



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) arising from a tenancy under Section 32 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/CV/20/1402

Re: Property at 33 Rosebank Drive, Cambuslang, Glasgow, G72 8TD (“the Property”)

Parties:

Mr Jean Pierre Zammit, Mrs Priscilla Zammit, care of Ms Louise Kinloch, Century 21 UK, 244 Main Street, Cambuslang, G72 7EQ; care of Let-it, 123 Stockwell Street, Glasgow, G1 4LT (“the Applicants”)

Miss Kirsten Whyteside, Mr Iain McKay, 2 MacDougall Drive, Cambuslang, Glasgow, G72 7GE; Current address unknown (“the First and Second Named Respondents”)

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Second Named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment be granted in favour of the Applicants against the First and Second Named Respondents, jointly and severally, for payment of the sum of £4,500; with interest at 2% from today’s date until payment is made in full.

Background

1. The application was submitted to the Tribunal on 23 June 2020 and accepted on 6 August 2020. In terms of the original application form submitted, the Applicant sought an Order for payment against both Respondents of £5,445 plus interest and expenses.
2. The sum sought is broken down into sums claimed for rent, and sums claimed for external works and internal works for which the Applicants claim the Respondents are liable for in term of the lease, jointly and severally.
3. Written Representations were submitted by the First Named Respondent on 9 September 2020.
4. Service by Advertisement was made on the Second Named Respondent until 23 September 2020 on the Advertisement page of the First-tier Tribunal for

Scotland Housing and Property Chamber website. He has not lodged any written Representation.

Case Management Discussion (CMD)- 23 September 2020 at 10 a.m.

5. The Applicant's Representative participated. The First Named Respondent participated.
6. Both Parties who participated were taken through the headings of claim and each were discussed to ascertain what was agreed and what was in dispute.
7. It was noted that the obligations under the tenancy agreement were joint and several.
8. Rent- no issue was taken of the sum due of unpaid rent of £1950. There was an additional claim for £120 for late payment for rent for 12 October 2018, 12 March, April and May all 2019. The Applicant sought this under Clause 2.2 of the tenancy agreement. This was not agreed currently.
9. Eurotech quotation/outline of works carried out. Itemised and discussed. My understanding of the position is as follows.

External-

- (1) The First Named Respondent disputes the sum. She accepted the back grass needed cut. She disputed the front garden work, saying she had improved the front garden at her own expenses and labour during the tenancy. She would be prepared to agree a compromise figure of say £200.
- (2) The location of the fence needed to be confirmed. In any event, the Respondent stated that she could not agree to bear this cost for the reasons set out and detailed in her response. She had a photograph she could produce. The Applicant might have further information to produce or may need to seek instruction.
- (3) The First Named Respondent stated she had never used the shed and it contained items of a previous tenant. She could not agree to bear this cost.
- (4) I raised this as a possible fair wear and tear/ maintenance cost, possibly not attributable to a tenant? To be checked.

Internal-

- (1) The First Named Respondent indicated that the skirtings and facings had been removed by Pest Control and not re-attached after the works and she was not prepared to pay for this work, but a compromise might be reached for the cost of redecoration, filling and sanding of holes.
- (2) Not in dispute. £150.
- (3) Not in dispute. £150.
- (4) The First Named Respondent was personally not aware of the damage and photographs would perhaps assist in clarifying what if anything is owed, having regard in addition to the age, the wear and tear referred to at the outset. Sum sought £450.
- (5) Further enquiry needed. Sum sought £200.
- (6) The First Named Respondent could not agree to bear this cost for the reasons set out and detailed in her response.

10. This is not exhaustive of the Discussion but simply an outline to enable some progress to be made.
11. A deposit was also recovered of £625 which had been applied to the Damage claim heading.
12. The Applicant and the First Named Respondent agreed a further CMD would be appropriate and meantime agreed to exchange contact details, cross over any additional evidence and seek to clarify what could be agreed and what was in dispute before the next CMD.
13. I adjourned the CMD to a further date to allow discussions to take place and for further information to be given to the Tribunal in answer to the Direction to be issued.

Further communication

14. In response to the Direction subsequently issued, the Applicant's Representative provided a written Note on the outcome of the discussions between him and the First Named Applicant. It stated that a figure had been agreed as a compromise to settle the Claim of £4,500 (rent arrears of £1950 and £2,550 for damage/repairs). It was stated that the First Named Applicant had agreed that figure but confirmation for the Tribunal was sought. The only matter remaining for the Tribunal would be to determine if there was joint and several liability for the whole debt, referring to Clause 2.1 of the tenancy agreement. No additional paperwork was being lodged. A new address had been provided for the Second Named Respondent by the First Named Respondent.
15. On 16 November 2020 the First Named Respondent provided an e mail address for the Second Named Respondent explaining that there had been difficulties in him contacting the Tribunal. She did not represent him but there had been contact between them.
16. On 18 November 2020 the First Named Respondent contacted the Tribunal stating that due to an unforeseen family emergency she would be unable to participate in the CMD to take place that day.

Case Management Discussion (CMD)- 18 November 2020 at 10am.

17. The Applicant's Representative participated. Neither Respondent participated.
18. The recent communications were discussed. The new address for the Second Named Respondent was noted as Flat 5, 56 Strathleven Place, Dumbarton, G82 1BA. This had been given by the First Named Respondent.
19. I considered Rule 6A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules) which states-

6A.— Service by advertisement

(1) Where any formal communication requires to be served on a party under these Rules, and the party's address is unknown, the communication is deemed to be served if it has been publicised by advertisement on the website of the First-tier

Tribunal for not less than 14 days or, in the event that another enactment provides for a longer period of notice for the communication, for not less than that period.

