



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) 2016 Act

Chamber Ref: FTS/HPC/CV/20/1902

Re: Property at 86 Almond Street, Grangemouth, FK3 8LU (“the Property”)

Parties:

Mrs Louisa Rutherford, c/o RGM Solicitors, 9 La Porte Precinct, Grangemouth, FK3 8AZ (“the Applicant”)

Miss Lisa Cochrane, 154 Kingseat Avenue, Grangemouth, FK3 0AE (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears along with damages in regard to breaches of the Tenancy agreement. The tenancy in question is a Private Residential Tenancy Agreement of the Property by the Applicant to the Respondents dated 22 August 2018 and with start date on that same date (“the Tenancy”).
2. The application was dated 9 September 2020 and lodged with the Tribunal on that date. The order sought in the application was for £4,860.02, said to be £2,975 of rent arrears and costs of “cleaning and repairs” (arising from the breaches) of £1,885.02, all as at the end of the Tenancy on 1 July 2019. The

lease for the Tenancy accompanied the application and bore a rental payment of £425 per month, payable on the 22nd of each month.

3. Further to information requests that I made to the Applicant's solicitor prior to the case management discussion ("CMD"), as at the date of CMD the Applicant now sought £4,527.60, being £2,550 of rent arrears and costs of cleaning, repairs and a trace report totalling £1,977.60.

The Hearing

4. On 20 October 2020, at a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber assigned for 10:00, conducted by the remote telephone conference call, there was an appearance by Yuliia Waiss, solicitor from RGM Solicitors, for the Applicant.
5. There was no appearance by the Respondent (that is, no call was placed into the telephone conferencing facility by the conclusion of the call at 10:21). The Applicant's agent stated that no contact had been received from the Respondent since the commencement of the application.
6. The report from the Tribunal's Sheriff Officer – further to intimation of the CMD on the Respondent – stated that the Respondent had said that she disputed the claim and would be lodging written submissions and attending the CMD. No details of the proposed defence was contained in the Sheriff Officer's report however. The clerk confirmed that no contact had been received by the Tribunal from the Respondent. In the circumstances, having waited until 10:08 to commence the CMD and, with no attempted contact from the Respondent during the call, I was satisfied to proceed in the absence of the Respondent.
7. I sought further information from the Applicant's agent on all aspects of the claim as now before the Tribunal. In regard to the arrears, a revised payment schedule was provided to the Tribunal by emailed letter on 8 October 2020. It was not entirely clear to follow, but set out that by the final month's rent due on 22 May 2019, the Respondent had missed six months' of payments; from December 2018 to end of the Tenancy. This amounted to £2,550. The Applicant's agent confirmed in the application papers that a deposit for £425 had been paid by the Respondent and now uplifted by the Applicant. Further to my questions, the Applicant's agent conceded that this deposit sum fell to be deducted against the rental arrears, reducing these to £2,125.
8. In regard to the damages claims, they were made up of three invoices (other invoices and amounts having been referred to in the application but no longer insisted upon):
 - a) £1,767.60 being an invoice of £1,473.00 plus VAT from CAMS Construction for work: changing locks; repairing doors and ironmongery on doors; and "to decorate all internal walls, woodwork and doors".

The emailed letter of 8 October 2020 set out that, on retaking possession, the Applicant had found that the Property was left in a “damaged state whereby every internal door in the property had been punched or kicked which resulted in holes being in each door” with repairs necessary to all the internal doors, plus a lock change on the external door.

The Applicant’s agent confirmed that no photographs were available and evidence on this head of claim, and the next head of claim, all relied on the statements in application papers and responses to the further information requests.

I pressed the Applicant’s agent on what had necessitated redecoration of “all internal doors, [and] woodwork” where the application had only referred to the locks and doors. She submitted that all the walls were scuffed and damaged. She reported that, in the opinion of the Applicant, his contractor, and his cleaner, the condition of the Property was beyond that of normal wear and tear.

- b) £180 being cleaning costs paid to Tip Top of Bo’Ness. A breakdown of the work undertaken was provided with the emailed letter of 8 October 2020 setting out a full clean of the entire Property (which was a two-bedroom property).

The reason for the cleaning was, as per the previous head of claim, the condition in which the Respondent was said to have left the Property and, again, no photographs were available.

- c) £30 being an invoice from Alex M Adamson Sheriff Officers for £25 plus VAT to trace the new address of the Respondent prior to raising the application.

- 9. The application did not seek any order in respect of expenses or interest at any contractual rate. The Applicant’s agent confirmed she did not seek expenses but did seek interest at 8% from the date of any decision.

