

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/CV/21/1920

Re: Property at 18F Afton Road, Stevenston KA20 3HA (“the Property”)

Parties:

Europe and Jersey Estates Limited, 30 East Main Street, Darvel, KA17 0HP (“the Applicant”), and

Ms Annie Bryson, 19 Hunter Avenue, Ardrossan, KA22 8BD (“the Respondent”) and

Shelter Scotland, 116 Osborne Street, Glasgow G1 5QH (“the Respondent’s Representative”)

Tribunal Members:

G McWilliams- Legal Member

L. Forrest- Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refuses the Application and makes no order against the Respondent.

Introduction

1. The Applicant had applied under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) for payment in respect of damages relating to remedial works’ costs following the ending of the parties’ private residential tenancy agreement (“PRT”).

Case Management Discussion

2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 21st October 2021. Reference is made to the Notes on the CMD.

Hearing

3. An evidential Hearing proceeded remotely by telephone conference call on 20th December 2021. The Applicant’s Managing Director, Mr K Johnstone, and Director and Account Executive, Mrs A Seggie, attended. The Respondent, Ms A Bryson, and her Representative’s Ms J Leonard also attended. Ms Seggie attended whilst the Hearing proceeded in the morning of 21st December 2021 but did not attend in the afternoon that day as she was unwell.
4. The Applicant and the Respondent’s Representative had lodged written representations, with supporting papers and photographs, in advance of the Hearing.

Evidence and Submissions

5. The Applicant’s Mr Johnstone and the Respondent’s Representative agreed at the outset of the Hearing that a material point in issue was whether or not there was already a washing machine present within the Property when the parties’ tenancy agreement commenced, and the Respondent began residing in the Property, in September 2020. Mr Johnstone, Ms Seggie and Ms Bryson gave evidence, and Mr Johnstone and Ms Leonard made submissions on this issue.
6. Mr Johnstone stated that the Applicant’s policy was not to include washing machines and fridges in their 25 residential rented properties. He said that the only white goods item included in their rented properties is a cooker. Mr Johnstone stated that he was on holiday when Ms Bryson took entry to the Property and that Mr R Hamilton, a tenant of a nearby property for some 12 years obtained Ms Bryson’s initial tenancy payment and gave her the keys to move in, in September 2020. Mr Johnstone stated that Mr Hamilton had done this without his knowledge. He said that Mr Hamilton did not wish to become involved in these proceedings, beyond his provision of a letter which had been lodged prior to the CMD. Mr Johnstone said that, by mistake, an Inventory of Contents was not prepared and signed in this case. He said that a washing machine was left in the Property by Ms Bryson when the PRT ended in July 2021. He stated that Ms Bryson had made numerous complaints to the Applicant, regarding the condition of the Property, during the tenancy.

7. Ms Seggie said that the parties' written PRT was signed after Ms Bryson moved into the Property. She stated that she had not been involved in the move. She said that Mr Hamilton is a reliable tenant who sometimes assists the Applicant with property and tenancy matters. She said that the Applicant's policy was to provide a cooker only, and no other white goods, in their rented residential properties. She stated that they always ask outgoing tenants to remove other white goods that they may have had installed during the tenancy.
8. Ms Bryson stated that the washing machine was in the Property when she took entry. She said that Mr Hamilton asked her if she wanted the washing machine to remain in the Property. Ms Bryson said that Mr Hamilton told her that the Applicant keeps a spare washing machine for tenants who may require it. She said that she agreed to the washing machine remaining in the Property as this avoided the need for her to bring her old washing machine from her former tenancy in Glasgow. She said that Mr Hamilton showed her how to turn on the machine. Ms Bryson said that she arranged for the British Heart Foundation to help remove her belongings, and they removed everything except the washing machine and cooker, when the tenancy ended and she left the Property in July 2021. She said that she herself moved into homeless accommodation on 2nd July 2021 and her belongings were removed on 22nd July 2021.
9. Mr Johnstone and Ms Bryson also gave evidence, and made submissions, regarding the issue of damage to the flooring in the Property.
10. Mr Johnstone stated the Property had been inspected in February 2021 and there were no adverse issues reported. He said that he had a joiner attend at the Property on 3rd August 2021 and he discovered that water had been leaking onto the flooring in the kitchen area and that this had damaged boarding and destroyed insulation. He stated that the joiner could not confirm how long the leaking had persisted. He said that the leaking should have been noticeable. Mr Johnstone stated that the Property had been let to a new tenant on 24th September 2021.
11. Ms Bryson stated that during her tenancy kitchen taps were leaking. She said that Mr Hamilton could not fix the problem but another man, Joe, who worked for the Applicant, did so. She said that she did not notice any leaking from the washing machine. She said that she noticed that the kitchen floor was uneven and reported this to Shelter during her tenancy of the Property.
12. In closing, Mr Johnstone said that the Applicant did not provide Ms Bryson with a washing machine, there had been damage to flooring in the Property which had caused loss to the Applicant, as claimed in the Application. He said that he had found the whole circumstances of this matter to be stressful and he sought that it be brought to a close.
13. Ms Leonard submitted that the Applicant had the onus of proving that there was not a washing machine within the Property in the tenancy, and that there had been insufficient evidence to prove that this was the case. She

