

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/19/1399

Re: 148 Brooms Road, Dumfries DG1 2EB ("Property")

Parties:

**Robin Ridley, Cargenglen Trout Farm, The Glen, Dumfries DG2 8PX
("Applicant")**

John Maxwell, 11 Creswell Wynd, Dumfries DG1 2TL ("Respondent")

Tribunal Members:

**Joan Devine (Legal Member)
Leslie Forrest (Housing Member)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
("Tribunal") determined that an order for payment of £1,205.11 should be
made.**

Background

The Applicant sought an order for payment of £1,350 in respect of arrears of rent and for payment of £1,589.06 in respect of items removed from and damage caused to the Property. The Applicant had lodged with the Tribunal Form F. The documents produced were a Tenancy Agreement dated 1 August 2018 and a statement in respect of rent arrears. A Case Management Discussion ("CMD") took place on 8 October 2019. The outcome of the CMD was that the case was adjourned to a full hearing. A direction was issued to the Parties seeking vouching for certain items which formed part of the Applicant's claim and an inventory of furniture that was in the Property at the commencement of the tenancy. A full hearing was fixed for 21 November 2019 at 2pm.

Hearing on 21 November 2019

A Hearing took place before the Tribunal on 21 November 2019. The Applicant and the Respondent were both in attendance. In advance of the Hearing the Applicant had lodged with the Tribunal a written representation along with photographs of the Property and vouching in respect of expenditure incurred.

At the commencement of the Hearing the Respondent told the Tribunal that his new address was 11 Creswell Wynd, Dumfries DG1 2TL. His email address was locharinndumfries@gmail.com. The Respondent then requested an adjournment. He said that he had mislaid the papers relating to the Application and that he wished further time to call witnesses. He said that he wished to call Adam Black, the author of a letter dated 2 May 2019 which had been lodged with the Tribunal at the CMD who could comment on the state of repair of the Property and in particular the cooker, sink tap and the broken window locks. He also wished to call a witness from the shop where he had purchased a new fridge freezer. The Applicant opposed the request for an adjournment. He said that if the matter would be delayed for the witnesses identified to be called then his preference was to withdraw his claim in respect of the items in the claim for which those witnesses were required. The Tribunal indicated that they were minded to discharge the hearing to allow the Respondent time to produce the witnesses referred to although the Tribunal was content to refuse the adjournment and proceed if the specific elements of the claim to be covered by those witnesses were withdrawn. The Applicant withdrew his claim in so far as it related to cost incurred in respect of the cooker, fridge freezer and window locks. The Hearing proceeded in respect of the other elements of the claim.

At the outset of the Hearing the Tribunal asked the Parties whether the tenancy agreement produced by the Applicant was the tenancy agreement that governed the Respondent's occupation of the Property. Both Parties said that it was. The Parties also agreed that the tenancy ended on 30 June 2019.

The Tribunal heard evidence in respect of the various items that made up the Applicant's claim as follows :

- **Rent arrears (£1,350)** – the Applicant told the Tribunal that rent remained unpaid for the months of April, May and June 2019. The Respondent told the Tribunal that he withheld payment of rent for four reasons. Firstly because the Property was in a state of disrepair. Secondly because he had paid one month of rent in cash to the Applicant. Thirdly because £600 had been stolen from the Property. The Respondent believed that it had been stolen by the Applicant. Fourthly he withheld payment of the final months' rent as he proceeded on the basis that the deposit would be used to pay that month. The Applicant confirmed to the Tribunal that the deposit of £450 had been returned to him from Safe Deposit

Scotland. The Respondent said that he did not oppose the return of the deposit. As regards the evidence from the Respondent about a meeting taking place at which rent was paid in cash, on questioning from the Tribunal it appeared that a meeting took place between the Parties on or about 2 May 2019. The Applicant attended the Lochar Inn where the Respondent was working. The Applicant told the Tribunal that he handed an eviction notice to the Respondent at that meeting. The Respondent's evidence was that he gave the Applicant cash at that meeting. The Applicant denied that any cash was handed over. The Applicant read to the Tribunal a number of text messages from around that date in which he requested payment of rent. As regards the funds that were stolen from the Property the Respondent said that he reported the matter to the police and had a crime reference number. He did not however have the number with him at the Hearing. The Respondent said that the money was stolen early May 2019. The Applicant said that he had contacted the police about the freezer missing from the Property in July 2019. In the course of following that up with the police, the police said to the Applicant that they also had a report about money being stolen from the Property. The report had been made by the Respondent. As regards the Property being in a state of disrepair at the time the Respondent withheld rent, the Respondent referred to the letter from Adam Black of Dumfries and Galloway Council dated 2 May 2019 which itemised a number of repairs that were required. The Respondent explained the repairs further at the Hearing. The Tribunal asked the Respondent if he had made an application to the First tier Tribunal for Scotland seeking an order that the Applicant comply with the repairing standard. The Respondent said that he had not made such an application.