Findings in Fact

- 10. On 22 August 2018, the Applicant let the Property to the Respondent by a Private Residential Tenancy with a start date of 22 August 2018 (“the Tenancy”).
- 11. Under clause 7 of the Tenancy, the Respondent was to make payment of £425 per month in rent to the Applicant on the 22nd of each month.
- 12. Under clause 10 of the Tenancy, the Respondent was to make payment of £425 as a deposit at the outset of the Tenancy. The Respondent made this payment.
- 13. The Tenancy ended on or about 1 July 2019.

14. As of 1 July 2019 there was unpaid rent of £2,550 due by the Respondent to the Applicant in terms of the Tenancy, being rent arrears accrued from December 2018 to May 2019.

15. The Applicant uplifted the said deposit of £425 and applied it against the said arrears, leaving an unpaid balance of rent arrears of £2,125.

16. Clause 16 of the Tenancy agreement contains the following provision:

The Tenant agrees to take reasonable care of the Let Property and any common parts, and in particular agrees to take all reasonable steps to: ... ensure the Let Property and its fixtures and fittings are kept clean...

17. Clause 17 of the Tenancy agreement contains the following provision:

PAYMENT FOR REPAIRS

The Tenant will be liable for the cost of repairs where the need for them is attributable to his or her fault or negligence, that of any person residing with him or her, or any guest of his or hers.

18. Clause 24 of the Tenancy agreement contains the following provision:

The Tenant agrees to replace or repair (or, at the option of the Landlord, to pay the reasonable cost of repairing or replacing) any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the Tenant, anyone living with the Tenant or an invited visitor to the Let Property (see clause above on 'Reasonable care').

19. Clause 36 of the Tenancy agreement contains the following provision:

The Landlord will be entitled to pursue the Tenant for any reasonable costs incurred as a result of the Tenant's failure to pay rent on time... The recovery of reasonable legal costs and expenses... could also be sought from the Tenant.

20. On retaking possession of the Property, the Applicant found that it was in a state of disrepair and was untidy and requiring cleaning. In particular, the Applicant found that:

- a) Every internal door in the property had been damaged beyond the level of usual wear and tear, with dents or holes apparent, requiring repairs to the doors and replacement of ironmongery.
- b) The walls and internal woodwork were generally scuffed and damaged, beyond the level of usual wear and tear.
- c) Replacement locks were needed for the external door due to the general damage.

21. The said damage and state of untidiness amounted to breaches of clause 16 of the Tenancy agreement, and the Applicant had claims for damages against the Respondent in terms of clauses 16, 17 and 24 of the Tenancy agreement.
22. The Applicant incurred the following costs in remedying the said breaches of the Tenancy agreement:
 - a) £1,473.00 plus VAT incurred to CAMS Construction for changing locks; repairing doors and ironmongery on doors; and decoration of all internal walls, woodwork and doors.
 - b) £180 incurred to Tip Top of Bo'ness for thorough cleaning of the Property.
23. The Respondent provided no forwarding address on leaving the Property. In order to pursue the outstanding rent arrears, the Applicant required to incur a trace report for £25 plus VAT from Alex M Adamson, to locate her new address. Such a cost is recoverable in terms of clause 36 of the Tenancy agreement.
24. On 9 September 2020, the Applicant raised proceedings for an order for payment of the rent arrears and damages of £4,860.02 for the period to conclusion of the Tenancy on 1 July 2019.
25. On 24 September 2020, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 22 October 2020 and the details for dialling into the conference call.
26. The Respondent provided no evidence of payment of any part of the said unpaid rent of £2,125 nor any dispute that the said unpaid rent was due in full.
27. The Respondent provided no material dispute that the said clauses of the Tenancy agreement had been breached nor to the quantification of the damages sought by the Applicant.

Reasons for Decision

28. The application was in terms of rule 111, being an order for civil proceedings in relation to a private residential tenancy. I was satisfied, on the basis of the application and supporting papers, that rent arrears of £2,125 were outstanding as at the date of the CMD for the period to 1 July 2019.
29. In regard to damages, there was a lack of photographic evidence but the Applicant's agent, and the papers, provided a consistent story of the Property being left in a poor condition and the sums sought were reasonable and commensurate with the condition as described. I was satisfied, on the basis of the application and supporting papers, that the Tenancy agreement had been breached and that the Applicant incurred loss and damage of £1,947.60.

30. Further, I was satisfied that the Applicant incurred £30 in recovery costs in tracing the Respondent which was further recoverable under the Tenancy agreement.
31. I was satisfied that the necessary level of evidence for such civil proceedings had been provided. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the revised (and lower) sum sought at the CMD of £4,102.60 against the Respondent jointly and severally along with judicial interest of 8% per annum on that sum from the date of this Decision onwards until payment.

Decision

32. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of the sum of £4,102.60 to the Applicant with interest at 8% per annum from today's date until payment.

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.

Joel Conn

22 October 2020

Legal Member/Chair

Date