



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/21/0401

Re: Property at 3 Willow Road, Dalkeith, EH22 5LN (“the Property”)

Parties:

Mr Johnson MacIntyre, 55 McKinnon Drive, Dalkeith, EH22 5RF, as having power of attorney for Mrs Louise McIntyre, 7 Easterhouses Road, Dalkeith, EH22 4DH (“the Applicant”)

AM Lettings Limited, 11 South Street, Dalkeith, EH22 1AH (“the Applicant’s Representative”)

Mr David Davies and Mrs Kimberley Davies nee Simpson, 70 Walden Terrace, Gifford, Haddington, EH41 4QP (“the Respondents”)

Tribunal Members:

Ms. Susanne L. M. Tanner Q.C., Legal Member

Mr. Ahsan Khan, Ordinary Member

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents should pay to the Applicant the sum of TWO THOUSAND SEVEN HUNDRED AND EIGHTY FIVE POUNDS AND SIXTY PENCE (£2785.60) STERLING; and made an order for payment by the Respondents to the Applicant.

Reasons

1. On 18 February 2021, the Applicant’s Representative made an application to the tribunal under Section 16 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and

Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”).

2. The Applicant originally sought a payment order in the sum of £3294.60, in respect of rent arrears of £90.60 and remedial works in the sum of £3204.00, but this was amended downwards during the hearing on 15 June 2021, as referred to below.
3. The Applicant’s Representative lodged:
 - 3.1. A short assured tenancy agreement between Louise McIntyre c/o the Applicant’s Representative and the Respondents, dated 5 June 2016;
 - 3.2. A letter of authority from the Applicant, John MacIntyre authorising the Applicants’ Representative to act for him;
 - 3.3. A trace report in respect of the Respondents;
 - 3.4. A letter from the Applicants’ Representative to the Respondents dated 16 September 2020, in respect of the end of tenancy arrangements;
 - 3.5. An inventory dated 17 June 2016;
 - 3.6. A final check out inspection dated 28 October 2020;
 - 3.7. An email from the Applicants’ Representative to the Respondent, Kimberley Davies, dated 10 February 2021 in respect of rent arrears and end of tenancy checkout report;
 - 3.8. Two invoices from MG Maintenance services dated 24 November 2020 and 6 December 2020;
 - 3.9. Invoice from AM Lettings to Applicant Louise McIntyre dated 1 May 2020;
 - 3.10. Quotation from Lothian Glass dated 11 December 2020; and
 - 3.11. Images of Property before and after tenancy (undated).
4. On 23 February 2021, the tribunal’s administration obtained a Sasine search sheet for the Property, which contains details of a disposition dated 31 August 2012 by Johnson MacIntyre and Julie Bernadette MacIntyre, to Johnson MacIntyre to extent of 1% pro indiviso and Julie Bernadette MacIntyre, to 99% pro indiviso.
5. On 9 March 2021, the tribunal requested further information from the Applicant’s Representative, namely: a home address for the Applicant; clarification as to the tenancy being granted by Louise McIntyre; an explanation as to the rent arrears claimed; an enquiry about the deposit and whether it has been claimed by the Applicant to reduce the sum sought.
6. On 9 March 2021, the Applicant’s Representative responded as follows: an address was provided for the Applicant; the Representative advised that Louise McIntyre is the Applicant, John MacIntyre’s mother; and an explanation as to the rent due and deposit received, leaving a balance of £90.60 rent arrears.
7. On 22 March 2021, the tribunal requested further information from the Applicant’s Representative in relation to the Applicants’ title and interest to make the

Application; and requesting the Representative to confirm whether Louise McIntyre was to be added as an Applicant.