- **Missing kettle (£12), toaster (£17) and shower rail and curtain (£24)** – the Applicant told the Tribunal that these items were in the Property at the commencement of the tenancy and were not there on termination of the tenancy. The Respondent said that he had put the kettle and toaster in a cupboard and had used his own. The Respondent said that there was no shower rail and curtain in the Property at the commencement of the tenancy. The Applicant directed the Tribunal to a picture of the kettle and toaster at the commencement of the tenancy. The Tribunal asked the Applicant if there was an inventory of goods in the Property prepared at the commencement of the tenancy. He said that there was not. The Tribunal noted that the tenancy agreement referred to a signed inventory at clause 11.1. The Respondent noted that the photographs produced were not dated. The Tribunal asked the Applicant if he had replaced the toaster and kettle. He said that he had not replaced those items. The Applicant did however refer the Tribunal to a receipt from Wickes in respect of the cost of a replacement shower rail and curtain.

- **Replacement bulbs (£4.95)** – the Applicant told the Tribunal that he had attended the Property in January 2018 and noticed that a bulb had gone in the sitting room. He therefore replaced the bulb.
- **Replacement of mattress (£350) and bedding (£100)** – the Applicant referred the Tribunal to photographs of a soiled mattress. The Respondent said that the photographs produced were a fabrication. He said that at the commencement of the tenancy he complained about staining on the mattress. He only used one bedroom. He replaced all of the bedding with his own. He said that any staining on the mattresses was there at the commencement of the tenancy. He said that the bedrooms did not appear as they were in the pictures at the commencement of the tenancy. The Tribunal asked the Applicant if he had replaced the mattresses. The Tribunal noted that no vouching was produced in respect of this element of the claim. The Applicant told the Tribunal that he had removed one mattress and disposed of it. The other remained in the Property. He told the Tribunal that the mattresses were two/three years old at the commencement of the tenancy. He had not replaced the mattresses. As regards the bedding he told the Tribunal that it was 18 – 24 months old at the commencement of the tenancy and that he had not replaced it since termination of the tenancy and did not intend to.
- **Cleaning costs (£161.40)** – the Applicant told the Tribunal that he simply could not get the Property clean following termination of the tenancy. He produced three invoices, one from Nith Valley Cleaning for £113.40, one from BB Carpet Cleaning for £100 and an invoice from Ridley Services for £36 in respect of cleaning and £24 in respect of replacing window catches. The Respondent said that he cleaned the cooker before he left the Property. He did however accept that the Property would have needed some cleaning.
- **Overpayment of electricity (£17.10)** – the Applicant told the Tribunal that the electricity was operated through a top up meter. Following termination of the tenancy he had put £30 on the fob. He said that when he went to clean the Property following termination of the tenancy when he put the fob into the meter it immediately went down to around £20. It was clear that the electricity and therefore gone into debit by £10.71 which was the Applicants claim. The Respondent told the Tribunal that he always had electricity while he was in the flat.
- **Front door lock (£75)** – the Applicant produced to the Tribunal an invoice from Lamont Locksmiths for £75 for replacement of two locks at the Property. The Applicant told the Tribunal that there had been two sets of keys given to the Respondent at the commencement of the tenancy. Only one set was returned. The Applicant felt the need to change the locks. The Respondent told the

Tribunal that he only ever had one set of keys for the Property. He said that if the Applicant wished to change to locks it was a matter for him to bear that expense.

