

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) under Section 16 of the Housing (Scotland) Act 2014.

Chamber Ref: FTS/HPC/CV/18/2472

Re: Property at G/02, 26 Highholm Street, Port Glasgow, PA14 5HL ("the Property")

Parties:

Chesnutt Skeoch Ltd, 30 East Main Street, Darvel, KA17 0HP ("the Applicant")

Mr Richard Cowan, 19A John Street, Greenock, PA15 4SB ("the Respondent")

Tribunal Members:

Mrs Lesley A Ward (Legal Member)

Mrs Linda Reid (Housing Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the respondent shall make payment to the applicant the sum of two thousand two hundred and sixty pounds and thirty three pence (£2260.33).

This was an evidential hearing in connection with an application in terms of rule 70 of the First-tier Tribunal Housing and Property Chamber (Procedure) Rules 2017, 'the rules' and s16 of the Housing (Scotland) Act 2014, 'the Act'.

Two previous case management discussions 'CMD's' were adjourned with directions, on the 26 November 2018 and 16 January 2019. It was also decided by the tribunal at the CMD on 16 January 2019 that the respondent would participate at today's hearing via conference call.

The application was made by Mr Kenneth Johnstone on behalf of Chesnutt Sketch Ltd. Mr Johnstone attended the hearing. Mr Cowan was represented by Mr Ben

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Christman trainee solicitor. Mr Cowan participated by conference call. The tribunal had before it the following copy documents:

1. Application dated 12 September 2018 and received by the Tribunal on that date.
2. Tenancy agreement dated 11 September 2017.
3. AT5 form.
4. Copy photographs.
5. Invoice dated 6 September 2018.
6. Invoice dated 10 September 2018.
7. Rent statement
8. Receipts.
9. Land certificate.
10. Email from respondent's solicitor with written submissions dated 20 November 2018.
11. Further photographs.
12. Letter from applicant dated 16 January 2019.
13. Bank statement dated 26 September 2018.

Preliminary matters

1. The tribunal noted that the applicant had written to the tribunal on 16 January 2019 with a copy of his bank statement from 26 September 2019. The tribunal was satisfied that the applicant had therefore complied with the tribunal direction.
2. The tribunal noted that the parties had been sent a letter from the tribunal which suggested that this is a CMD. The parties agreed that today was to be a full evidential hearing.
3. It was agreed at the CMD on 16 January 2019 that the rent arrears due are £1435. The tribunal did therefore not propose to hear any evidence regarding that portion of the claim.
4. The two disputed sums are £480 for cleaning and clearing and £975.33 for redecoration. The respondent has offered £100 in respect of the redecoration of the lounge in the flat.

Evidence of the applicant

The applicant's evidence was that he has lodged 21 photographs regarding the condition of the flat before and after the respondent took entry in September 2017. The applicant conceded that the 'before' photos were taken in February 2017. He also conceded that the respondent's partner's mother was a tenant of the same property between August and September 2017 (a Mrs Wilson) before she sadly passed away around 6 weeks after taking the tenancy in August 2017. The applicant did not take photos of the condition of the flat before the respondent took entry. His

evidence was that the property was empty when Mrs Wilson took entry. She left a red sofa and a bed and those items were in the property when the respondent moved in. This was a new matter that had not been part of the discussion at the two previous CMD's.

The applicant gave evidence about the two invoices lodged, the terms of the lease and the photographs. His evidence was that the respondent asked him in advance of painting and decorating the lounge if he could do so and he refused permission. He stated that the respondent told him that he was good at decorating but he still refused to consent. His evidence was that the respondent went ahead anyway. His evidence was that the respondent put up shelves in the hall and bathroom and this meant the walls had to be reinstated and redecorated after the respondent left. He also gave evidence about damage done to the lounge door. He was not claiming for the damage done to the kitchen cabinets shown in the photos lodged.

The applicant's evidence was that the carpet in the lounge was marked with candle wax and this took a lot of cleaning to remove. He also gave evidence that the kitchen was very dirty and the cooker in particular required a great deal of cleaning.

Evidence of the respondent

The respondent gave evidence by telephone. His evidence was that he agreed with the applicant in advance that he could decorate the lounge. His evidence was that he also received permission to remove the cupboard door in the lounge. He conceded that the applicant asked him not to do any further decorating. He also accepted in his evidence that he damaged the lounge door and he put up shelves in the hall and bathroom which he removed before leaving. He did not reinstate the walls. The respondent's evidence was that Mrs Wilson was living in the flat when she died. His evidence was that the green three piece suit seen in the photos lodged by the respondent was in the flat when Mrs Wilson moved in. He also gave evidence that the wardrobe shown in the photos was also there when she moved in. This being the case, the respondent's evidence was that he left the suite and the wardrobes in the flat when he moved out. He accepted that he left a box and a glass tv stand and he should have taken those items.

Findings in fact

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1. The parties entered into a lease for the property in September 2017. The monthly rent was £350 per month for the period 11 September 2017 until 10 September 2018.
2. The respondent left the property before the end of 10 September 2018 and owes the sum of £1435 in respect of rent areas and rent in lieu of notice
3. There was some damage to the property caused by actions of the respondent in breach of the conditions of the lease. The applicant incurred the sum of £825.33 in reinstating the lounge, hall and bathroom.

Reasons

The tribunal heard oral evidence from both parties and took into account the written documents lodged. The applicant gave oral evidence about the work carried out to reinstate the flat after the respondent left. The tribunal accepted that the lounge hall and bathroom required walls to be repaired and thereafter they required painting. There was a dispute as to whether the respondent was given permission to proceed to redecorate the lounge. The tribunal preferred the evidence of the applicant in this connection. The tribunal noted that the lease stated at clause 3(d) that the tenant undertakes not to alter the flat and at 3(a) to make good any damage caused. The evidence of the applicant was that a large proportion of the invoice for redecoration was for the lounge (although he was unable to say what proportion) and the tribunal accepted this. The evidence of the respondent was that he put up shelves in the hall and bathroom and that he removed them before he left. As he did not reinstate the wall the tribunal was satisfied that a further portion of the invoice to redecorate the hall and bathroom was reasonable. The applicant was unable to give any assistance on the proportions and the respondent's solicitor declined to make any submission on this point leaving it to the tribunal to decide. There was no evidence that there was any damage to the kitchen décor. The units were partially removed (according to the respondent this was the fire brigade as he has a faulty washing machine which leaked). There was no claim for damage to the units and the tribunal decided to deduct £150 from the redecoration costs as the proportion allocated to the kitchen.

Turning to the claim for £480 for cleaning and removal of furniture, the tribunal was not satisfied that, on the balance of probability, the respondent left furniture in the property that he was not entitled to leave, save a box and a glass cabinet. Mrs Wilson was residing in the property for several weeks and the applicant appeared to accept that there was furniture in the flat when the respondent took entry. It was not clear to the tribunal who this furniture belonged to and whether the same furniture was left in the property by the applicant or whether this was different furniture. The tribunal was not satisfied that the claim for cleaning the carpet and the oven was made out by the applicant. There were no photographs of either the oven or the carpets that made out this aspect of the claim. The 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.

L. A. Ward

12 March 2019

Lesley A Ward Legal Member

Date