



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/23/3944

Re: Property at 1 (3F) Randolph Place, Edinburgh, EH3 7TQ (“the Property”)

Parties:

Mr Dominic Cole-Morgan, Mr Alastair Wilkinson, Flat 2, Brandon House, 10 Hilary Mews, London, SE1 1AP; Flat 2 Brandon House, 10 Hilary Mews, London, SE1 1AP (“the Applicants”)

Mr James Nichol (SBA), UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondent in favour of the Applicants in the sum of £12,156.74.

Background

1. The Applicants submitted an application under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) for payment in respect of rent arrears said to have been incurred by the Respondent and repairs required.
2. This case previously called for case management discussions (CMD) on 25 March and 2 August 2024. The Tribunal issued notes summarising those CMDs and issued a notice of direction to the Applicants on 2 August 2024. The Tribunal assigned a hearing for 14 January 2025 at 10am.
3. On 29 November 2024, the Tribunal served notice of the hearing on the Respondent by advertisement on the Housing and Property Chamber website.

4. On 19 December 2024, the Tribunal received an email from the Applicants' representative in response to the notice of direction.

The Hearing

5. The hearing took place by conference call. The Applicants were represented by Mr Raphael Bar. The Respondent did not participate in the hearing and it proceeded in his absence. The Applicants' representative explained the amendment sought in relation to the sum claimed. The Applicants sought rent arrears of £12,231.74, storage costs of £514.28, cleaning costs of £685, floor repairs amounting to £1,260 and a replacement shower screen costing £480. After deduction of the deposit recovered (£1,900), this reduced the Applicants' claim to £13,271.02.
6. A witness was available to give evidence, although the Applicants' representative considered that the hearing could proceed on the basis of submissions only. The Applicants' representative relied on the rent statement, check in report, check out report and copy invoices which had already been lodged. The Tribunal heard submissions from the Applicants' representative as follows:

Rent arrears

7. The rent statement accurately reflects the rent charged and the payments made throughout the tenancy. It has also taken account of the payment made by the guarantor.

Storage costs

8. The Respondent had removed some personal belongings but had left a number of personal belongings behind. These items remained in the Property and the Applicants were unable to re-let the Property and therefore lost rental income. The tenancy agreement made provision for the Applicants to recover their costs in relation to abandoned belongings.

Cleaning and removal costs

9. The Applicants instructed Bluestone Cleaners who undertook a deep clean of the Property, including carpet shampooing, replaced lightbulbs and removed and disposed of the Respondent's belongings from the Property. A copy of the invoice has been produced. The Respondent had made no effort to clean or clear the Property. In terms of the tenancy agreement, he was obliged to do so upon leaving the Property.

Flooring repair

10. When a check out inspection was undertaken, it was noted that the shower screen was broken in respect that the runner and seals were defective. This had not been reported by the Respondent. The result of the defective shower screen was that water was splashing over the side of the bath and saturating the floor. The wood beneath the tiled flooring dropped because of water ingress and the tiles cracked. The tiles needed to be replaced along with the plywood flooring beneath the tiles. This damage went beyond fair wear and tear. A copy

of the quote from Property Care Scotland has been produced. It discloses that the cost of this work was £1,050 plus vat. However, it was noted that this cost included regrouting the shower room, which should not be charged to the Respondent. It was suggested that a 10% deduction should be made to the flooring charge to reflect the cost of the regrouting work.

Shower screen

11. The shower screen was damaged in that the runners and seals were missing. This had not been reported as a defect by the Respondent. The shower screen was not capable of repair and needed to be replaced.

Response to the Tribunal's enquiries

12. The Applicants' representative accepted that the Applicants did not incur any outlays in relation to the storage of the Respondent's belongings. The Applicants were however unable to rent the Property with the Respondent's belongings remaining in the Property, so they sustained a loss of rent.
13. Although the check out report records at page 75 "Edge of screen is loose - general wear and tear repair required - Landlord Charge", further enquiry has been made about that. Upon investigation, it was noted that the seals and runners were missing from the shower screen which took the repair beyond fair wear and tear.

Findings in fact

14. The parties entered into a private residential tenancy which commenced 19 August 2020.
15. The contractual monthly rent was £1,800, payable in advance, which increased to £1,854 from July 2023.
16. A balance of rent arrears amounting to £12,231.74 is due by the Respondent to the Applicants.
17. The Applicants incurred an outlay of £685 for cleaning the Property and removing and disposing of the Respondent's belongings.
18. The Applicants incurred an outlay of £1,140 for flooring repairs.

Reasons for Decision

19. The onus of proof rests with the Applicants to establish their claim for the various heads of claim referred to. The Tribunal was satisfied that the rent statement appears to reflect the rental charges and the payments made. There was no information before the Tribunal to suggest that the Respondent has ever disputed the accuracy of the rent statement.
20. Having considered the check in and check out reports, along with the invoice from Bluestone Cleaners, the Tribunal was satisfied that the Respondent is liable for the cost of cleaning and removal of personal belongings. In terms of clause 25 of the tenancy agreement, the Respondent was obliged to maintain the Property in like condition throughout the tenancy. He was also obliged to leave the Property in a clean and tidy condition and to pay for any cleaning required.
21. In relation to the repair to flooring, the Tribunal accepted the explanation given on behalf of the Applicants that the floor had become damaged due to water ingress. The Tribunal agreed with the Applicants' representative that a deduction should be made from the cost of the flooring repair, to take account of work for which the Respondent was not responsible. The total cost of the flooring repair as £1,260. The Tribunal deducted £120 to reflect the value of the regrouting work carried out.
22. The Tribunal was not persuaded that the Applicants are entitled to £514.28 in respect of storage costs. Clause 37 (q) of the tenancy agreement provides "*The Tenant will be responsible for meeting all reasonable removal and/or storage charges incurred by the Landlord when belongings are left in the Let Property. The Landlord will remove said belongings and store them for a maximum of one month. The Landlord will notify the Tenant at his last known address. If the belongings are not collected within one month, the Landlord will consider same to be abandoned and will dispose of the items. The Tenant will be liable for the reasonable costs of disposal which may be deducted from any funds arising from the sale of the belongings or the deposit.*" The information before the Tribunal was that the Applicants have not incurred storage costs. They kept the Respondent's belongings in the Property before arranging for their removal and disposal. The tenancy agreement does not provide for any equivalent calculation of loss as a substitute for storage costs.
23. The Tribunal was not persuaded that the Respondent is liable for the costs of a new shower screen. The check out report records at page 75 that the shower screen was loose which was due to wear and tear, for which the landlord was responsible. The check out report appears to have been prepared by the end of tenancy team from the offices of the Applicants' representative who recorded

it as a landlord repair. There was no information about the condition of the shower screen at the outset of the tenancy beyond the pictures included in the check in report.

24. For all of the reasons set out above, the Tribunal granted an order for payment in the sum of £12,156.74, which sum comprises rent arrears of £12,231.74, cleaning costs of £685 and flooring repairs of £1,140, under deduction of the deposit of £1,900 which was recovered by the Applicants.

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.

Nicola Irvine

Legal Member/Chair

14 January 2025

Date