



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/CV/19/0842**

**Re: Property at 19A Afton Road, Stevenston, KA20 3HA (“the Property”)**

**Parties:**

**Europe & Jersey Estates Ltd, 30 East Main Street, Darvel, KA17 0HP (“the Applicant”)**

**Mr Ian Lewis, 73B Donaldson Avenue, Stevenston, KA20 4DN (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

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

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

**BACKGROUND**

1. By lease dated 30 April 2018 the Applicant let the Property to the Respondent;
2. The rent payable was £350.00 per calendar month;
3. The Respondent vacated the Property during October 2018 but no later than 7 October 2018;
4. The Respondent did not provide the Applicant with any notice of his decision to leave the Property;
5. Prior to the Respondent vacating the Property, his rent had, until latterly, been paid by, or with the assistance of, housing benefit. By 7 September 2018, however, his housing benefit had been cancelled. No rent was paid for the month of September 2018, nor were any further rental payments made by the Respondent;
6. The Applicant seeks payment of 2 months rent, being the rental payments due for September and October 2018;

7. In addition, the Applicant asserts that the Property was left in an untidy state with unwanted belongings and rubbish left behind. The Applicant seeks payment for the cost of removing such items and repainting the Property;

## **THE CASE MANAGEMENT DISCUSSION**

8. The Applicant, being a Limited Company, was represented at the Case Management Discussion by Kenneth Johnstone, Director;
9. The Respondent was personally present;
10. The Tribunal dealt with the Application in two parts, the claim for rent and the claim for cleaning / repairs;
11. In relation to the rent due, the Applicant sought payment of 2 months rent for September and October 2018, being £700.00 in total. The Respondent disputed this claim. The Respondent maintained that he had given notice of the termination of the tenancy to Mr Johnstone by telephone. He did not recall exactly when he called him. He indicated that he normally recorded his telephone calls but had not retained the recording of that one. He believed he had moved out of the Property "about 28 September" 2018;
12. Mr Johnstone, for the Applicant, was quite clear about matters. There was no call advising the tenancy was being terminated. The Respondent never called him. He never had credit in his phone to do so. The Respondent regularly changed telephone number also. Mr Johnstone would often ask his new number when attending with him. He advised that when he attended at the Property he would normally find the Respondent outside it, at the front against the railings there. The Respondent was definitely still there at the start of October 2018 as Mr Johnstone seen him there and had a discussion with him about his benefits which, at the time, were being changed from Employment Support Allowance to Universal Credit and there would be an effect on housing benefit payments too;
13. The Tribunal allowed Mr Lewis to comment on what had been said. He had nothing more to add. He confirmed, however, that he would not have any witness to the fact he had called Mr Johnstone to end the tenancy, and he had no recording of the call. In the circumstances, there would be no benefit in arranging a Hearing as nothing further would be added;
14. The Tribunal determined that there would be no additional benefit in assigning a hearing to determine the disputed facts. On the basis of the information provided at the Case Management Discussion, the position of the Applicant was to be preferred. Mr Johnstone gave clear information about the matter. What he explained was credible and, aside from the Respondent's own comments, which were vague in detail and unsupported in any other way, there was nothing else to dispute what was said on behalf of the Applicant;
15. The Respondent was unable to provide any information in relation to housing benefit. He did not, however, suggest that the failure to pay rent was as a result of and delay or failure in payment of that. Indeed, he advised that when he vacated the Property he secured alternative accommodation and he thinks he asked for his housing benefit to be applied to the new tenancy he had;
16. In the circumstances, the Tribunal decided that it would order the Respondent to make payment of £700.00, being two months rent;

17. In relation to the amount claimed for cleaning / repairs, the Tribunal enquired as to the legal basis of this claim. The lease did not appear to provide for this part of the claim;
18. Mr Johnstone drew attention to clause 16 which provides that the respondent shall "ensure the Let Property and its fixtures and fittings are kept clean during the tenancy", to clause 17, under the sub heading of "PAYMENT FOR REPAIRS" that "The Tenant will be liable for the cost of repairs where the need for them is attributable to his or her fault or negligence...";
19. The Applicant also produced a set of 8 photographs taken after the respondent had vacated the Property showing the Property, in certain parts, as being unclean, untidy and with litter left behind;
20. The Applicant also produced an amended invoice for the cost of cleaning / repairs showing a breakdown of the separate costs of work undertaken as follows:-
- |          |   |                |
|----------|---|----------------|
| Painting | - | £185.00        |
| Cleaning | - | £ 75.00        |
| Removal  | - | <u>£122.00</u> |
| Total    | - | <u>£382.00</u> |
21. In relation to the painting component, the Applicant advised that this was required as the Respondent had a pedal cycle which he clearly kept in the Property. The rubber grips on the handlebars had made numerous marks on the walls throughout the property which necessitated repainting of the walls. The Respondent did not dispute this;
22. The Tribunal decided that it would order the Respondent to be responsible for the cost of painting the walls of the Property, but not the cost of cleaning and removing items. The Tribunal, therefore, ordered the Respondent to make payment of £185.00 over and above the order for payment of rent referred to at paragraph 16 above;
23. The total amount ordered to be paid by the Respondent was £885.00. The Tribunal enquired as to whether the Respondent wished to seek time to pay this amount. He declined, saying he could not afford to pay anyway and would end up "going bankrupt". In the circumstances, no time to pay direction could be made;

## **FINDINGS IN FACT**

24. The Tribunal found the following facts to be admitted or proved:-
- i. By lease dated 30 April 2018 the Applicant let the Property to the Respondent;
  - ii. The rent payable was £350.00 per calendar month;
  - iii. The Respondent vacated the Property during October 2018 but no later than 7 October 2018;
  - iv. The Respondent did not provide the Applicant with any notice of his decision to leave the Property;
  - v. Prior to the Respondent vacating the Property, his rent had, until latterly, been paid by, or with the assistance of, housing benefit. By 7 September 2018, however, his housing benefit had been cancelled. No rent was paid for the month of September 2018, nor were any further rental payments made by the Respondent;

- vi. The failure to pay rent was not due to any delay nor failure in the payment of housing benefit nor any other relevant benefit;
- vii. Damage had been caused to the internal walls of the Property by a pedal cycle owned by the Respondent. The cost of repairing this damage was £185;

## **DECISION**

The Tribunal granted an order against the Respondent for payment of sum of EIGHT HUNDRED AND EIGHTY FIVE POUNDS (£885.00) STERLING 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.

# **V Crawford**

**1 July 2019**

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**Legal Member/Chair**

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**Date**