



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/20/0575

Re: Property at 25 Caulstran Road, Dumfries, DG2 9FJ (“the Property”)

Parties:

Doctor Jagan Repala, Doctor Swathi Tadakmalla, 10 St Andrews Crescent, Canning Vale, West Australia, 6155 (“the Applicants”)

Miss Telea Jardine, residing formerly at 25 Caulstran Road, Dumfries and now at 4 Ashfield Drive, Dumfries, DG2 9BX (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

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

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment in relation to unpaid rent and damages.
2. The application contained:-
 - a copy of the tenancy agreement
 - rental statement

3. A case management discussion (CMD) was held on 1 October 2020 reference is made to the CMD Note. The Applicants sought to amend the sum sued to £10,050. At the CMD the Respondent advised that she took responsibility for the rent arrears. She advised that she had applied for a time to pay direction. This time to pay application had not been received by the tribunal office and consequently the Applicants' had not had the opportunity to consider if it was acceptable. The case was continued for the Applicants' instructions to be sought on the time to pay offer.
4. Prior to today's case management discussion, the Applicants' agents advised that the Applicants accepted the time to pay offer. They advised that they wished to amend the sum sued to include a further sum of £155 for a broken window. They submitted an invoice in support of this claim. They also submitted an UpToDate rent statement for today's case management discussion.
5. Miss Reid from Messrs G M Thomson & Co appeared for the Applicants; Miss Jardine, the Respondent did not appear. I was prepared to proceed in her absence as she had been notified of today's case management discussion by email.
6. I allow amendment to the sum sued to include the cost of the replacement window totalling £155.

Discussion

7. The Applicants advised that the rent arrears were still outstanding. They had submitted an update rent statement and an invoice for the replacement window. The rent arrears were currently £9,870. The replacement window cost £155. The Applicants sought an order for payment of these two sums. The Applicants advised that the arrears had reduced since the last rent statement had been submitted, as the first Respondent had been making payments to the rent arrears.
8. The Respondent advised at the first CMD that she was not disputing that the rent arrears were due. She advised that she took full responsibility for all of the arrears and she had submitted a time to pay order offering to repay the sum owed at a rate of £100 per month, she would try and pay more if her circumstances changed, however she had made an offer which she was able to afford. The Applicants had confirmed that they were agreeable to this repayment offer.
9. In correspondence in relation to the broken window submitted by the Respondent since the first CMD. She indicated that notified the landlord's agents that the window had broken at the same time as she had notified them of other repairs. She did not explain how it had broken. She further advised that she did not think it was fair that she should have to pay something which she did not feel liable for, however she wanted the matter resolved and the time to pay order granted as soon as possible.

10. The Applicants' agent advised that they had no record of the window being notified to them as broken in 2018, they advised that they had records of other matters being notified in 2018. They advised that they had inspected the property in August 2019 and had not noticed a broken window. They advised that they would have ensured that it would have been repaired given that the Applicants' have duties as landlords and further as there were children in the property. They advised that the conservatory window was at least 9 years old.

Findings in Fact

11. The Tribunal found the following facts to be established:
12. A tenancy agreement was entered into between the Applicants and the Respondent for the property. It commenced on 21 September 2018.
13. That on around March 2020 the joint tenant had vacated the property and the Respondent assumed responsibility for the rent from March 2020.
14. Rent arrears accrued from March 2020.
15. The tenancy ended on 28 August 2020.
16. Clause 8 in the tenancy agreement provided that monthly rent was £750. Rent was payable in advance. Rent was payable on the 18th of each month.
17. The rent account statement showed amounts due each month, amounts received, and rent outstanding and showed arrears as at 30 October 2020.
18. That the Respondent had been making payments towards the arrears since 10 July 2020.
19. That rent arrears in respect of the property totalled £9870 as at 19 November 2020.
20. Clause 18 in the tenancy agreement deals with repairs. It provides that the landlord will replace and repair all fixtures and fittings. It further provides that the tenant will be liable for the cost of repairs caused by her fault or negligence.
21. A window had been broken at the property.
22. There was an invoice totalling £155 for the replacement window.

Reasons for Decision

23. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies.
24. As this tenancy is a private residential tenancy, I am content that I have jurisdiction to deal with this case.
25. The tenancy agreement created obligations between the parties; one of those obligations was to pay rent, the Respondent had failed to do so. The Respondent appeared at the first CMD and advised that she did not dispute the rent arrears and wanted to enter a time to pay arrangement of £100.00 per month. She also advised that the joint tenant had vacated the property in March 2020, and he had advised the agent of this change. The Applicants' agent confirmed that they were content to seek the order against the Respondent only.
26. In respect of the broken window the tenancy agreement created obligations on both parties to carry out repairs and who should pay for them. There is limited evidence as to what happened to cause the window to be broken. I have taken into account that the Respondent disputes that she is due to pay for the window but did not provide an explanation as to how it was broken. The Applicants' agents advise that they have no record of this item needing to be repaired but had records of other items needing to be repaired. It had not been broken when they had inspected the property. The window was at least 9 years old. I consider that the Respondent should pay for half the cost of the window as she has not explained what has happened to it and there is no evidence of her reporting it. However, I have decided to reduce the amount that she required to pay by one half taking into account fair wear and tear as the window was over 9 years old.
27. Accordingly, I find that rent arrears totalling £9870 are due and one half of the cost for replacing the window totalling £77.50. Based on the evidence submitted and having regard to all papers submitted including the application, I consider that I should make a time to pay direction for £100 per month in relation to the sum of £9,947.50.

Decision

28. I grant an order in favour of the Applicants for the Sum of NINE THOUSAND NINE HUNDRED AND FORTY-SEVEN POUNDS FIFTY PENCE (£9,947.50) STERLING against the Respondent; with a time to pay direction of £100 per month.

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.

Melanie Barbour

19/11/20

Legal Member/Chair

Date