

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/18/3046

Re: Property at 31 Ferguson Park, Rattray, Blairgowrie, Perthshire, PH10 7AU (“the Property”)

Parties:

Mr Alan McHattie, Old Foresters Cottage, Meikleour, Perthshire, PH2 6EB (“the Applicant”)

Mr Steven Balmer, Mrs Michelle Balmer, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Linda Reid (Ordinary 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 for FOUR THOUSAND THREE HUNDRED AND SIXTY SEVEN POUNDS AND SIXTY PENCE (£4367.60) STERLING be made in favour of the Applicant.

1. Background

- 1.1 This is an application under Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) for an order for payment of various sums allegedly due by the Respondent following the end of an assured tenancy agreement between the parties.
- 1.2 The Applicant sought payment of rent arrears and the cost of repairing or replacing various items within the Property as a result of damaged allegedly caused by the Respondent.
- 1.3 The application was accompanied by a copy of the written tenancy agreement (“the lease”), a statement of the rent account and various invoices. An amended Section 5 of the application form and a further list of the damage allegedly done by the Respondent to the Property had

been submitted by the Applicant immediately prior to the Case Management Discussion on 10 April 2019.

2. The Hearing

- 2.1 The Hearing took place on 29 May 2019. The Applicant appeared personally. The Respondent was absent and was not represented. The Applicant confirmed that the application was insisted upon and he wished to proceed with the hearing.
- 2.2 The Tribunal noted that Sheriff Officers had been unable to serve notice of the Case Management Discussion on the Respondents and the Applicant had been unable to provide any further address. Thereafter, notice of the Hearing had been given by advertisement. No representations had been received from the Respondents. The Tribunal considered sufficient notice of the hearing had been given in terms of Rule 24(1) of the Rules, and, accordingly, proceeded with the Hearing in the absence of the Respondent under Rule 29 of the Rules.
- 2.3 The Tribunal firstly considered the terms of the lease. The Tribunal considered that the sums the Applicant was claiming all arose as a result of breaches of contract, that being the lease. The Applicant agreed with the Tribunal that Paragraphs 4, 6(b), 6(d), 6(g), 6(j), 6(t) and 6(u)(iii) of the lease were the relevant provisions relating to the claim.
- 2.4 The Tribunal then dealt with the alleged unpaid rent. The Applicant confirmed that the total amount of unpaid rent was £2236.62 as of the 6 December 2018, being the date the property was recovered. The Applicant confirmed that the deposit of £475.00 paid by the Respondent and been retained by him and should be offset against the amount of rent outstanding. The total amount of rent outstanding was therefore £1761.62.
- 2.5 The Tribunal proceeded to consider each item on the list of the damage allegedly caused by the Respondent. The Applicant confirmed that no pets were allowed under the lease. No permission had been given by him for the Respondents to keep dogs within the Property. At this stage, the Applicant asked the Tribunal to receive a number of photographs of the Property following the end of the lease. The Applicant had advised that he had attempted to tender these at the Case Management Discussion but had not been permitted to do so. He had attempted to submit them electronically but had been unable to do so given the file size. The Tribunal considered that the Applicant should be allowed to lodge these photographs on the day of the Hearing, albeit late, given his position, in terms of Rule 22(2) of the Rules.
- 2.6 The Applicant confirmed he had no photographs of the Property immediately before the commencement of the tenancy. He also

confirmed he did not have a written inventory of the furniture and fittings provided under the lease. The Applicant advised that this was a result of a failing on the part of the letting agents that had previously managed the Property. These failings had formed the basis of a separate application to the Tribunal.

