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/18/3239

Re: Property at 2 Mugiemoss Drive, Bucksburn, AB21 9PF ("the Property")

Parties:

LAR Housing Trust, F3 Buchan House, Enterprise Way, Dunfermline, KY11 8PL ("the Applicant")

Mr Marc Anderson, 3 Oldcroft Gardens, Aberdeen, AB16 5US ("the Respondent")

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

This was a Case Management Discussion continued from 24th January 2019.The case management discussion had been continued to allow the Applicant to provide vouching for the payment of a deposit by the Respondent and also for the Applicant to provide written representations and evidence as to the basis of liability for the costs sought in respect of an invoice from Dave Grant Glazing for fitting a replacement door at the property and also an invoice from the Scottish Police Authority for expenses incurred following forced entry to the property by police.
The terms of the Case Management Discussion Note dated 24 January 2019 should be read along with this decision and are held to be incorporated by reference without further repetition of the terms.

Mr Doran, local agent for principal agents TC Young Solicitors, represented the Applicant at the continued Case Management Hearing. The Respondent who had attended the original case management hearing and been present when the date was

fixed did not attend. The Tribunal also noted that the Respondent had been written to on 21 February 2019 giving him further notice of the continued date and advising him that he required to attend. Mr Doran moved the Tribunal to proceed in his absence. Given the fact the Respondent was clearly aware of the date but had not attended, the Tribunal was prepared to continue in his absence in terms of Rule 29 of the Tribunal Rules of Procedure.

Case Management Discussion

The Applicant's representatives had lodged written representations setting out the basis upon which they sought a payment order against the Respondent. They had also lodged an email exchange between the Applicant's representatives and an officer from Police Scotland. As with all correspondence from parties the Tribunal noted that these had been sent to the Respondent.

Mr Doran submitted that as far as the request for a payment order related to unpaid rent the Applicant could revise the figure being sought taking account of the deposit paid by the Respondent and that this figure was now £1534.05, a lesser sum than originally sought. Mr Doran confirmed to the Tribunal that the figure now being sought corresponded exactly with the amount which the Respondent had confirmed was owed in rent at the previous case management discussion for the period from 1st April 2018 to 13 August 2018.This was also the amount set out on a schedule of unpaid rent lodged by the Applicant.

There appeared to be no dispute about this matter.

As far as the forced entry to the property was concerned Mr Doran referred to an email from an officer of Police Scotland, which appeared to confirm that police had executed a drugs search warrant at the property and that this had resulted in the finding of controlled drugs. The e mail indicated that the door had been forced at the property after repeated knocking had elicited no response. The email gave a crime reference number but no further information as to the nature of any controlled drugs found, where they were within the property or indeed whether any person had been the subject of a police report following execution of the warrant.

Mr Doran Referred the Tribunal to section 61 of the Civic Government (Scotland) Act 1982 which is set out here :

1Protection of insecure premises.

(1)Where—

(a) any premises have been left open, unlocked or otherwise insecure; and

(b)in the opinion of a constable, the insecurity of the premises is likely to conduce to the commission of an offence,

the constable may take such reasonable steps as he may consider necessary to make the premises secure.

(2)Any reasonable expense incurred by a constable in making any premises secure under subsection (1) above may be recovered by the Scottish Police Authority from the occupier (or, where there is no occupier, from the tenant or, where there is no occupier or tenant, from the owner) of the premises.

Mr Doran sought to recover the cost of the expenses incurred by the Scottish Police Authority on the basis of this legislation submitting that the police had clearly required to force entry and were entitled to seek recovery of reasonable expenses incurred in securing the premises. He referred to the invoice lodged by the Applicant from the Scottish Police Authority dated 19 September 2018 in the sum of £95.56.He advised that the landlord had paid this invoice and was now seeking to recover this from the Respondent.

The Tribunal noted that at the previous Case `Management Discussion that the Respondent had agreed that entry had been forced to the property by police on 6 July 2018 when he said that he had not been present. He had indicated that police were looking for his friend and had questioned whether the police should have contacted the landlord to effect entry and he questioned why he should be liable for the costs.

The Tribunal noted that there appeared to be no dispute that police had forced entry to the property during the Respondent's tenancy on 6th July 2018 when acting under the authority of a warrant, that damage had been done and the dispute appeared to relate to liability for the costs incurred.

