



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing Tenancies (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/19/2705**

**Re: Property at Back Cottage, Mains of Whitecairns, Whitecairns, Aberdeen, AB23 8XA ("the Property")**

**Parties:**

**Whitecairns Estates Limited, 10 The Square, Tarves, Ellon, Aberdeenshire, AB41 7GX ("the Applicant")**

**Miss Kay Taylor and Mr Ian Craig, residing at 31 Greenbrae Drive, Bridge of Don, Aberdeen, AB23 8NH ("the Respondent")**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to make an order for payment against the Respondent in the sum of Five thousand five hundred and fifty five pounds (£5,555) Sterling**

**Background**

- 1 By application dated 29 August 2019 the Applicant sought an order for payment against the Respondent in respect of unpaid rent and the cost of replacement carpets. In support of the application the Applicant provided the following documentation:-
  - (i) Tenancy Agreement between the parties dated 24 February 2017;
  - (ii) Bank Statements evidencing unpaid rent;
  - (iii) Rent Account from February 2017 to May 2019;

- (iv) Invoice from Frasers of Ellon House furnishers for supply and fit of carpets in the sum of £2450; and
  - (v) Copy letter from Applicant to Whom It May Concern regarding issues with access to the property and the condition at termination.
- 2 By Notice of Acceptance of Application dated 16 September 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 1<sup>st</sup> November 2019.
  - 3 The application paperwork together with notification of the Case Management Discussion was served on the Respondents by Sheriff Officers on 1<sup>st</sup> October 2019.
  - 4 On 18<sup>th</sup> October 2019 the Applicant submitted further written representations in the form of transcripts of text messages between Valerie Fowlie and the Respondent which purported to evidence the repeated requests for payment.

### **The Case Management Discussion**

- 5 The Case Management Discussion took place at Credo Centre on 1<sup>st</sup> November 2019. Ms Valerie Fowlie was present on behalf of the Applicant.
- 6 Ms Fowlie explained that the Respondents had made multiple promises to pay the rent. She had instructed a solicitor to serve notices asking them to leave on 31<sup>st</sup> May 2019. They have given the keys to a neighbour on 31<sup>st</sup> May 2019 and the tenancy terminated on that date. The arrears outstanding were £4900.
- 7 Mrs Fowlie explained that she had paid £1670 for a new carpet. The carpets were approximately three years old. They were in good condition when the Respondents moved in. There was no way a new tenant would have accepted them in the state they were left. The Respondents kept a lot of cats and the smell from the carpet was overwhelming. They had to be replaced.
- 8 Finally Ms Fowlie explained that she had received the deposit of £500 back from the deposit scheme and would be applying that to the sums owed.

### **Findings in Fact and Law**

- 9 The parties entered into a Tenancy Agreement dated 29<sup>th</sup> October 2018 in respect of the Property.
- 10 In terms of Clause 3 of the Tenancy Agreement the Respondents undertook to pay rent of £800 per month.



- 11 The tenancy terminated on 31<sup>st</sup> May 2019. As at the date of termination arrears of rent in the sum of £4900 were outstanding.
- 12 The Respondents are both liable to pay the sum of £4900 in accordance with the terms of the Tenancy Agreement between the parties.
- 13 Following the Respondents removal from the property, the Applicant incurred costs of £1670 for replacement carpets. The carpets required replaced as a result of the Respondents failure to keep the house clean under Clause 4 of the Tenancy Agreement.
- 14 The damage to the carpets was such that it affected the quality of the property and achievable rent. The Applicant was entitled to replace the carpets.
- 15 The carpets were approximately three years old. Taking into account reasonable expected use the carpet could reasonably have been expected to have a lifespan of ten years. The remaining lifespan of the carpets in the property was therefore seven years. On that basis the sum of £495 should be deducted from the sum due by the Respondent, being three tenths of the total cost. The Applicant is entitled therefore to recover £1155.
- 16 Despite repeated requests the Respondents have refused or delayed in making payment of the sum due.

### **Reasons for Decision**

- 17 The Tribunal was satisfied that it was able to continue with the Case Management Discussion in the absence of the Respondents. The application paperwork had been served upon them by Sheriff Officers. The Tribunal therefore considered it could reasonably assume that they were aware of the Case Management Discussion and had been given the opportunity to attend or make written representations in response to the application.
- 18 The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 19 Based on the verbal and written representations from the Applicant, the Tribunal accepted that the Respondents were due to make payment of rent in the sum of £800 per month in terms of the Tenancy Agreement entered into between the parties. They had failed to do so, despite efforts made by Ms Fowlie to engage with them in this regard. They had not put forward any evidence to counter the Applicant's position in this regard. The Tribunal found the Applicant's evidence to be credible and therefore accepted the position put forward by Ms Fowlie on their behalf.

- 20 The Tribunal accepted that the Applicant required to replace the carpets, as the damage was so extensive that cleaning would not have sufficed. However the Applicant was not entitled to betterment, in that a landlord cannot not end up financially or materially better off at the end of a tenancy. The Tribunal determined that the carpets would have a lifespan of ten years, taking into account reasonable expected usage. Ms Fowlie on behalf of the Applicant had explained that the carpets were approximately 3 years old. The Tribunal therefore deducted £495 from the cost of the carpets and determined that the Applicant was entitled to recover the sum of £1155 from the Respondents.
- 21 For the avoidance of doubt the Tribunal noted the Applicant's comment that Ms Taylor had denied receiving the second offer of lease in 2008. However, even if that were true, the Tribunal noted that the original lease would have continued by tacit relocation. The Respondents would therefore have retained the contractual obligation to pay rent in the terms agreed in the original agreement, namely £800 per month.
- 22 The Tribunal further noted that Mr Craig had not been named in the tenancy agreement. He had however signed the agreement above wording which stated "*We hereby acknowledge receipt of the above offer and accept the conditions*". The Tribunal therefore took the view that be doing so he had become a party to the agreement and was therefore bound by its terms.
- 23 Finally the Tribunal noted that the Respondent's deposit of £500 would be applied to the outstanding debt and therefore deducted that amount from the sum sought.
- 24 The Tribunal therefore determined to make an order for payment against the Respondent in the sum of £5,555, being arrears of rent due by the Respondent under the terms of the tenancy agreement between the parties.

### 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.**

Ruth O'Hare

Legal Member/Chair

Date

11/11/19