- 2.7 The Applicant advised that the carpets within the Property had apparently been damaged by dogs kept by the Respondents. He advised there was a smell within the Property as a result of the dogs. There was dog hair within the Property. There was dog excrement everywhere in the garden. He had no photographs of the garden. He referred to a photograph of dog hair ("photograph 1") and a photograph of a carpet edge scraped away by dogs ("photograph 2"). The carpets were approximately four or five years old at the commencement of the lease. The damage necessitated their replacement. The carpet fitters had been paid in cash and the Applicant did not have proof of payment.
- 2.8 The Applicant advised that the Respondents had left a number of personal belongings within the Property. These included children's toys, a three piece suite, bedroom furniture and two pet lizards within a tank. The Applicant submitted he had required to have the Property cleared. He referred to the invoice from Graham Hygiene Services as detailing the cost of this. The Applicant had paid this in advance and could provide proof of payment. The lizards were taken away by the RSPCA. He had given the Respondents one week to return and collect their belongings but they had failed to do so. He referred to a photograph of missing wallpaper and lizards left in a case ("photograph 3") and confirmed that the sofa pictured in this was part of the three piece suite.
- 2.9 The Applicant confirmed that the living room and bathroom within the Property were wallpapered at the start of the lease. He advised that the Respondents had removed the wallpaper from the living room and partially painted it yellow. The wallpaper in the bathroom had also been partially painted yellow. He referred to photograph 3 and a photograph of a missing light switch ("photograph 4") and photograph of missing wallpaper and a wall part painted ("photograph 5"). The Respondents had not been given permission to redecorate. He referred to the estimate given by Alan Sherriff, decorator, as the cost of redecoration. He could provide proof of payment.
- 2.10 The Applicant advised that the kitchen was within the Property at the time it was purchased by him. He referred to photographs of a broken kitchen cupboard and washing machine ("photograph 6") and a missing cupboard door and a broken oven. He was not claiming any sums as a result of the damage to the kitchen units, but had been forced to remove a number of them.
- 2.11 The Applicant confirmed that the receipt from B & M related to the missing curtain poles, curtains, lamp shades and light bulbs. He was

unable to confirm exactly what each item on the receipt from B & Q were beyond bathroom paint at the cost of £15.00 and a new bath panel at the cost of £30.00. The Applicant was content to drop the claim for the items detailed on the receipt from B & M. He advised that the bath panel would have been undamaged at the start of the lease. He referred to a photograph of the broken bath panel ("photograph 8"). The bathroom had been refitted as a whole approximately four years earlier. He had required to supply paint for the bathroom to the decorator.

- 2.12 The Applicant advised that a glass holder was missing, as was a soap dish. He advised he would be content to restrict his claim in respect of the items on the receipt from B & Q to 50% of their value.
- 2.13 The Applicant advised that a hole in the hall cupboard door had been fixed by the decorator and had not incurred any further specific charge.
- 2.14 The Applicant advised that the over door was taped up. The Respondents had damaged it and it would not stay closed. He referred to photograph 7. He had replaced the oven since purchasing the property but could not recall how long ago, only that it was not in the last 5 years. There had not been anything wrong with the hob but it had been replaced in any case. He was not insisting on the cost of the hob.
- 2.15 The Applicant confirmed he did not incur any cost in replacing the allegedly damaged fridge freezer and washing machine.
- 2.16 The Applicant referred to a photograph of a broken doubling glazing panel within a door. He advised that there had been no damage to the glazing at the commencement of the lease. There would not have been any other fault with the door. He referred to the invoice from Balhousie Glazing Limited. He could provide proof of payment of this.
- 2.17 The Applicant referred to a photograph of a broken switch ("photograph 10") and a broken socket ("photograph 11"). He advised that these showed a broken light switch in a bedroom and a broken socket in the kitchen respectively. He advised that it appeared to him as if the Respondents had deliberately damaged these upon leaving the Property. He could not identify which items on the B & Q receipt related to these. The Applicant also confirmed that no cost was incurred in repairing the broken floor of the garden shed. The Applicant confirmed that the Property had been redecorated as a whole at the end of the lease. It had appeared as if children had drawn on the walls in the bedrooms. There was no specific damage or alterations to the hall which had been redecorated for the sake of completeness.
- 2.18 At the end of the hearing, the Tribunal adjourned the hearing and a direction was issued to the Applicant. This required him to produce proof of payment to Alan Sheriff, Decorators, Graham Hygiene Services and Balhousie Glazing Limited.

