



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules')

Chamber Ref: FTS/HPC/CV/18/3393

**81 Kenilworth Crescent, Burnbank, Hamilton ML3 9LT
(‘the Property’)**

PARTIES:

**Mrs Annette MacMillan, 54 Aberfeldy Avenue, West Craigs, Blantyre, Glasgow
ML3 9LT
(‘the Applicant’)**

**Ms Stacey Queen, 2 Pitcairn Terrace, Hamilton ML3 9EL
(‘the Respondent’)**

TRIBUNAL:

**Joseph C Hughes (Legal Member)
Eileen Shand (Ordinary Member)**

Audrey Warden (Clerk of Tribunal)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) determined that the Respondent is liable to make payment to the Applicant in the sum of TWO THOUSAND THREE HUNDRED AND SEVENTY ONE POUNDS AND FIFTY SIX PENCE (£2371.56) STERLING.

BACKGROUND

1. This is an Application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules'). The Applicant is seeking an Order for Payment of unpaid rent and costs under the tenancy agreement between the parties.

A Case Management Discussion ('CMD') took place on 7th February 2019.

The Application was accompanied by a copy of the written tenancy agreement with various supporting documents including rent arrears statement, check-in and out reports, check-in and check-out photos, Inventories, contractors invoices, a range of receipts, a range of testimonials, sheriff officers invoices and Certificates, copy emails and correspondence between the parties.

The Tribunal, whilst highlighting these items, had careful regard to all documents lodged by parties.

The Applicant is the Landlord of the Property. The Respondent was the Tenant of the property. She left the property on Friday 2nd November 2018. The Respondent intimated her departure from the property in an email dated 3rd November 2018 at 0011 hours.

This was a two day same panel Hearing. The first day of the hearing required to be adjourned during evidence due to the Respondent becoming unwell in the late stages of pregnancy. The first hearing took place on 7th May 2019. The continued second hearing took place on 29th July 2019. Evidence was therefore heard over the two days.

Evidence was noted from both parties. Mr Ian Armstrong attended as supporter for the Applicant on day one. Mr Armstrong is the Applicant's partner and co owner of the Property. Mrs Ann Brodie attended as supporter for the Applicant on day two.

Mrs Margaret Queen attended as supporter for the Respondent over both days. Mrs Queen is the Respondent's mother.

The Tribunal Members have no conflict of interest in respect of this case.

THE HEARING

2. The Applicant and the Respondent attended on both days of the hearing. They were unrepresented and presented their own case.

3. The Tribunal is invited to grant an Order for payment sought in the application. It was the Applicant's position that the Respondent had been their tenant under a Private Residential Tenancy and, as a consequence, owed certain contractual and other duties to take reasonable care of the let property. Effectively the Applicant's position is that the Respondent breached those duties, by causing damage to the property and leaving it in a dirty condition internally and externally.
4. The Tribunal was invited to consider the rent arrears and range of costs highlighted within the papers in Appendix B.
5. On the second day of the hearing the Applicant effectively accepted in principle the 27 items highlighted within Appendix B. She commented that some of the figures were at variance with other documentation within the bundle. She did not consider she was responsible for the November rent as she was unable to access the Property to ensure it was returned to the Applicant in a reasonable condition.
6. The Respondent's position is that she had intended to return to the property in order to carry out any repairs, tidy up, clean and make good the property with a view to leaving the property in a reasonable condition.
7. The Respondent was very clear that her relationship with the Applicant and Mr Ian Armstrong had completely broken down.

FINDINGS IN FACT

8. The Respondent was the tenant of the Applicant under, and in terms of, a Private Residential Tenancy Agreement dated 2nd March 2018. The Respondent confirmed that the Entry Inventory Report lodged by the Appellant was accurate. She did not seek to challenge the Report.
9. The let property was a flat at 81 Kenilworth Crescent, Burnbank, Hamilton ML3 9LT. Other areas/facilities included with the let property were a back garden (left hand side) and two sheds at the bottom of the garden.
10. The monthly rent was £480 per calendar month payable in advance.
11. No rent was paid by the Respondent for the months of October and November (in lieu of notice) in 2018 totalling £960.
12. The tenancy deposits, totalling £580, were repaid to the Applicant.
13. The said deposits were deducted from the rent arrears leaving a balance of £380. The Applicant is therefore seeking net rent arrears of £380.

14. The total of the 27 items listed within Appendix B totals £2231.17. The Applicant confirmed that this total should be reduced to £2130.01. This cost included repairs, painting, cleaning, sheriff officers and ancillary expenditure.
15. The Applicant sought the net rent arrears of £380 and the additional costs she incurred of £2130.01, totalling £2510.01.
16. The Applicant maintained the Property to a high standard. Photographs of the flat, prior to the Respondent moving in, confirm the high standard.
17. The Respondent changed the locks to the Property without the consent and agreement of the Applicant.
18. Parties accept that since a second inspection in September 2018, the communication and the relationship between the parties deteriorated.
19. The Applicant sought advice from the Scottish Association of Landlords ('SAL') in respect of the Respondent's tenancy. Advice was given to the Applicant about the use of sheriff officers in the event the Respondent failed to respond to the Applicant. The Respondent did not respond to a range of communications from the Applicant and therefore the cost of any sheriff officers is justifiable and reasonable.
20. The Respondent abandoned the Property on Friday 2nd November 2018.
21. The Respondent did not return the keys to the Applicant directly or indirectly. She did not attempt to communicate with the Applicant after she vacated the Property of 2nd November 2018.
22. The cost of the items at paragraph 14 has been fully vouched for by the Applicant.
23. The Applicant is entitled to the balance of the rent arrears, namely £380, and reasonable reparation for costs incurred from the Respondent.
24. The amended total sum sought, £2510.01, is an estimate of the balance of the Applicant's rent arrears and costs incurred.
25. The Applicant has claimed as part of the total costs three Sheriff Officer's Invoices dated:
 - (a) 5th October 2018 for £76.03
 - (b) 16th October 2018 for £62.42 and
 - (c) 5th December 2018 for £90.
26. Invoice (a) refers to serving a letter about the late rent - which was only three days late having been due on Tuesday 2nd October 2018, a Rent-Increase Notice and a Notice to Leave. The Sheriff Officer's typed Citation for Invoice