Mr Doran submitted to the Tribunal that the Respondent was liable for both the cost of securing the door incurred by the Scottish Police Authority and the replacement door costing some £1100 on the basis of his contractual obligations within the tenancy agreement which he submitted had been breached He referred to clauses 11.4, 12.3 and 14.6 within the agreement, which had been produced and was signed by the Respondent. He submitted that the Applicant landlord who had paid these invoices was entitled to seek to recover these costs from the Respondent as the Respondent's breach of the terms of the tenancy agreement had brought about these costs.

Mr Doran referred to clause 11.4 of the agreement, which required the tenant (the Respondent) to take reasonable care of the accommodation, its fixtures and contents. He further referred to clause 12.3 of the agreement in which the Respondent had agreed to refrain from certain activities and to ensure those living with him or visitors to the property also refrained from these activities all of which were listed. He referred to clause 12.3 (iii) which effectively prohibited the use of the accommodation for illegal or immoral purposes including the using or selling of unlawful drugs or the selling of

alcohol. On the information provided by Police Scotland the Tribunal was being asked to accept that illegal activity had taken place due to the very fact of the finding of controlled drugs within the premises by police. Finally Mr Doran submitted that clause 14.6 of the agreement applied as this imposed liability on the Respondent for any repairs or replacement of fixtures, fittings and contents where the need for replacement or repair is attributable to the fault or negligence of the tenant or any person living with or visiting the tenant.

It was further submitted that in permitting controlled drugs within the property the Respondent had breached clause 12.3 of the agreement and because of the Respondent's behaviour the police required to force entry to the premises and in terms of clause 14.6 the Respondent had accepted liability for repairs or replacements which were attributable to his fault. There was a brief discussion of section 5 (2) of the Misuse of Drugs Act 1971, which makes it an offence to possess controlled drugs even if they are not being used or sold at the time they are found.

Mr Doran submitted that even if the Tribunal had regard to the Respondent's assertion at the previous Case Management Discussion that police were looking for his friend when they searched the property in terms of the warrant, that liability would still attach to the Respondent as there was no suggestion that the door of the property was in any way damaged before the police forced it so as occupier at the time the Respondent would have had control of the property and required to allow any others access to the property and on that basis liability could attach to him.

Mr Doran further advised that the landlord had required to pay the costs of £1100 and £95.56 and had been unable to claim any part of these costs on his insurance policy for the premises as these were deemed to be uninsurable losses.

The Tribunal was prepared to make a payment order in respect of the rent said to be lawfully due as this appeared not to be in dispute between the parties. This amounts to £1534.05.

The remaining sums sought fall to be considered with reference to the facts before the Tribunal in respect of the police visit to the property when they acted in terms of a Drugs Search warrant and forced entry to the property. The Tribunal accepted the information given on behalf of the Applicant to the effect that controlled drugs were

found at the property on 6th July 2018 and indeed this does not appear to be disputed by the Respondent who has had all of the documentation provided by the Applicants. No further information is known as to the finding of the drugs but the Respondent advised that he was not present at the time. It is clear from the terms of section 61 of the Civic Government (Scotland) Act 1982 that police can recover reasonable expenses in connection with the securing of premises from an owner, occupier or tenant. Here the landlord paid the invoice from the Scottish Police Authority and seeks to recover the amount paid by him for the cost of securing the door forced open by police and also the ultimate cost of replacing the door. The Respondent questioned his liability for these costs but then failed to appear for the subsequent case management discussion.

It appears that there is no dispute here on the costs occasioned by the execution of the drugs search warrant. Little is known regarding the circumstances around the finding of the controlled drugs but what is known is that the Respondent was the occupier and tenant of the property at the time of the search taking place and the controlled drugs being found. The Tribunal was advised that there was no sub tenant for the property. There is no suggestion that the property had been abandoned or was insecure at the time of the search in fact it is clear that the door had to be forced open by police so it appears reasonable to draw an inference from the evidence available that at the time of the search the occupier and tenant the now Respondent, was in control of access to the property. The Tribunal has no information as to who may have brought the controlled drugs into the property nor where they were found but it appears to be a reasonable inference to draw based on the evidence that even if these were brought in without the Respondent's knowledge by another party he must have had some part in allowing entry to that party given his control of the premises and the apparent lack of damage to the door before the police forced it open. The Tribunal also notes that when the Respondent appeared at the first case management Discussion he was clearly aware of the search and had not suggested that any person had gained access to the property without his knowledge or authority.