- **Gardening costs (£45)** – the Applicant said that he cut the grass himself three times and removed overhanging branches which a neighbour had complained about. He had no vouching for the work carried out. The Applicant told the Tribunal that the front grass was part of the title and was part of the Property let to the Respondent. The Respondent told the Tribunal that every house in that street had a shared drying green. He had received no complaints from a neighbour about overhanging branches. He said that he had employed a contractor to cut the grass once. The Tribunal asked the Applicant if he had asked the Respondent to carry out the gardening. The Applicant said that by that stage the Parties were no longer on speaking terms.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement for the Property dated 1 August 2018.
2. The rent in terms of the Tenancy Agreement was £450 per month.
3. The Respondent vacated the Property on 30 June 2019.
4. The Respondent, had failed to make payment of rent due for the months April, May and June 2019.
5. The deposit of £450 was paid to the Applicant following termination of the tenancy by Safe Deposits Scotland.
6. The Applicant incurred costs to have the Property cleaned at the end of the tenancy.
7. The electricity meter for the Property was in debit at the end of the tenancy.
8. The Applicant carried out gardening at the Property.

Reasons for the Decision

The Tribunal determined to make an Order for payment of £1,205.11 broken down in respect of each item claimed as follows :

- **Rent Arrears (£1350)** – In terms of clause 4 of the tenancy agreement, the Respondent was obliged to pay rent. A handwritten note at the end of the tenancy agreement noted the rent to be £450 per month. The Tribunal

carefully considered the reasons given by the Respondent for not paying the rent. The Tribunal took the view that in the absence of a failure to comply with a Repairing Standard Enforcement Order and a Rent Relief Order being in place, the Respondent was not entitled to withhold rent due to the state of repair of the Property. It had been open to the Respondent to seek relief by applying to the First-tier Tribunal for such orders but he had not done so. As regards the Respondent's evidence that he had given cash to the Applicant on or about 2 May 2019, on the balance of probabilities, the Tribunal found that this was not proven. As regards the Respondent's evidence that that the Applicant had stolen £600 of the Respondent's money, there was insufficient evidence before the Tribunal to allow them to determine, on the balance of probabilities, who may have taken the money from the Property. The Tribunal accepted this element of the claim.

- **Missing Kettle (£12), Toaster (£17) and Shower Rail and Curtain (£28)** – The Tribunal noted that there was no inventory of goods annexed to the tenancy agreement as was envisaged by clause 11.1. This would have assisted in determining what was in the Property at the commencement of the tenancy. The photographs produced were undated. There were no photographs showing a shower rail and shower curtain in place at the commencement of the tenancy. The Applicant had not replaced the kettle and toaster and so had suffered no loss in respect of those items. The Tribunal did not accept this element of the claim.
- **Replacement Bulbs (£4.95)** – the lightbulbs were replaced during the course of the tenancy rather than at the end. In any event, the obligation on the Respondent to repair excepted fair wear and tear. The Tribunal did not accept this element of the claim.
- **Replacement of Mattress (£350) and Replacement Bedding (£100)** – The Applicant had not replaced these items and did not intend to. They were not new at the commencement of the tenancy. As the items were not replaced, no loss had been suffered. The Tribunal did not accept this element of the claim.
- **Cleaning Costs (£249.40)** – In terms of clause 13 of the tenancy agreement the Respondent was obliged to keep the Property clean during the tenancy. The Respondent accepted that the Property was not left in a clean condition at the end of the tenancy. The Tribunal accepted that the Applicant required to carry out cleaning at the end of the tenancy and accepted this element of the claim under deduction of £24 of the invoice from Ridley Services which related to the replacement of window catches as that element of the claim had been withdrawn.

- **Electricity (£10.71)** – in terms of clause 8.1 of the tenancy agreement the Respondent was to pay for electricity during the tenancy. The electricity account was in debit at the end of the tenancy. The Tribunal accepted this element of the claim.
- **Front Door Lock (£75)** – This part of the claim related to the cost of changing the locks. The Tribunal took the view that it was a choice made by the Applicant to change the locks and it was not a cost that should properly be passed on to the Respondent. The Tribunal did not accept this element of the claim.
- **Gardening Costs (£45)** – In terms of clause 14.3 of the tenancy agreement the Respondent was obliged to maintain the garden including cutting the grass. The Tribunal accepted this element of the claim.

The Tribunal determined that the sum of £1,655.11 was due by the Respondent to the Applicant in respect of the tenancy of the Property. From that sum was to be deducted the deposit of £450 which had been returned to the Applicant. That left a balance due of £1,205.11

Decision

For the foregoing reasons, the Tribunal determined to make an Order for payment of £1,205.11.

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.

Joan Devine
Legal Member

21 November 2019

Date

