1 April 2020. He had a second invoice from the builder dated 27 November 2022 which related to the removal of a chimney. From this evidence it was apparent that any work done by the builder regarding damp and mould was not carried out after the damp and mould was first

reported in December 2021. The Respondent's evidence was that the damp and mould was addressed by a builder. However the only evidence before the Tribunal indicated that the work was done in April 2020 and it was therefore apparent that the Respondent took no steps to deal with the damp and mould after it was reported in December 2021 and April 2023.

26. The Respondent's evidence was that the damp and mould was caused by the Applicant failing to ventilate the Property. The Respondent did not say that he was a damp specialist and he did not instruct a specialist to inspect the Property after the damp and mould was reported in December 2021 or April 2023. There was therefore no evidence before the Tribunal of the cause of the damp which, according to the checkout report was present in 4 rooms. In terms of the Housing (Scotland) Act 2006 it is the responsibility of the Respondent to ensure the Property meets the repairing standard throughout the tenancy which includes ensuring the Property is wind and watertight. The failure to investigate the damp and mould after it was reported in December 2021 and April 2023 indicates to the Tribunal that the Respondent failed to comply with his obligations under the Housing (Scotland) Act 2006.

27. The Respondent sought to retain the deposit to compensate for costs incurred decorating the Property at the end of the tenancy. His evidence was that the entire Property would not have needed to be decorated due to the mould in the Property. It was also his evidence that he would not expect to decorate the entire Property after a tenancy of this length. The checkout report contained comment regarding the walls in each room of the Property. The report referred to mould being present, scuff marks and wear and tear. The Tribunal determined that the combination of wear and tear after a tenancy of over four years and the presence of mould were such that it would be reasonable for a landlord to decorate the Property throughout before re-letting the Property and it would not be reasonable to expect the cost of the decoration to be met by the tenant.

Decision

28. The Tribunal determined that the Respondent is not entitled to withhold any part of the deposit paid to the Respondent by the Applicant and grants an order for payment of £475 by the Respondent 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.



Date :26 November 2024