



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/19/0199

Re: Property at 50 Duncansby Way, Perth, PH1 5XF (“the Property”)

Parties:

Mr Blair Miles, Abbyhill, Precinct Street, Coupar Angus, PH13 9DG (“the Applicant”)

Mr Shaun McIntosh, 43B Kingswell Terrace, Perth, PH1 2BZ (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 18th January 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in his application payment of arrears in rental payments and damages of £1,978.61 in relation to the Property from the Respondent. He provided with his application copies of the short assured tenancy agreement, form AT5, rent arrears statement, and various other documents.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 4th April 2019, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 25th April 2019 at Inveralmond Business Centre, Auld Bond Road, Perth. The Applicant appeared, and was not represented. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Applicant invited the Tribunal to grant an order for payment of the sum of £1,978.61, and explained how this figure was comprised.

The Respondent had quit the Property on 12th February 2019. The Applicant sought the sum of £1,470.00 in respect of rent arrears incurred up till the termination date, and referred the Tribunal to a rent arrears statement disclosing this amount as outstanding.

The Applicant sought the sum of £287.50, being half the monthly rental in respect of the time when he was unable to let out the Property to a replacement tenant as a result of the condition in which the Respondent left it until it had been cleaned and restored to its original condition. He estimated that this work could have been completed in about one working week, but it had taken him longer to do as a result of his own work and family commitments.

The Applicant sought the sum of £384.66 in respect of 18 hours he had to spend repainting the Property, cleaning it, and deep cleaning the carpets with a carpet washing machine which he required to rent out for the purpose. This figure also included the cost of paint. He had not retained any receipts in respect of this element of his claim.

This work was required as the internal walls of the Property had been left badly marked, and required repainting as a result. The Property had been left in a dirty condition, and required extensive cleaning. All of the carpets were very dirty and required him to use a carpet washing machine to restore to their original condition as at the start of the lease.

The Applicant located photographs on his mobile phone, which he showed to the Tribunal to demonstrate that the condition of the Property left by the Respondent could not fall under the category of fair wear and tear.

The Applicant sought the sum of £100, being a proportion of the interest payable on a £7,500 personal loan which he attributed to replacing temporarily the unpaid rental amounts.

The Applicant sought the sum of £36.45 in respect of petrol costs to attend the Property.

Finally, the Applicant sought the sum of £200 in respect of stress and inconvenience he said he had suffered as a result of dealing with rectifying the Property to its original condition.

The Applicant advised the Tribunal that he had retained the tenancy deposit paid by the Respondent of £495.00, which sum should be deducted from his claim.

The Applicant also sought interest on the amount which the Tribunal might award of 4% per annum.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental and damages against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement and the copy rent arrears statement provided, and was satisfied that this disclosed an outstanding balance of rent arrears in the sum sought of £1,470.00.

The Tribunal considered the terms of the short assured tenancy agreement in relation to the other heads of claim.

The second paragraph on page 2 obliges the tenant to keep the Property in a clean and tidy condition, fair wear and tear excepted, and provides that any remedial work will be undertaken at the cost of the tenant.

From the submissions of the Applicant, and the photographs of the Property which he showed the Tribunal, the Tribunal considered that the condition of the Property did not fall within the fair wear and tear exception, and accordingly concluded that the Respondent was in breach of this term of the contract.

The Tribunal accepted that the Property was not in a tenable condition, and could not have been re-let by the Applicant until after it had been cleaned and repainted. However, as the Applicant accepted that this work could have been done in approximately one week, the Tribunal restricted the amount sought in respect of the time when he was unable to let out the Property to a replacement tenant as a result of the condition in which the Respondent left it to one quarter of the monthly rental, being £143.75.

Similarly, with respect to the Applicant's claim in respect of the time he spent and materials he used to clean and repaint the Property, the Tribunal considered that the restricted figure of £200.00 would be a reasonable one to allow for this head of claim. In the absence of receipts, and utilising a "broad brush" approach to the likely cost which contractors might have charged to undertake this work, this figure seems a reasonable one in the circumstances.

The Tribunal considered that the cost of petrol was an inherent expense naturally associated with visits to manage a let property and was not one which would be recoverable in the above circumstances.

The Tribunal also considered that the sum sought in respect of a proportion of the personal loan interest was also not a loss which naturally flowed from the Respondent's breaches of contract, and accordingly will not make an award in respect of this head of claim.

Finally, albeit that the Tribunal has no doubt that dealing with the aftermath of the Respondent's departure was annoying and upsetting for the Applicant, the Applicant accepted that he did not require any medical treatment and had no medical evidence in support of such a claim. That being so, the Tribunal did not consider this sufficient to merit an award in that respect.

In these circumstances, the Tribunal considered for the above reasons that the sum of £1,813.75 is an appropriate award in this application, comprised of the rent arrears of £1,470.00, the sum of £143.75 in respect of the time when the Applicant was unable to let out the Property to a replacement tenant as a result of the condition in which the Respondent left it, and the sum of £200 in respect of the time the Applicant spent and materials he used to clean and repaint the Property.

From this amount, the sum of £495.00 requires to be deducted in respect of the deposit paid by the Respondent which the Applicant has retained, producing a figure of £1,318.75.

The Applicant seeks interest on this amount. The seventh paragraph on page 2 of the tenancy agreement provides that in the event of rent or any other charges and sums due by the tenant not being paid timeously, the landlord is entitled to charge interest on all sums due at the Bank of Scotland base rate plus four percent thereon.

The Tribunal considered this contractual provision regarding interest to apply, and will accordingly award interest on the sum due on that basis.

Decision

For the above reasons, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £1,318.75 with interest thereon at the Bank of Scotland base rate plus four percent from 12th February 2019 until payment.

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.

Neil Kinnear

Legal Member/Chair

25/04/19

Date