The Applicant relies on three clauses within the tenancy agreement to seek to suggest that the Respondent is liable for the repair and replacement invoices amounting to £1195.56.

The agreement in terms of clause 11.4 required the Respondent to take reasonable care of the property, fixtures and fittings belonging to the landlord during the period of the tenancy agreement. Clause 12.3 appears to impose a clear obligation on a tenant

not to carry out certain activities in the property and also imposes an obligation on the tenant to ensure that those living in the property or visiting do not do carry out these activities. The Applicant relies on this clause at 12.3(iii) to establish primary liability in this matter as this prohibits the use of the property for illegal or immoral purposes and includes the use of or selling of controlled drugs or alcohol. Although there is no evidence here of use of drugs or sale of drugs there is clear evidence that controlled drugs were within the property when the police searched it on 6 July 2018 and it is of course an offence to possess such drugs. Given the obligation on the Respondent within the tenancy agreement to ensure that others visiting or living there should not use the property for illegal purposes then the finding of drugs suggests in my view that he failed in that obligation in terms of clause 12.3(iii) either because he introduced the drugs himself or he allowed access to the property to another person or persons who brought the drugs with them. In my view the breach of clause 12.3 is established as the presence of the drugs is clear evidence of use of the property for illegal purposes.

In my view it follows that if clause 12.3 is breached by the Applicant due to his failure to comply with his obligations then he can also be said to be in breach of clause 11.4 of the agreement which is the duty to take reasonable care of the property, fixtures and fittings. The losses here in my view arise from the breach of obligation in that the Respondent has failed to ensure that no illegal activity has taken place at the property and has therefore exposed the property to the risk of entry by police, if necessary by force with the resulting requirement to make the door secure and ultimately replace the door itself. Clause 14.6 of the tenancy agreement also appears to be engaged here as this gives notice to the tenant of the property that cost of repairs or replacements occasioned by fault or negligence on the part of the tenant or anyone visiting or living there will result in liability for the costs of repair or replacement.

I therefore am of the view that in terms of the contractual clauses referred to above, namely 11.4 and 12.3(iii) the Respondent is in breach of the tenancy agreement and therefore is also liable for the costs for securing the door and replacing it amounting to £1195.56 for the reasons specified above.

Findings in Fact

1. The Applicants are landlords of the property and the Respondent was the sole tenant of the property in terms of a short assured tenancy.

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2. The tenancy ran from 8th September 2016 until 28th March 2017 and thereafter continued on a month to month basis until the Respondent vacated the property on 13th August 2018.

3. There are arrears of rent lawfully due to the Applicant in respect of the tenancy agreement covering the period from 1st April 2018 to 13th August 2008.These sums amount to £1534.05.

4. Police entered the property by force on 6th July 2018 during the Respondent's' tenancy at the property and found controlled drugs. They entered after repeated knocking failed to elicit a response. They entered by force which rendered the door insecure and it required to be replaced.

5. Police arranged for the door to be secured which incurred expense of £95.56.

6. The Applicant has paid the outstanding costs of £1195.56 in respect of securing the door and replacing it.

7. The Respondent failed to ensure that illegal activity did not take place at the property and is thus in breach of the tenancy agreement in particular clauses 11.4 and 12.3(iii).

Reasons for Decision

Rent is lawfully due by the Respondent to the Applicant in the sum of £1534.05. The remaining costs in the sum of £1195.56 are due by the Respondent who failed to fulfil his obligations under the lease which resulted in police entering the property by force. Damage was occasioned as a result and the door required to be replaced and the property secured which also incurred expense. The Respondent by failing to comply with his obligations under the lease is liable for these costs.

Decision

The Tribunal Makes a payment order in the sum of £ 2729.61in favour of the Applicant to be paid by the Respondent.

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.

V Bremner

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Legal Member/Chair

15th March 2019

Date