(2) The advertisement mentioned in paragraph (1) must disclose—

(a) details of the names and addresses of the parties (so far as they are known),

(b) details of the type of application or document,

(c) the address of the property to which the application or document relates, and

(d) any other information which the First-tier Tribunal must communicate to parties under these Rules.

(3) If the party's address becomes known after service by advertisement, the First-tier Tribunal must order—

(a) any application before the First-tier Tribunal to be amended to include the party's address,

(b) any document required by legislation to be served, by the person who made the request under rule 5(5), on the person who should receive notification, and

(c) any application accepted by the First-tier Tribunal to be served on that party or that party's representative.

(4) Where paragraph (3) applies, the First-tier Tribunal may direct a review of the timescales for further procedure in relation to the application, if it thinks fit in the interests of justice.

20. In terms of Rule 6A(3) I was required to order that the application be amended to reflect the known address of the Second Named Respondent and continue the CMD to a later date to allow fresh intimation of the papers upon him.

21. Meantime, I made a further Direction to ensure the Parties clarify their respective positions.

22. Accordingly, I adjourned the CMD-proceeding to further case management discussion on 16 December 2020 at 10am by way of conference call.

23. The Applicant's Representative received oral intimation of the date, time and place of the next case management discussion before adjournment of the proceedings on 18 November 2020. Written intimation was thereafter made to the Parties participating.

24. Meantime I issued further Direction to ensure the Tribunal was updated of any developments and confirmation as to whether a sum was agreed or not, so as to identify whether any issues remained outstanding.

Further communication

25. On 30 November 2020, Sheriff Officers attended at the address given for the Second Named Respondent. They were unable to effect service as no-one was at home and no neighbours were available at the time of their visit. They noted from the papers that there was reference to the Second Named Respondent having been in hospital and therefore tried to call him on the mobile number given with no success.

26. On 13 December 2020 the First Named Respondent, in answer to the Direction, e mailed the Tribunal to say, "Yes, it has been agreed that the final total due to be paid is now £4,500."

Case Management Discussion (CMD)- 16 December 2020 at 10am.

27. The Applicant's Representative participated. The First Named Respondent participated.
28. I clarified the extent of the agreement. The sum of £1950 representing rent arrears owed is £1950. The remaining £2,550 is agreed as a reduced sum due and owing for internal and external repairs and works carried out for which the Respondents are liable under the terms of the Short Assured tenancy agreement.
29. It was stated by the First Named Respondent, when asked, that the Second Named Respondent no longer lived at the address given and where Sheriff Officers had attempted service. The First Named Respondent was in contact with him over family matters and believed him to be residing elsewhere. He was out of hospital. They had spoken of the debt and she had told him of the sum agreed. She understood he had tried to contact the Tribunal without success.
30. I adjourned the CMD for a short time to allow the First Named Respondent the opportunity to contact the Second Named Respondent so that he could provide an address even at this late stage. On reconvening, she stated that she had been unable to reach him by phone.
31. I considered that as Service had been effected by Advertisement and the new address given had not been verified and no new address had been provided to the Tribunal by the Second Named Respondent with which to serve the papers on him, I could proceed to fairly determine the application today.

Findings in Fact

- I. The Parties entered into a Short Assured Tenancy Agreement (SAT) on 2 September 2016.
- II. The rental due under the SAT was £525 per calendar month.
- III. A Deposit was taken of £625.
- IV. The Respondents vacated the Property on 2 June 2019.
- V. The contractual terms of the SAT provided for the Respondents amongst other things, to be liable for the fair net costs involved in carrying out such repair and maintenance where such action is required as a result of negligence or significant breach of the agreement terms, or mis-use by the tenant. They are required to not deliberately damage or alter the premises, its décor its fixtures or fittings either internally or externally; clean or have cleaned both internally and externally all reasonably accessible windows immediately prior to the end of the tenancy; and are responsible for any cleaning, damage, or compensation for damage to the premises its fixtures and fittings or for missing items or other dilapidations for which the tenants may be liable as well as the fair costs relating to the cleaning of the premises, its fixtures and fittings, garden maintenance, decoration, removal of tenant's belongings/refuse or any other damage caused by the tenants during the course of the tenancy.
- VI. The outstanding rent due and owing by the Respondents to the Applicants, after deduction of all payments made is £1950.
- VII. The Applicants recovered the sum of £625 by way of the Deposit towards cleaning and damage costs.

- VIII. The Respondents are liable to pay £2,550 to the Applicants for the residual losses incurred for cleaning, internal and external works occasioned and for which the Respondents are contractually liable.
- IX. The total sum of £4,500 is due and resting owing by the Respondents to the Applicants. The Applicants and the First Named Respondent agreed this sum after negotiations between them.

Reasons for Decision & Decision

The contractual terms of the SAT entitle the Applicants to recover from the Respondents unpaid rent due and recover from them sums due for cleaning, internal and external repairs, removal of items at the end of the tenancy, amongst other things.

Included in the paperwork was

- A copy of the SAT and AT5
- Copy Section 33 Notice with confirmation of Service
- Copy Rent Schedule
- Copy check in Inventory Report
- Copy check out Inventory Report
- Photographs
- Copy Eurotech Repair quote dated 20 June 2019.

I was satisfied that the paperwork produced evidenced the debt due, for the rent arrears and for the repairs etc. works at the reduced negotiated sum sought. The debt owed is joint and several as provided for in the SAT.

As there was no contractual right to interest referred to, I was not prepared to grant the interest sought at 8%. However, I was prepared to grant interest at the rate of 2% until payment as being a reasonable rate having regard to a figure that appeared to me to be more in line with use value. The Applicants Representative was content to leave this at my discretion.

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.

Susan Christie

Legal Member/Chair

16 December 2020
Date