



Decision with Statement of Reasons by the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 111 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/21/0760

Re: Property at 145 Howes Drive, Aberdeen AB16 7FH (“the Property”)

Parties:

William Lindsay residing at 42, Raemoir Road, Banchory, Aberdeenshire, AB31 5UJ (“the Applicant”)

Daniel Riddoch residing sometime at the Property and now having an address care of Buckhurst Plant Hire, Blackdog Centre, Bridge of Don AB23 8BT (“the Respondent”), the Applicant and the Respondent referred to together as “the Parties”.

Tribunal Member:

Karen Moore (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is liable to the Applicant in respect of rent due amounting to Two Thousand Three Hundred and Eighty Pounds (£2,380.00) Sterling.

Background

1. By application received between 25 March 2021 and 11 May 2021 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a payment order for the sum of £3,030.00 to 31 March 2021 arising from a tenancy agreement between the Parties. The Application comprised an application form, copy tenancy agreement (“the TA”) between the Parties, copy rent statement in respect of the TA, copy redacted bank statements, supporting statement and copy messages between the Parties.
2. On 19 May 2021, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 30 June 2021 at 14.00 by telephone conference call. Both Parties attended and took part in the CMD at which the Applicant confirmed that the sum sought remains £3,030.00 and the Respondent advised that he considered that

only one month's rent is due. The outcome of the CMD was that a Hearing was fixed for 9 August 2021 at 10.00 am by telephone conference call.

3. Prior to the Hearing, the Applicant lodged video evidence of the Property which was made available to the Respondent and intimated that Ms. June Ward would be called as a witness.

Hearing

4. The Hearing took place by telephone conference call on 9 August 2021 at 10.00 am. Both Parties attended and took part. The Tribunal outlined the procedure to be followed and advised that, as the Applicant and his witness were in the same location, the Tribunal would hear from the witness first.

Applicant's Position

5. Ms. June Ward gave evidence that she and the Applicant attended at the Property on 31 March 2021 and again on 2 April 2021. On the first occasion, there were no keys within the Property but on return the keys were in the Property on 2 April 2021. Ms. Ward stated that the Property was empty and in a poor condition. She stated that she had seen the Property before the tenancy started and that it was in good condition at that time. She stated that pieces she was aware that the Property had been furnished with two sofas missing, a bed with a mattress, a washing machine and that these and crockery and cutlery in the kitchen were all missing when she attended the Property in March 2021. Ms. Ward stated that she was aware of rent arrears and so had driven past the Property at the end of January or start of February 2021 and had seen lights on indicating that someone was in the Property.
6. In response to questions from the Respondent, Ms. Ward stated that she was not aware that there had been an agreement between the Parties that items from the Property had been stored in the Applicant's sister's storage container and that the Respondent was storing two sofas which could be returned to the Applicant. With regard to the lights in the Property, Ms. Ward maintained that these appeared to be the kitchen lights, and not, as the Respondent suggested the lobby and living room lights which the Respondent advised he had left on when he vacated the Property. Ms. Ward advised that she saw the lights at the end of January 2021. With regard to the keys to the Property, Ms. Ward maintained that no keys had been left in the Property when she attended on 31 March 2021 and that on 2 April 2021 when she attended again, there had been a key in the back door and the other keys had been posted through the letter box. She did not agree that the keys had been left between 24 and 30 January 2021.
7. The Applicant then gave evidence and confirmed that the sum sought is £3,030.00 as set out in the rent statement which accompanied the Application. He stated that the Respondent might have left the Property in January 2021 and the only evidence he has in respect of the Property being occupied beyond January 2021 is Ms Ward's statement. The Applicant stated that he and Ms. Ward attended the Property on 31 March 2021 and on 2 April 2021 and that he was looking to be paid rent until then. He stated that he had rented the Property whilst he and his girlfriend worked on Shetland and that they rented there. When the Respondent began to fall into arrears, the

Applicant stated that he could not afford the mortgage on the Property and the rent in Shetland and so had served a Notice to Leave on the Respondent ending the tenancy on 31 March 2021 and had returned to Aberdeen. He stated that the Property had been let fully furnished with bed linen and cutlery crockery and that the Respondent had made a first payment of £1,300.00 being a deposit of £650.00 and £650.00 for the first month's rent. The deposit had been recovered and was used to make good the Property, to replace the missing items and for the disposal of the Respondent's own items. The Applicant stated that the cost of these matters exceeded the amount of the deposit and that there were no funds to put towards the rent arrears. With reference to the videos lodged in evidence, he explained that the videos lodged on 7 August 2021 are the videos showing the Property before the start of the tenancy and those lodged on 5 August 2021 are the videos taken on 31 March 2021.

