



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section under Section 71 of the
Private Housing (Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/18/2843

**Re: Property at 25 Glen Mallie, St Leonards, East Kilbride, G74 2BA (“the
Property”)**

Parties:

**Mr Gordon Smith, Mrs Christine Smith, 22 Langlands Road, Auldhouse, East
Kilbride, G75 9DW; 22 Langlands Road, Auldhouse, East Kilbride, G75 9DW
 (“the Applicant”)**

**Mr Scott Armstrong, formerly residing at 25 Glen Mallie, St Leonards, East
Kilbride, G74 2BA (“the Respondent”)**

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment by the respondent of the sum
of £2190 should be granted in favour of the applicant.**

Background

An application was received from the applicants on 23 October 2018 seeking a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).

The applicants were seeking payment of rent arrears of £1200 from the respondent in relation to the property, being the amount of arrears outstanding as at the date of the application, together with the sum of £877 in respect of damage allegedly caused to the property by the respondent during his tenancy. The application included copies of the applicant’s bank statements; an extract from the private residential

tenancy agreement between the parties; photographs of the alleged damage to the property; and quotes for replacement doors and double glazed units.

Notice of the case management discussion on 16 January 2019, together with the application papers and guidance notes, had been served on the respondent on 27 December 2018, by sheriff officers on behalf of the tribunal.

An email was received from the applicants on 7 January 2019 confirming that the respondent had left the property on or around 30 December 2018, without giving them formal notice, and had returned the keys. They therefore withdrew the accompanying eviction application (HPV/EV/18/2840).

The email also stated that they wished to amend their application in the present case to include 1) an additional two months unpaid rent for the period to 12 January 2019, as rent was paid in terms of the tenancy agreement on the 12th of each month and 2) additional sums totalling £611.77, for further damage allegedly caused by the respondent, which had only been discovered on gaining access to the property after the respondent had moved out. This email was only received by the tribunal on 15 January, and had not been copied to the respondent.

No written representations were received from the respondent before the case management discussion.

The Case Management Discussion

A case management discussion was held on 16 January 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicants were present at the hearing, and gave evidence on their own behalf. The respondent was not present or represented at the hearing. The tribunal noted that notice of the case management discussion had been served on the respondent at the property prior to the date he appeared to have moved out. At the case management discussion, the applicants also produced an email from the applicant dated 30 December 2018, which stated 'I got the letters etc you posted through the door.' The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. It therefore proceeded with the hearing in the absence of the respondent, in terms of rule 29 of the 2017 rules.

The applicants' claim for rent

The applicants told the tribunal that the respondent had not paid the rent since July 2019. They wished to amend their original application to include an additional two month's rent for the period from 11 November -11 January 2019. The tribunal accepted this amendment, as it did not raise a new issue, and had been submitted in writing by the applicant 7 working days prior to the date of the case management discussion, as required in terms of rule 13 of the 2017 rules. While the amendment had not been communicated to the respondent, the email from him dated 30 December 2018 which the applicants produced at the hearing stated 'obviously I expect you to charge me till the 12th of January'. He was therefore aware that the applicants would seek this additional rent.

The applicants' claim for damages

The applicants told the tribunal that they had had difficulty in contacting the respondent, having tried to do so several times around September 2018. They had concerns about his safety, and following advice from their solicitor, had called the police. The police had tried to gain entry to the property, and due to their concerns, they had declared an emergency situation and forced entry, damaging the front door. It then became apparent that the respondent had been in the property throughout.

Further damage to the property had been discovered when the respondent had allowed the applicants to inspect the property in September. The applicants had submitted photographs of the damage with their application. They said that there was damage to the kitchen door and surround. They told the tribunal that the door was operating correctly, but that the tenant said he had been trapped in the kitchen and had forced the door with a screwdriver. The bedroom window had also been broken due to misuse, and had a large crack in the pane. In the original application, the applicants had sought payment for replacement of the front door (£500); a replacement kitchen door (£42); a new double glazing unit for the bedroom (£35) and an estimated £300 labour in respect of these items, totalling £877.

The applicants told the tribunal, however, that they wished to reduce the amount claimed in respect of these matters. They had now been assessed by a joiner, who said that the front door could be repaired, rather than requiring replacement. The applicants produced a quote from the joiner for the various works for a total of £590.

When the applicants had obtained access to the property following the respondent's departure, they had discovered additional damage to the property, which was listed in their email of 7 January. They wished to amend their application to include an additional sum totalling £611.77, in respect of replacement of a further internal door (£42); door handles (£15.98); cleaning and sanitising the flat (£240); replacement blind for the living room (153.80) and replacement fridge (£159.99). The tribunal noted that this amendment raised new issues which were not contained in the original application. Were the tribunal to agree to this amendment, the rules required that the respondent should be given an opportunity to make written representations in relation to the amendment in terms of rule 14 of the 2017 rules. While this could be done, this would involve adjourning the matter to a further case management discussion or hearing, to allow time for this.

Following a brief adjournment to consider how they wished to proceed, the applicants decided not to pursue these additional items, and told the tribunal they wished to seek an order for the outstanding rent and the reduced sum for the damages included in their original application.

Findings in Fact

- The tribunal was satisfied that there was a valid private residential tenancy in place between the parties from 12 May 2018.

- As at the date of the hearing, the respondent owed the applicant the sum of £2000 in rental payments.

Reasons for Decision

The tribunal was satisfied that the respondents owed the applicants the sum of £2000 in respect of 5 months' rent at £400 per month, as set out in the tenancy agreement. When asked about the £400 deposit provided for in the tenancy agreement, the applicants said they had made a claim to the tenancy deposit scheme for the full sum, in respect of unpaid rent. Taking this into account, the tribunal decided to award a sum of £1600 in respect of unpaid rent.

With regard to the £590 sought in relation to damage caused to the property, the tribunal found the applicants to be credible and reliable in their evidence. Taking into account all the evidence before it, including the photographic evidence, the tribunal was satisfied that the respondent was liable to pay for the costs claimed in relation to this damage.

Decision

The tribunal grants an order for payment by the respondent to the applicants for the sum of £2190.

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.

Ms Sarah O'Neill

Legal Member/Chair

16/1/19

Date