8. On 22 March 2021, the Applicants' Representative requested that the Application be amended to add Louise McIntyre as an additional Applicant; and an amended page of the Application form was provided.
9. On 30 March 2021, the Applicant's Representative provided a copy of the Power of Attorney in respect of Louise McIntyre dated 25 February 2020, and Certificate of Registration of Power of Attorney dated 12 November 2020, conferring a continuing and welfare power of attorney on Mr Johnson MacIntyre.
10. It is noted by the tribunal that in the Power of Attorney documentation Mr Johnson MacIntyre has a different spelling of his surname from Ms Louise McIntyre and the same approach to spelling has been adopted throughout this decision.
11. On 31 March 2021, the Application was accepted for determination.
12. A CMD teleconference was fixed for 17 May 2021 at 1400h by teleconference and both parties were notified by letter dated 15 April 2021 of the date, time and joining details. The Respondents were invited to make written representations in response to the application by 6 May 2021. Both parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application, which may involve making or refusing a payment order. The application and the CMD notification were successfully served upon both Respondents by Sheriff Officers depositing the same in the letterbox at 70 Walden Terrace, Gifford, Haddington, EH41 4QP, having reasonable grounds for believing that the Respondents are resident at the said address.
13. A Case Management Discussion took place on 17 May 2021 at 1400h by teleconference. Ms Jacqueline Barr from the Applicant's Representative attended. The Respondents did not attend. The tribunal chair was satisfied that the requirements of rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it. Reference is made to the Notes on the Case Management Discussion which were sent to parties.
14. A hearing was fixed for 15 June 2021 at 1000h by teleconference in order that the issue of title and interest could be addressed; to allow the Applicants' Representative to produce additional evidence in support of both heads of claim; and to consider the evidence the Applicants' Representative wished to lead and submissions she wished to make in support of the heads of claim for rent arrears

and remedial works. The Applicants' Representative was notified of the date and time of the hearing at the CMD.

15. The date, time and arrangements for the hearing were notified in writing to the Applicant's Representative and to the Respondents.

16. The Applicant's Representative lodged a numbered bundle of productions prior to the hearing. She also confirmed that she wished to amend the Application to remove the first two Applicants and to proceed in the name of Mr Johnson MacIntyre as power of attorney for Mrs Louise McIntyre.

Hearing: 15 June 2020 at 1000h by teleconference

17. Ms Jacqueline Barr from the Applicant's Representative attended.

18. The Respondents did not attend. A Hearing notification letter dated 20 May 2021 had been sent to the Respondents. The tribunal chair was satisfied that the requirements of rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.

Title and Interest

19. Ms Barr confirmed that she wished to amend the Application to change the Applicant to Mr Johnson MacIntyre, 55 McKinnon Drive, Dalkeith, EH22 5RF as having power of attorney for Mrs Louise McIntyre, 7 Easterhouses Road, Dalkeith, EH22 4DH. She stated that the Property owners are Johnson MacIntyre and Julie MacIntyre and that their consent was given to Mr MacIntyre's mother, Ms Louise MacIntyre to let the property to the Respondents. Ms Barr stated that the Applicant's Representative originally entered into terms of business with Mrs Louise McIntyre and that she now takes instructions from Mr Johnson MacIntyre, who has power of attorney over his mother's property affairs.

20. The tribunal allowed the Application to be so amended.

Rent arrears (£90.60 claimed)

21. The Applicants seeks rent arrears of £90.60, which represents the balance of rent arrears from 17 September to 26 October 2020, less the £700 deposit money which was paid by SDS, the deposit protection company to the Applicant.

22. A rent statement has been produced for the period in respect of which rent arrears have been claimed (Number 40), as evidence in support of that head of claim.

Remedial works (£2695.00 claimed, as amended)

23. The Applicant originally sought £3204.00 for remedial works, for which it is alleged the Respondents are liable but this was amended downwards to £2695.00 during the hearing, as noted below.

24. The tribunal noted that the invoice produced for the replacement mirrored doors (number 41) is for the sum of £300.00 as opposed to the quotation originally lodged for £549.00 in support of a claim for £549.00. The Applicant's Representative amended the sum claimed downwards to £2955.00 to reflect this.

25. During evidence and submissions, the tribunal permitted the Applicant's Representative to have a short adjournment to clarify some matters relating to breakdown of the costs with the contractor who carried out the works.

26. Following her discussion with the contractor, the Applicants' Representative further amended the sum claimed downwards by £260 (in relation to electrical works, as noted below), to give an amended sum claimed of £2695.00.