acknowledged that a leak from the washing machine did likely cause damage to flooring in the Property but that it had not been established that Ms Bryson had or should have noticed the leak. She submitted that as it was agreed that Ms Bryson had made numerous reports to the Applicant regarding the condition of the Property, the fact that Ms Bryson had not made a report in respect of leaking from the washing machine was consistent with the fact that Ms Bryson had not noticed any leaking.

Findings in Fact and Law

14. The Applicant's Mr Johnstone and Mrs Seggie were not involved in the commencement of the parties' tenancy.
15. Ms Bryson moved in with assistance from another tenant in September 2020 and the parties' PRT was signed some days later.
16. An Inventory of Contents, in respect of the PRT, was not prepared.
17. There was a washing machine in the Property at the commencement of, and throughout, the tenancy.
18. Leaking from the washing machine caused damage to flooring in the kitchen area in the Property.
19. Ms Bryson did not notice the leaking during her tenancy of the Property.
20. The Applicant suffered loss as a result of the damage to the flooring as they incurred repair and replacement costs.
21. The Applicant's loss and damage has not been caused by any breach of the parties' PRT by Ms Bryson. She did not notice the leaking from the washing machine. She would have reported such leaking if she had discovered it.
22. The Applicant is not due to be paid any monies by Ms Bryson as there has been no breach of contract by Ms Bryson.

Reasons for Decision

23. Section 71 of The Private Housing (Tenancies) Act 2016 provides as follows:

- (1) In relation to civil proceedings arising from a private residential tenancy-
 - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than-

- (a) the prosecution of a criminal offence,
- (b) any proceedings related to such a prosecution.

24. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for payment of monies against a tenant (such as the Respondent) in respect of a PRT such as this.

25. The Tribunal considered, and weighed, all of the documentary and oral evidence and submissions.

26. The Applicant sought to prove that a washing machine was not in the Property at the commencement of the parties' PRT, that a washing machine was introduced into the Property by Ms Bryson, that she had or should have noticed leaking from a washing machine, regardless of whether or not it was installed at the beginning of the tenancy, and that the Tribunal find that she acted in breach of the parties' PRT.

27. The standard of proof is balance of probabilities.

28. The Applicant's Mr Johnstone and Mrs Seggie were not involved in the commencement of the PRT. There was no Inventory of Contents prepared. Mr Hamilton submitted a letter to the Tribunal, through the Applicant, but did not give oral evidence regarding the circumstances of the beginning of the tenancy, and the inclusion or otherwise of a washing machine in the PRT.

29. Ms Bryson was present at the commencement of the PRT and gave oral evidence in a consistent manner. She described the circumstances of the start of the tenancy, in particular her discussions with Mr Hamilton, clearly. The Tribunal find her evidence to be credible and reliable and, on a balance of probabilities, that there was a washing machine present in the Property at the start of the tenancy.

30. Ms Bryson also made numerous reports to the Applicant regarding the condition of the Property. She did not make a report regarding leaking from the washing machine and the Tribunal find, on a balance of probabilities, that she had not noticed any leaking.

31. Having considered all of the evidence, the Tribunal find, on a balance of probabilities, that the Applicant has not proved that it was more likely than not that a washing machine was introduced to the Property by Ms Bryson, that she had or should have noticed leaking from a washing machine, and that the loss and damage suffered by the Applicant was due to Ms Bryson's action or inaction and breach of the PRT.

32. The leaking from the washing machine was noticed after the parties PRT had ended and it is unfortunate that the Applicant suffered loss and damage.

33. Accordingly, the Tribunal find that Ms Bryson is not in breach of the parties' PRT and is not liable to make any payment to the Applicant in respect of their loss and damage.

34. Therefore, the Tribunal have determined to refuse the Application and not to make an order for payment by the Respondent Ms Bryson 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.

G McWilliams

G McWilliams

10th March 2022

Legal Member

Date