

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/19/3645

Re: Property at 43 North Road, Liff, Dundee, DD2 5SQ (“the Property”)

Parties:

Mr Niven Phoenix, Mrs Sheena Phoenix, 16 Old Railway Close, Malmesbury, Wiltshire, SN16 9TU (“the Applicants”)

Mr Danny Low, Ms Angela Archibald, 1 Inchkeith Avenue, Broughty-Ferry, Dundee, DD5 2LS (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member); Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondents in the sum of £2,377.

Background

- [1] The Applicants submitted an application seeking an order for payment in the sum of £2,377. That sum related to arrears of rent, cleaning, repairs and other charges in respect of the Respondents’ tenancy of the property at 43 North Road, Liff, Dundee. A case management discussion took place on 20th January 2020. Reference is made to the Note of that case management discussion. The Tribunal assigned a hearing and intimated the date, time and place of today’s Hearing by letter of 28th January 2020.

The Hearing

- [2] The Applicants were represented by Mr Paul Letley of Pavillion Properties. The Hearing took place in the absence of the Respondents. The Tribunal noted that from the First Respondent’s email of 6th January 2020 that the arrears of rent

(£1,600) were not in dispute. The Tribunal asked the Applicants' representative about the other charges, namely:-

1. Cleaning charges (£318)
2. Cost of replacement vinyl (£209)
3. Fee to Pavillion Properties (£250)

[3] Mr Letley advised that he does not normally deal with day to day management of the tenancies and this is undertaken by his colleague, Billy Baxter. Following recovery of possession of the property in June 2019, Mr Letley attended at the property with Billy Baxter to inspect the property. He noted that the Respondents had vacated the property, had removed furnishings, had attempted a clean and had left a few items. He noted that there was no serious damage to the property. He noted that the vinyl flooring in the kitchen had been removed. After inspecting the property, Mr Letley instructed an organisation called Low Cost Quality Cleaning to clean the property, clean windows, shampoo carpets and remove small items left by the Respondents. Pavillion Properties did not obtain competitive quotations in respect of the cleaning charge and the explanation given by Mr Letley was that for such a small routine cleaning job, cleaning companies do not ordinarily provide quotations.

[4] In relation to the vinyl which had been removed from the kitchen, Mr Letley advised that Pavillion Properties use 2 or 3 different flooring companies and the Applicants had selected Victoria Carpets to replace the vinyl in the kitchen.

[5] In relation to the invoice from Pavillion Properties dated 22nd January 2020 in the sum of £250, Mr Letley explained that this invoice was issued to the Applicants in respect of work carried out on their behalf in pursuing the Respondents for breaching the terms of the tenancy agreement.

[6] The Tribunal considered the legal basis entitling the Applicants to claim payment from the Respondents in respect of these charges. The Tribunal had regard to the tenancy agreement dated 15th June 2017 and in particular, clauses 19 and 21. The Tribunal observed that the First Respondent lodged a written response to the present application which indicated that the property was "very dirty when we moved in". Mr Letley explained that the First Respondent reached agreement about the tenancy directly with the Applicants and they agreed that some work was required to the property; the parties agreed that the Respondents would initially pay a reduced rent to reflect that. The Tribunal also observed that clause 8 of the tenancy agreement provides that "The tenant accepts the accommodation as being in good and clean tenantable condition....."

[7] The Tribunal noted that in terms of clause 21 of the tenancy agreement, the Respondents are obliged to "clean or pay for the cleaning of the property...."

- [8] The Tribunal noted that in terms of clause 19 of the tenancy agreement, the Respondents are obliged to meet all reasonable fees and outlays incurred by the Applicants in pursuing payment from the Respondents of arrears of rent or other charges or outlays as a result of the breach by the Respondents.

Findings in Fact

1. The parties entered into a Tenancy Agreement dated 15th June 2017.
2. The rent payable was £800 per month.
3. The Applicants recovered possession of the property in June 2019.
4. The Respondents have incurred rent arrears amounting to £1,600.
5. The Applicants incurred an outlay of £318 in respect of cleaning the property.
6. The Applicants incurred an outlay of £209 in respect of replacement vinyl flooring.
7. The Applicants incurred a charge of £250 by Pavillion Properties in respect of pursuing the Respondents for rent arrears and other outlays incurred.
8. The Applicants are entitled to the Order sought for payment in the sum of £2,377.

Reason for Decision

- [9] The Respondents have admitted liability for rent arrears of £1,600. The Applicants have produced documentation which shows that they incurred outlays to clean the property, renew flooring and pursue the Respondents for rent arrears. There is a legal basis for the Applicants recovering those costs from the Respondents and that basis can be found in the tenancy agreement between the parties. The Applicants' representative gave an explanation about why the outlays were necessarily incurred by the Applicants. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the Hearing. The Tribunal was satisfied that the Respondents are liable to pay rent arrears and outlays and therefore granted the order for 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish

to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Nicola Irvine

Legal Member/Chair

3rd March 2020

Date