



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) 2016 Act

Chamber Ref: FTS/HPC/CV/24/3385

Re: Property at Flat B, 19 Diamond Lane, Aberdeen, AB10 1WB (“the Property”)

Parties:

Angus MacDonald, Isobel MacDonald, 65 Glenpatrick Road, Elderslie, PA5 9AG (“the Applicants”)

Misbah Chohan, 2 Baberton Mains Wood, Edinburgh, EH14 3DU (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicants for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”), namely an order for payment under a guarantee in respect of sums due for rent arrears and other sums due under a PRT. The PRT in question was by the Applicants to Fiza Ali (“the Tenant”) commencing on 29 November 2019. The Respondent’s guarantee was within the Tenancy Agreement and the Respondent signed the Tenancy Agreement as guarantor.
2. The application was dated 25 July 2024 and lodged with the Tribunal on that day. The application sought payment of:
 - a. arrears of £2,719.33 said to be due as of 25 July 2024. This was supported within the application papers by:

- i. The lease for the Tenancy which accompanied the application and detailed a rental payment of £375 payable in advance on the 21st of each month; and
 - ii. A detailed rental statement showing missed and irregular payments from 21 February 2023 until 21 March 2024, and then uplift of a deposit on 2 July 2024, leaving the balance of £2,719.33;
 - b. Sheriff Officer's fees of £103.24 for service of a Charge for Payment upon the Tenant. This was supported by the copy Charge and an invoice by Walker Love Sheriff Officers for £86.03 plus VAT dated 20 March 2024;
 - c. Sheriff Officer's fees of £323.04 for eviction of the Tenant. This was supported by an invoice by Nelson James Sheriff Officers for £269.20 plus VAT dated 18 April 2024;
 - d. Costs for clearance of belongings of the Tenant of £59.50. This was supported by an invoice by Clear Blue Complete Cleaning & Maintenance for £49.58 plus VAT dated 22 April 2024;
 - e. Costs for change of locks and new keys of £156.00. This was supported by an invoice by Cruickshank & Gordon for £130.00 plus VAT dated 25 April 2024; and
 - f. Costs for cleaning of the Property of £362.00. This was partially supported by an invoice by Clear Blue Complete Cleaning & Maintenance for £60.83 plus VAT dated 2 May 2024 relating to cleaning and defrosting a fridge/freezer.
3. Prior to the initial case management discussion ("CMD") further vouching was provided by the Applicants containing:
 - a. Evidence of increase in the passing rent to £386.00/m from 21 July 2023, consistent with what was seen in the rent statement; and
 - b. A Check Out report dated 17 April 2024 and a Check In report dated 19 October 2021 that, when read together, showed evidence of:
 - i. The Tenant leaving personal belongings within the Property;
 - ii. The Tenant leaving food stuffs in the kitchen and the fridge/freezer;
 - iii. Some other need for cleaning and clearance; and
 - iv. No keys left.

The Hearing

4. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 10 January 2025 at 14:00. I was addressed by Rachel MacDonell, Head of Lettings, Trinity Factors for the Applicants. There was no appearance from the Respondent.
5. I was informed by the clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicants' agent confirmed that no contact had been received from the Respondent and that generally she did not respond to contact. Having not commenced the CMD until around 14:10, I was satisfied to consider the application in the Respondent's absence. In any case, no attempt was made by the Respondent (nor anyone on her behalf) to dial in late to the CMD.

6. The Applicants' agent confirmed that the Tenancy ended, further to eviction, on 17 April 2024 and that the rent arrears figure was calculated to that date. She confirmed no further payments had been received since the date of the rent statement. In regard to the vouching, she could not explain why only a single invoice for £60.83 plus VAT was provided in regard to the cleaning costs, but was satisfied from her records that £362 had been incurred in total.
7. I was satisfied with the arithmetic in the rent statement provided by the Applicants' agent and the further information provided at the CMD, and noted that there was no dispute intimated by the Respondent, who had not sought to enter appearance.
8. No motion was made for expenses or interest.