3. Findings In Fact

- 3.1 The parties had entered into an assured tenancy which commenced on 11 August 2017 and ended on 6 December 2018.
- 3.2 In terms of Paragraph 4 of the lease, rent of £475.00 per month was due to be paid by the Respondents.
- 3.3 In terms of Paragraph 6(b) of the lease, the Respondents had undertaken to keep the interior of the Property and all fixtures, fittings and appliances in good condition and repair.
- 3.4 In terms of Paragraph 6(d) of the lease, the Respondents were obliged to replace any missing furniture, furnishings, furnishings and effects or repair those damaged, failing which the cost to the Applicant of repair or replacement could be recovered from them.
- 3.5 In terms of Paragraph 6(g) of the lease, the Respondents were to leave any alterations made with the consent of the Applicant to the fixtures and fittings in a good state of repair.
- 3.6 In terms of Paragraph 6(t) of the lease, the Respondents were not to keep dogs in the Property without the Applicant's consent.
- 3.7 In terms of Paragraph 6(u)(iii) the Respondent was required to have the carpets professionally cleaned prior to leaving the property.
- 3.8 As of 6 December 2018, £2236.62 of rent had gone unpaid by the Respondents.
- 3.9 The Respondents had kept dogs within the Property, without the consent of the Applicant which had resulted in damage to the carpets.
- 3.10 The Respondents had removed wallpaper from within the living room and had repainted within the living room and bathroom, without the consent of the Applicant.
- 3.11 The Property required to be redecorated as a result of alterations made by the Respondents.
- 3.12 The kitchen cabinets had been damaged during the course of the lease.
- 3.13 The bath panel had been damaged during the course of the lease.

- 3.14 The hall cupboard door had been damaged during the course of the lease.
- 3.15 The oven had been damaged during the course of the lease.
- 3.16 The window in the back door had been damaged during the course of the lease.
- 3.17 Light switches and sockets had been damaged during the course of the lease.
- 3.18 The invoices, estimates and receipts lodged by the Applicant were a true reflection of the cost of necessary replacement or repairs of items damaged during the course of the lease.

4. Reasons for Decision

- 4.1 In the absence of the Respondents, the Tribunal proceeded on the basis of the papers before it and the verbal evidence and submissions of the Applicant. The Tribunal found the Applicant to be credible and accepted his descriptions of the Property at the commencement of and immediately following the lease.
- 4.2 As mentioned above, the claim is one of breach of contract. The Respondent was obliged to pay rent. The rent statement reflected the sum that went unpaid. As the deposit had been withheld by the Applicant, this was deducted from the arrears giving a sum of £1761.62 due to the Applicant.
- 4.3 The Respondents had breached their obligations in respect of maintaining the property. The oven was damaged during the lease. The Applicant had replaced it. As the oven was not new, being some years old, the Tribunal considers the Applicant to be entitled to 50% of the replacement value, being £60.00.
- 4.4 As the Applicant could not confirm what each of the individual items on the receipt from B & Q were, beyond the purchase of paint and a bath panel, the Tribunal only considered that £45.00 of the cost reflected on it was due to the Applicant.
- 4.5 The Tribunal had noted that the carpets replaced by the Applicant were not new. It could reasonably be expected that they were exhibiting some wear and tear, having been in situ for at least 4 years prior to the lease. The Tribunal considered the Applicant to be entitled to £400.00 of the cost of the new carpets together with the cost of fitting, being £186.00.
- 4.6 The Tribunal accepted the Applicant's position regarding the damage to the pane of glass in the back door. The cost of replacement was £216.48. The Applicant's position regarding the need for the Property to

be cleared was also accepted. The Tribunal noted that the relevant invoices were not proof of payment but that the Applicant could provide these if called upon to do so.

4.7 The Tribunal considered that the redecoration went somewhat beyond that which was needed at the end of the lease. The Tribunal however, also accepted that the majority of the work had been demonstrated to be necessary and, accordingly, found the Applicant to be entitled to £948.50 of the cost of the work. Again, the evidence of the cost was in the form of an estimate however, the Applicant confirmed that proof of payment could be provided.

4.8 In response to the direction issued by the Tribunal, the Applicant provided a bank statement, credit card statement and receipt. These documents verified that payment had been made to Alan Sheriff, Decorators, Graham Hygiene Services and Balhousie Glazing Limited. Accordingly, the sum of £4397.60 was due to 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

24 JUNE 2019

Date