27. The items making up the remedial works are as follows:

Supply and fit 3 internal doors (£375.00 claimed)

28. Ms Barr adopted what was said at the Case Management Discussion. She stated that she carried out the end of tenancy inspection and that the place was trashed and disgusting. She stated that there were holes in the three doors at the end of the tenancy. The doors were incapable of repair and had to be replaced. The Respondents had left by the time of the end of tenancy inspection.

29. Ms Barr referred to photographs 2, 3 and 18 which show the damage to three doors: the bathroom, a bedroom and a cupboard.

30. The ordinary member asked Ms Barr to confirm whether the works had been carried out and the costs had been incurred. Ms Barr confirmed that they had. Ms Barr stated that MG Maintenance Services are a contractor that her firm has used for several years. She trusts them and has not had any issues with them. She stated that there were no competitive quotes obtained for the works. The amount claimed for is for the supply and fit of 3 internal doors.

31. In relation to the doors used for replacement, Ms Barr stated that they were unable to get doors to match the plywood doors and they have all been replaced by white doors. She stated that she has recently purchased similar doors for another property from another contractor and she is not concerned about the price for these doors being too high.

32. Following a discussion with the contractor, Ms Barr confirmed that there were three doors which were replaced. The cupboard door had to be cut to size. The labour for the bedroom and bathroom doors was £60.00 each and for the cupboard door it was £90. The cost of the doors was approximately £45.00 each, plus ironmongery and hinges at £30.00 inclusive. The total claimed for supply and fit of the three doors is £375.00.

Supply and fit replacement locks to front and back doors (£120.00 claimed)

33. The Applicant is claiming for replacement locks for the front and back doors. Ms Barr adopted what had been said at the CMD, in that the Respondents put a key through the letterbox at the office two days after the end of the tenancy. They only returned one key. Invoice 39 shows the cost of replacement locks as £120.00.

Remove laminate (£60.00 claimed)

34. Ms Barr stated that the Respondents had fitted laminate in place of the carpets which were supplied at entry and that it had to be removed at a cost of £60.00. She referred to Invoice number 39 in support of the claim for £60.00.

Carpet in lounge (£130.00 claimed)

35. Ms Barr stated that the carpet in the lounge was new when the tenants moved in and it required to be replaced after the laminate was removed. She referred to Invoice number 39 in support of the cost for the replacement of the carpet. She also referred to the inventory at check in which says "very good". She stated that the inventory had been typed by someone else. She stated that she would have said "new", as from memory the property was painted and the carpets were replaced before the tenants moved in.

Supply and fit two spindles broken on the staircase (£75.00 claimed)

36. Ms Barr stated that two spindles on the staircase were broken and required to be replaced. She referred to Photograph number 1 and Invoice number 39. She stated

that she did not know the breakdown between the cost of spindles and labour. Following her discussion with the contractor during the hearing, she advised that she had been told that the spindles had to be shaped. The labour was £60.00 and the materials were £15. His normal rate is £35.00 per hour. He also had to drive somewhere to collect these items, for which he had made no charge.

Supply and fit replacement door frames chewed by dog (£200.00 claimed)

37. Ms Barr stated that the door frames had been chewed by a dog and were unable to be repaired. She stated that there were two door frames which required to be replaced. The tenants did not have permission for a dog. She stated that the two door frames were replaced in their entirety.

38. She referred to Photograph numbers 4 and 25 and Invoice number 39 in support of the claim.

Property clean, including oven and garden tidy (£165.00 claimed)

39. Ms Barr adopted what was said at the CMD, in that the oven was purchased in April 2020 and had never been cleaned. A document has been produced to prove that the oven was purchased in April 2020. The short assured tenancy clause 8.1 is being relied upon. She stated that the garden was a disaster. There were tyres in the front garden. It was unweeded. The Respondents were responsible for the garden in terms of Clause 14.1 of the tenancy agreement. She alleged that the garden was not maintained in a reasonable manner.

40. In support of the sum claimed, she referred to Photograph number 27 (the oven) and Invoice number 39. In response to a question from the tribunal she stated that she did not know how long the cleaning and gardening took as the information was not included on the invoice. She submitted that the cost was reasonable for the work which was required.