Findings in Fact

9. On or about 21 October 2021 the Applicants let the Property as a Private Residential Tenancy to Fiza Ali ("the Tenant") under a lease with commencement on 21 October 2021 ("the Tenancy").
10. Clause 49 of the Tenancy Agreement contains guarantee provisions and the Respondent, on executing the Tenancy Agreement as guarantor on 21 October 2021, undertook to guarantee the Tenant's obligations under the Tenancy.
11. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £375 a month in advance on the 21st day of each month.
12. In terms of a validly issued rent increase notice, the said rent increased to £386 a month from 21 July 2023.
13. The Tenancy terminated on 17 April 2024 by eviction of the Tenant.
14. Rent arrears due to 17 April 2024 amounted to £3,282.33.
15. On 2 July 2024, the Applicants received uplift of a deposit of £563 and applied same against the arrears.
16. The total arrears remaining due, to conclusion of the Tenancy, is £2,719.33 which balance remains due as of 10 January 2025.
17. In terms of clause 8 of the Tenancy Agreement, it was agreed that:
The Tenant shall be held liable for any further reasonable costs incurred by the Landlord through the Tenant's failure to pay rent on time including, but not limited to, any administrative charges or late fees made by the Landlord's bank, any expenses incurred by the Landlord in pursuing the Tenant for payment of said unpaid rent, legal or otherwise.
18. Further to the Tenant's default, to date the Applicants have incurred recovery costs with Sheriff Officers of:
 - a. £103.24 for service of a Charge for Payment with Walker Love; and

- b. £323.04 for eviction of the Tenant with Nelson James.
19. The said sums of £103.24 and £323.04 were reasonably incurred by the Applicants further to the Tenant's default and are sums due by the Tenant to the Applicants in terms of clause 8 of the Tenancy Agreement and guaranteed to the Applicants by the Respondent.
20. In terms of clause 39 of the Tenancy Agreement, it was agreed that:
[W]here keys are not returned at the end of the Agreement, the Tenant shall be liable to pay any costs incurred by the Landlord for replacing keys and/or changing corresponding locks.
21. The Tenant did not return keys at the end of the Tenancy and was in breach of clause 39 of the Tenancy Agreement.
22. Further to the Tenant's breach of clause 39, the Applicants incurred a cost of £156.00 with Cruickshank & Gordon for a change of locks and new keys.
23. The said sum of £156.00 was reasonably incurred by the Applicants further to the Tenant's breach of clause 39 and is a sum due by the Tenant to the Applicants and guaranteed to the Applicants by the Respondent.
24. In terms of clause 42 of the Tenancy Agreement, it was agreed that:
The Tenant will keep the Let Property and the contents thereof within the Let Property in a good and clean condition throughout the period of this Agreement and shall leave it in a like condition at the waygoing of the Tenant. The Tenant will leave the contents in the rooms or places in which they were at the commencement of this Agreement. The Tenant shall pay for any cleaning that may be required to reinstate the Let Property to the same order that it was provided at the beginning of the Tenancy, including the washing or cleaning of all soft furnishings, carpets, curtains, blankets and rugs which have been soiled during the Tenancy and the cleaning of all windows.
25. The Tenant failed to leave the Property in a good and clean condition by:
a. Leaving personal belongings within the Property;
b. Leaving food stuffs and food waste within the kitchen and on and in kitchen appliances and white goods; and
c. Leaving the Property in an untidy and dirty condition;
all in breach of clause 42.
26. Further to the Tenant's breach of clause 42, the Applicants incurred costs of:
a. Costs for clearance of belongings of the Tenant of £59.50 with Clear Blue Complete Cleaning & Maintenance;
b. Costs for cleaning and defrosting a fridge/freezer of £73.00 with Clear Blue Complete Cleaning & Maintenance; and
c. Further costs for cleaning of the Property amounting to £289.00.

27. The said sums of £421.50 were reasonably incurred by the Applicants further to the Tenant's breach of clause 42 and are sums due by the Tenant to the Applicants and guaranteed to the Applicants by the Respondent.
28. A Sheriff Officer instructed by the Tribunal provided sufficient intimation to the Respondent on 12 November 2024 of the date and time of the CMD.

Reasons for Decision

29. The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. I was satisfied, on the basis of the application and supporting papers, and the CMD submissions, that as of today there were rent arrears, plus sums due in terms of indemnification of costs, plus sums due in damages, all totalling £3,723.11, and that there was no dispute made to this sum. Although only partial vouching was provided for the cleaning costs, in consideration of the photographs in the Check Out report I was satisfied that a total cost of £421 for clearance and cleaning was reasonable damages in regard to that head of claim.
30. I was thus satisfied that the necessary level of evidence for these civil proceedings had been provided for an order of £3,723.11.
31. I shall make a decision to award the sum of £3,723.11 against the Respondent, being an order for rent arrears under the Tenancy to the termination date of 17 April 2024.

Decision

32. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of £3,723.11.

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. Conn

10 January 2025

Legal Member/Chair

Date