8. In response to questions from the Respondent, the Applicant agreed that he had not complied with the tenancy deposit regulations and not lodged the deposit until after the tenancy had ended. He explained that this was due to an online banking error. The Applicant agreed that there had been repair issues with the boiler and the radiators and that these had been notified by the Respondent. He explained that these were covered by a British Gas home care contract and had been replaced. He explained that he had reduced the rent of November 2020 to £430.00 to compensate the Respondent. With regard to when the Respondent removed from the Property, the Applicant accepted that he did not know the exact date but maintained that the keys had not been in the Property on 31 March 2021.
9. At this point, the Respondent indicated that he had a witness who was nearby who could speak the fact that he removed from the Property at the end of January 2021. He explained that he had not given notice of this as he did not want to get witness involved in this matter. The Tribunal explained that, in terms of the tribunal rules, advance notice of witnesses is required and adjourned to consider if the Respondent should be allowed to call the witness. The Tribunal took the view that the Respondent had not shown good reason for not giving prior notice of the witness and so advised that the witness would not be allowed

Respondent's Position

10. The Respondent stated that he considered that he should be liable for rent until he left the Property at the end of January 2021. He stated that there had been problems with the radiators and the boiler in the Property in October 2020 and that he had notified the Applicant. There was also an issue with the gas fire which was unsafe and a danger to his infant child. The Respondent agreed that the Applicant had had the boiler and radiators replaced and the gas fire had been removed. He accepted that the rent had been reduced in November 2020. He agreed that he had not paid for this work but maintained that he had been out of pocket in respect of loss of wages and had paid for a repair to the kitchen sink. The Respondent advised that he refused to pay rent for November 2020 and December 2020 as there was a fault with the shower isolator switch. He accepted that he did not lodge the withheld rent in a bank account or anywhere else until the repairs were carried out. He advised that he had paid for works carried out earlier in the tenancy and agreed that these had occurred before the rent arrears had accrued. The Respondent accepted that he had not paid rent for

November 2020 – March 2021 as set out in the rent statement. He explained that he refused to pay rent for November 2020 as he and the Applicant had fallen out by phone over the rent reduction for that month, that he refused to pay rent for December 2020 and January 2021 because of the shower switch and was not due to pay rent for February 2021 and March 2021. He stated that it was the Applicant's contractor who had ripped the linoleum in the kitchen when carrying out a repair and that he, the Respondent, had paid for new carpets in the living room and for linoleum in the kitchen and lobby when he moved in. He advised that the Applicant's carpets were still in the loft of the Property and that other items including the sofas are in storage. With regard to damage, the Respondent stated that the Applicant had allowed him to put his TV on the wall.

11. In response to questions from the Applicant, the Respondent agreed that the rent due for November 2020 had been discounted but maintained that he was entitled to withhold further rent because of the repair required to the isolator switch and the fact that the fire had been condemned. He maintained that he had advised that Applicant of this in a phone call and had also advised that he was refusing to pay rent for December 2020. He agreed that he had not put any of this in writing and that he had not given notice that he intended to leave at the end of January 2021. He explained that he had been disheartened and had just left the Property. He stated that he had tried to call the Applicant and had left a voice mail for him. He accepted that the carpeting and flooring had been purchased by him because of personal choice and not because of disrepair. The Parties agreed that Applicant had advised the tenancy deposit scheme provider that the deposit would be applied to the rent arrears.

Summing Up

12. In summing up, the Applicant stated that no valid reason had been given for withholding rent and no proof had been given that the Property was vacated in January 2021. He advised that he offered mediation which was not taken up and that he had given a week rent free at the start of the tenancy.
13. In summing up, the Respondent stated that the rent free week was in exchange for the Respondent assisting the Applicant to remove possession from the Property. He stated that he had offered two months' rent plus the deposit to settle and that this had been rejected.

