



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/19/1607

Re: Property at 2 Laurie Place, Forestmill, Alloa, FK10 3QH (“the Property”)

Parties:

Mr Adam Kindreich, 3 rua Nossa Senhora do Carmo, Bemposta, 3250-024 Almoester AVZ, Portugal, Portugal (“the Applicant”)

Mr Brian Kindreich, 71 Ashley Terrace, Alloa, Clackmannanshire, FK10 2BB (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of TWO HUNDRED AND FIFTY POUNDS (£250.00) STERLING be made in favour of the Applicant.

1. Background

1.1 This is one of three conjoined applications in relation to the same tenancy, being applications FTS/HPC/CV/19/0810 and FTS/HPC/CV/19/1607. The third of the applications, reference FTS/HPC/CV/19/1918 was lodged following the adjournment of the Hearing. In this application, the Applicant seeks an order for payment of £250.00 representing the excess he required to pay under his insurance policy to have remedial work carried out following an escape of water in the property.

1.2 The application was accompanied by a copy of the written tenancy agreement and a substantial quantity of supporting documentation pertaining to the repairs that had been required following the water escape.

2. The Hearing

2.1 The Hearing of this application took place on 2 July and 26 September 2019. The Applicant took part via conference call. The Respondent was personally present and accompanied by his daughter, Sophie Kindreich, as a supporter. The same issues as related to the conjoined applications were applicable to the present application. A summary of the parties positions is contained within paragraphs 2.1 to 2.14 of the written decision relating to FTS/HPC/CV/19/0810.

3. Findings In Fact

3.1 The parties entered into a tenancy agreement which commenced on 1 September 2019.

3.2 In terms of Clause 11 of the written tenancy agreement, the Respondent was obliged to take all reasonable steps to prevent the freezing of the water system.

3.3 On or around 1 February 2019, there was an escape of water within the property as a result of a broken speed fitting most likely caused by freezing temperatures.

3.4 The Respondent had failed to ensure that the property was adequately heated during the period he was in Australia.

3.5 The Applicant made a claim under the relevant insurance policy due to the damage caused and required to pay a £250.00 excess in connection with this.

4. Reasons For Decision

4.1 The Tribunal heard oral evidence from the Applicant in respect of this application. The Tribunal found the Applicant credible and accepted his evidence that the cause of the water escape, as advised by a plumber, was a broken speed fitting due to freezing temperatures. The Applicant had lodged evidence of his efforts to obtain a report from the plumber which had not been provided.

4.2 The Respondent accepted in his evidence that he had not set the heating system on a timer which was available as part of the thermostat. He had tasked the heating of the property to an elderly neighbour. Due to a medical emergency, the neighbour had not attended to turn the heating on for some time prior to the water escape. The Tribunal does not consider the Respondent to have fulfilled his contractual obligation in terms of Clause 11 of the tenancy contract. It would appear to the Tribunal that the water escape was caused by the Respondent's breach of his contractual obligations and, accordingly, he can be held liable for the cost incurred by the Applicant.

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.

Alastair Houston
Legal Member/Chair

12 November 2014
Date

