



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

Chamber Ref: FTS/HPC/CV/19/2251

Re: Property at 55 Dalriada Crescent, Motherwell, ML1 3XT (“the Property”)

Parties:

Mr James Horley, 65 Cilfynydd Road, Pontypridd, CF37 4NH (“the Applicant”)

Miss Aimee Cooper, 6F Dunrobin Place, Coatbridge, Lanarkshire, ML5 1RQ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

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

1. Background
2. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of the sum of £2,232.34 to the applicant in relation to rent arrears due by the respondent together with expenses and interest.
3. The application contained:-
 - a copy of the tenancy agreement,
 - housing benefit decision notice
 - housing benefit schedule of payments
 - invoice from Lanarkshire Letting
 - invoice from E Palombo Ltd
 - invoice from Stirling Park LLP

- Photographs of the property before and after repair.
4. On 18 September 2019 a case management discussion took place which was attended by the applicant's solicitor and the respondent. Reference is made to the full terms of that case management discussion notice. The respondent indicated that she was opposing the application. The decision of the hearing was that the case would be sent to a full hearing on 11 November 2019. The applicant's solicitor subsequently withdrew from acting. The hearing was adjourned to 23 December 2019. Notification of today's hearing had been sent to the respondent.
 5. At today's hearing the applicant was represented by his father, Mr Stephen Horley. There was no appearance by the respondent. The tribunal was prepared to proceed with the hearing in the absence of the respondent.
 6. Hearing
 7. The applicant's representative confirmed that he was seeking an order for payment of the rent and sums for repair works which had been required to be carried out to the property.
 8. He referred the tribunal to the tenancy agreement and the housing benefit statements. He advised that rent was to be paid £450 every four weeks. There was a shortfall in the four weekly rent paid. The housing benefit awarded was £396.24 (every four weeks) and the respondent had never paid any top up to meet the full rent due. He advised that the respondent had been in receipt of housing benefit since the tenancy commenced in 26 February 2018 until he was given the keys back on 12 November 2018. He advised that she had never paid the shortfall. He advised that the tenant had been short of at least 9 (4 weekly) payments of £53.74. He advised that the total sum for rent due was therefore £483.66.
 9. The applicant's representative then proceeded to take the tribunal members through the sums sought for damages. He referred to the tenancy agreement, the invoices he had submitted from Lanarkshire Letting and E Palombo Ltd, together with photos of the property after the tenant had left the property and also, the photos of the property after the repairs works had been carried out to the property.
 10. He advised that the property had been bought shortly before the respondent took the tenancy. He advised that the property was in a good state of repair when bought, other than it needed to be redecorated and new flooring. The respondent had already rented two earlier properties from the applicant; she was looking for a ground floor flat; and she was keen to take entry as soon as possible. He agreed with her that she would decorate and put down flooring in the property; and he would update the bathroom and have the boiler overhauled.

11. He advised that when she left the property there were numerous holes in various rooms, skirting had been removed, wall and bath panels had been removed. Tiles were missing. This damage had occurred as the tenant had had a snake in the house which had escaped; in order to find the snake the tenant and family members had made holes in walls, removed facings etc. He referred to the photos showing the damage sustained and also to the photographs showing how it had been made good.
12. He advised that the couch he had supplied with the tenancy had been damaged by the tenant's dogs. He advised that couch was only a year old.
13. He advised that the property had been dirty when the tenant had left the property. He advised that there was mess from the dogs. He advised that he had to have it deep cleaned. He had instructed two persons to enter the property and carry out the deep clean. He advised that the walls and the floors had been bleached to clean the house.
14. He advised that when the tenant took entry of the property he had had the electrical works (necessary to rent the property out safely) carried out. He advised that the smoke detectors, CO monitor and one wall socket had been damaged by the tenant. He referred to photos in support of this claim and referred to the invoice from the electrical contractor detailing the repairs works carried out.
15. He advised that he sought recovery of a tracing fee to identify the up-to-date address of the respondent.
16. He also sought expenses for having to instruct a solicitor, he advised that the respondent's mother would not allow him to speak directly to the respondent about the sums due to the landlord and therefore he had had to instruct solicitors to bring the application to the tribunal. He advised that he was no longer seeking interest on the sum sued.

17. Findings in Fact

18. The Tribunal found the following facts to be established:
19. A tenancy agreement was entered into between the Applicant and the Respondent for the property and existed between the parties. It was entered into on 26 February 2018.
20. Rent in the tenancy agreement was £450 and it was due 4 weekly. It was payable in advance.
21. That the housing benefit statement invoice showed that housing benefit of £396.24 would be paid four weekly from 20 May 2018 with two payments of £792.48 and £21.24 being paid for the period from 26 February 2018 until 20 May 2018.

22. The tenancy ended on 12 November 2018.
23. That there had been damage to the property as shown in the photographs lodged with the application.
24. Reasons for Decision
25. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private residential tenancies.
26. While the tenancy agreement consisted of one page only, as it had been granted after the Private Housing (Tenancies) (Scotland) Act 2016 had come into force, we were content that the mandatory conditions contained in the Scottish Government's model tenancy agreement applied. We considered that a tenancy agreement existed between the parties.
27. Further, we found that this tenancy is a private residential tenancy the tribunal is content that we have jurisdiction to deal with this case.
28. The tenancy agreement created obligations between the parties, one of those obligations was to pay rent, and the respondent failed to pay the top up rental which was due over and above the housing benefit which was being paid for the property.
29. There appeared to have been damage sustained to the property as shown in the photographs which had been submitted by the applicant. The applicant's agent gave evidence as to the condition of the property before he had let it to the respondent, and he described the photographs that he had lodged in support of the application, showing the damage sustained and the repairs carried out. We also had regard to the invoices submitted in support of the costs which had been expended in carrying out the repairs works.
30. We found that there had been damage to the property, that the repairs had been done and that the clause 17 of the Scottish Government's model tenancy agreement regulated the tenant's responsibilities under the agreement. We considered that she had a duty to take reasonable care of the property, including to keep it clean and tidy. Accordingly, subject to the terms of the following paragraph, we were prepared to award the applicant costs for the damage.
31. We did not consider that there was sufficient evidence provided to us to enable us to find that the £160 of costs were incurred for the repairs to the skirting to the cupboards; and on that basis we award £40 only for that repair. We considered that while there should be some award for the cost of the couch; we did not have any evidence as to the cost of the couch when new; we consider that a deduction for fair wear and tear would be required; we were not directed to the basis of how this liability fell to be quantified, and so we

are prepared to award £50 only for this item. While we are prepared to make an award for the cleaning of the property, we are not prepared to award for the "deep clean", we noted that the applicant's agent was unable to provide any detail about the manner of the cleaning, other than that it had been to the walls and floors and they had been bleached; and therefore we are prepared to award £100 only. On that basis, for the damage we are prepared to award £708 only for the invoice from Lanarkshire Letting. We are prepared to award in full for the electrical works.

32. We are not prepared to make any award for the trace, as it is not covered by the tenancy agreement. Again we are not prepared to make any award for expenses as they are not included in the tenancy agreement and further we do not consider that they meet the test for awarding expenses as set out in Rule 40 of the Tribunal Rules.

33. On the basis of the evidence submitted and having regard to all papers submitted including the application, we consider that we should make an order for the amended sum of £1,713.66.

34. Decision

35. I grant an order in favour of the Applicant for Sum of ONE THOUSAND SEVEN HUNDRED AND THIRTEEN POUNDS SIXTY SIX PENCE (£1,713.66) STERLING

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.

Melanie Barbour

Legal Member/Chair

23. 12. 19

Date