Findings in Fact

14. The Tribunal had regard to all of the written representations, documents and video evidence lodged, the evidence of Ms. Ward and the submissions made at the Hearing, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.
15. The Tribunal found the following facts established:
 - i. Although not properly constituted, there was a private residential tenancy agreement in terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act") between the Applicant and the Respondent at a monthly rent of £650.00 for a furnished let of the Property;

- ii. The Respondent's final payment of rent was October 2020 for the period to 31 October 2020;
- iii. The Applicant served Notice to Leave ending the tenancy on 31 March 2021;
- iv. The Respondent did not give counter notice bringing the tenancy to an earlier end;
- v. There had been informal arrangements between the Parties in respect of the furnishings in the Property;
- vi. Repairs or replacements to the heating system and appliances in the Property were instructed and carried out by the Applicant at the end of 2020;
- vii. The Respondent refused to pay rent from November 2020 as he considered that the shower isolator switch required to be repaired or replaced;
- viii. The Respondent did not lodge the unpaid rent in a bank account or similar;
- ix. The Respondent paid a tenancy deposit of £650.00 at the start of the tenancy;
- x. The Applicant lodged the tenancy deposit outwith the statutory timescales;
- xi. The Applicant recovered the tenancy deposit of £650.00 for the purpose of crediting it to the rent arrears;
- xii. Rent amounting to £3,030.00 is unpaid by the Respondent to the Applicant to the end of the tenancy on 31 March 2021.

Decision and Reasons for Decision

16. The matters for the Tribunal are whether or not the Applicant is entitled to an Order for payment of rent amounting to £3,030.00 due from 1 November 2020 to 31 March 2021 from the Respondent and whether or not the Respondent was entitled to refuse to pay rent because of the condition of the Property or for periods during which he did not occupy the Property.
17. The Parties were agreed that the Respondent had not paid rent since October 2020 and so the first issue for the Tribunal was did the Respondents' liability to pay rent end on the date on which he removed from the Property or on the date on which the Notice to Leave came into effect? Regardless of that date, the next issue for the Tribunal was had the Respondent been entitled to refuse to pay rent due to the condition of the Property?
18. The tenancy between the Parties is a private residential tenancy agreement and as such is governed by the Act. The Act sets out the ways in which a private residential tenancy agreement must be brought to an end. Section 50 of the Act states that a landlord can only terminate by serving a Notice to Leave. Section 48 and 49 of the Act state that a tenant can only bring a private residential tenancy to an end by giving notice in writing. In this case, the Applicant served notice in terms of Section 50 of the Act that the Respondent should leave on 31 March 2021, bringing the tenancy to an end on that date. The Respondent, although he may have removed from the Property on an earlier date, did not give notice of an earlier leaving date in terms of Sections 48 and 49 and so is bound by the Act to his contractual obligations of the private residential tenancy agreement until 31 March 2021. Accordingly, the Tribunal found that the Respondent is liable for rent to 31 March 2021.
19. The Respondent refused to pay rent due to the condition of the Property. However, there is no contractual right in terms of the private residential tenancy agreement to refuse to pay rent on that basis. In terms of common law, an aggrieved tenant may

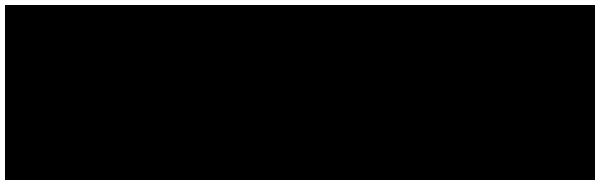
withhold rent until repairs are effected when the tenant must then pay the rent due. There is no common law right for a tenant to unilaterally refuse to pay rent on the basis of disrepair. In terms of statute, recourse is open to a tenant to apply to a tribunal to make a finding that a property does not meet the statutory repairing standard and to order the landlord to effect repairs, failing which the tribunal has the power to reduce the rent. In this case, the Respondent did not withhold rent but simply refused to pay on the basis of disrepair. The Respondent's recourse should have been to apply to a tribunal to make a statutory repairing standard finding and, if appropriate, a rent relief order. Accordingly, the Tribunal found that the Respondent had no right to refuse to pay rent.

20. The Tribunal then had regard to the issue of the tenancy deposit. The Applicant, in the Application, makes no reference to the sum claimed including a sum for tenant damage. The Applicant accepts that the reason given to retain the deposit was to offset this against rent arrears. Therefore, although the Tribunal accepts that the Applicant may have had costs as a result of the tenancy, neither the Application nor the evidence at the Hearing provide sufficient evidence of those costs and so the Tribunal considers that the deposit should be deducted from the sum claimed by the Applicant. Accordingly, the Tribunal grants an Order for £2,380.00.

21. This decision is unanimous.

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.



Legal Member

9 August 2021

Date