Removal of belongings in and outside the property; and electrical works (£1270 claimed, as amended)

41. Ms Barr stated that there had to be removal of items from inside the property and in the garden, including removal of waste and a dog kennel from the back garden (which had electrics connected to it). There were 14 gas canisters left which are shown in an image. Ms Barr stated that the contractor also supplied and replaced electrical sockets and detectors. The total for all works was £1530.00.

42. Following the CMD, Ms Barr submitted a breakdown of £530.00 for the electrical works and £1000.00 for the remainder of works on the invoice.
43. In answer to questions from the tribunal, Ms Barr stated that the electrical works included replacement of four sockets and the installation of a heat and smoke detector, at a cost of £530.00. She accepted that it seemed quite a high cost for the works. She stated that she had just asked the contractor for a breakdown of the price and he had said £530.00 for the electrical works and £1000.00 for the clearance works.
44. Following an adjournment in which Ms Barr discussed the works and invoice with the contractor, she stated that he told her that he charges £35 per hour. He stated that the cost for supply was approximately £80.00 per alarm, times two, and four sockets at a total cost of £40.00, totalling £200.00 plus fitting of two hours at a cost of £70. That totals £270, not £530 as shown on the invoice or claimed. She stated that he had also told her that he fitted two pendants but these were not mentioned on the invoice. There was no claim for replacement pendants included as part of the Application.
45. The claim was amended downwards to £270 (instead of £530) for this part of the remedial works head of claim.
46. In relation to the £1000.00 claimed for house and garden clearance, Ms Barr initially stated that the contractor spent a couple of days at the property. She stated that there was a lot of work in the back garden. The dog kennel had electric wiring and was attached to the wall. The shed was completely full. There were disposal costs as well as the contractor's labour. There was a couch left in the bedroom. There was a TV left. The work was mainly at the back and there is only a lane at the back so everything has to be brought through the house to get to the front. She submitted that compared with other jobs at other properties she does not think that it was excessive. She stated that a normal charge for a cleaner is £200 or £300 but that it depends upon the property.
47. After the adjournment in which Ms Barr discussed the clearance work with the contractor, she advised that he had spent four days and that he had to get a second man to assist at a cost of £250.00 to help with taking some of the stuff away on the last day. She stated that the dog kennel was full of dog waste. The cost was £35 per hour for one man with a van for 7 hours per day for four days (28 hours) at £35 per hour, plus the cost of £250 for the second man with a van on the last day. She stated that there were also costs for disposal but that she did not have details of those. When a calculation was done, it came to more than £1000.00 as claimed. She stated that she has been a letting agent for 17 years and submitted that the cost was not unreasonable. She stated that she was satisfied with the level of information provided by the contractor on the invoice. She had seen the Property

and had been on the phone to the maintenance contractor during the remedial works. She said that as a result of her experience she can compare the cost with other properties. She stated that she had a quote for a property in Fife this week and it was over £1000.00.

Smashed wardrobe door in master bedroom (£300 claimed, as amended)

48. Ms Barr stated that this claim was in respect of a mirrored wardrobe door and the mirrored section was smashed. A quotation had been produced but that was superseded by an invoice (number 41).

Discussion

49. The tribunal considered the heads of claim for rent arrears and remedial works.

50. In respect of rent arrears, the tribunal was satisfied on the balance of probabilities that the Respondents were liable to the Applicant for rent arrears in the sum of £90.60, having taken into account the £700.00 deposit which had already been paid to the Applicant following the end of the tenancy.

51. In respect of remedial works, the tribunal was satisfied on the balance of probabilities that the Respondents were liable to the Applicant for all items of remedial works as claimed. In respect of the amounts claimed for each item of remedial works, the tribunal was satisfied that the sums claimed (as amended) were both proved by evidence as having been incurred by or on behalf of the Applicant and that said sums were reasonable. The tribunal was therefore satisfied that the Respondents were liable to the Applicant for the sum of £2695.00 for remedial works.

52. The tribunal made an order for payment by the Respondents to the Applicant for the total amount of **£2785.60** in respect of rent arrears and remedial works.

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.



15 June 2021

Ms. Susanne L. M. Tanner Q.C.
Legal Member