- (a) only refers to serving the Landlord's Rent-Increase Notice to Tenant under section 22(1) of the Private Housing (Tenancies)(Scotland) Act 2016.
Invoice (b) specifically related only to a Notice to Leave.
Invoice (c) related to tracing the whereabouts of the Respondent.
27. Invoices (a) and (b) totalling £138.45 are not a reasonable or necessary cost in respect of this Application.
28. Invoice (c) for £90, for tracing the whereabouts of the Respondent, is a reasonable cost in respect of this Application.
29. All other costs sought by the Applicant in Appendix B are reasonable for this Application. The amended arrears of rent and costs of £2510.01 should therefore be reduced deducting the sheriff officer Invoices (a) and (b) [totalling £138.45] to give a final compensatory figure of £2371.56 in favour of the Applicant.

REASONS FOR DECISION

30. The Application is granted. The Tribunal find the Respondent is responsible to the Applicant for the reduced sum of £2510.01. The Tribunal is in no doubt that the Tenant was liable for the rent for October and November. The Tribunal accept the documentary productions lodged to support the costs incurred by the Applicant. The Tribunal accepts that these costs were incurred and are reasonable in all the circumstances. The Tribunal viewed photographs of the property prior to the Tenant moving in and after she left the Property. The Respondent stated in her evidence that she did not seek to challenge any of the photographs presented by the Applicant.

The Tribunal did not accept the evidence of the Tenant that she returned to the flat on 3rd November 2018 to complete the process of vacating the property with a view to making it presentable for the Applicant.

31. The Respondent was aware that the Applicant and Mr Armstrong were watching her vacate the property during the day time on Friday 2nd November 2018. Previously she was declining to respond to all communications from the Applicant or through sheriff officers. She stated within her email of 3rd November 2018 (at 00:11hours) that the Applicant and Mr Armstrong had been 'intimidating, bullying and harassing' her. She further stated in her oral evidence that she was effectively living in fear within the flat.
32. The Respondent stated in the aforesaid email that she was aware the Applicant and Mr Armstrong had sat outside the property on the Friday and videoed her removing furniture from the flat and evidently moving out. She further stated ' As of today I have moved out of the property and do not wish to have further contact with yourself or your partner'. She concluded in her email that she wished the 'tenancy to end and the contact to end'.

The Respondent's primary position is that she intended to carry out any necessary repairs and cleaning during the notice period she had created through her said email. She blames the Applicant for changing the locks to the Property during the weekend of 3rd November 2018 arguing that this deprived her of the opportunity to carry out repairs and cleaning. She accepted however in her evidence that at no time did she make any further attempt to communicate with the Applicant after she left the Property.

33. Having assessed all this email and all the other evidence before the Tribunal, we do not accept that the Respondent either returned to the Property on Saturday 3rd November 2018, or had any intention of returning to the Property, to tidy the flat up and make it presentable for the Applicant. At the time of the Respondent's departure from the Property she was on the sick due to her health. The Tribunal concluded that the Respondent would not have attempted to return to the Property as she had no desire to meet either with the Applicant or Mr Armstrong. It would be reasonable for the Respondent to have concluded that, after receiving the said email, the Applicant and Mr Armstrong would immediately make their way to their Property whereby they would then discover that the locks had been changed. The Tribunal find it highly unlikely that the Respondent would have elected to return to the Property in all these circumstances. The Tribunal consider that the action taken by the Applicant to instruct a locksmith to install new locks was reasonable and necessary in all the circumstances of the acrimonious departure of the Respondent on Friday 2nd November 2018.
34. The Respondent had no right to change the locks without the Applicant's consent. She cannot hold the Applicant responsible for immediately changing the locks on Saturday 3rd November 2018 when she discovered she could not access her own property. The Respondent failed to communicate with the Applicant, even by email, after leaving the property. She made no attempt to communicate her desire to return to the flat and carry out the work she stated in evidence she had intended to carry out. Since the Respondent's email of 3rd November 2018 there has been no further contact from Ms Queen to the Applicant. She left no forwarding address. She sent no further emails.
35. The Tribunal did not consider it appropriate for the Applicant to be paid all of the Sheriff Officers expenses. We considered the invoice to trace the Respondent was appropriate as she had severed all communication with the Applicant. The remaining invoices were primarily incurred to serve various Notices. Accordingly we formed the opinion that these should not be allowable costs as part of this Application.

DECISION

36. The Applicant's amended costs [subject to deducting Sheriff Officer's Invoices (a) and (b)] and the reduced rent arrears (after the deduction of the deposits) are reasonable in all the circumstances. The wear and tear of the

Respondent's tenancy should have been minimal during the period of this tenancy. The evidence presented, including the photographs, clearly demonstrate deterioration well in excess of what is reasonable during the period of this tenancy having regard to the pristine condition of the property at the outset of the tenancy. The costs incurred do not improve the property but simply return it to the condition it was in when the property was first leased by the Applicant to the Respondent. The Respondent is therefore liable to the Applicant for the amended said costs and the balance of the outstanding rent.

37. The Tribunal make an Order for Payment of £2371.56 in favour of the Applicant. The decision of the Tribunal 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.

J.Hughes

/ /
'Joseph C Hughes'
Legal Member HPC

5th August 2019