



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/22/0187

Re: Property at 57/1 Waterfront Park, Edinburgh, EH5 1BA (“the Property”)

Parties:

Mr Conor McHugh, Flat 1/3 30 Budhill Avenue, Glasgow, G32 0PN (“the applicant”)

Miss Sonata Grismanauskaitė, formerly residing at the Property and whose present whereabouts are unknown to the tribunal (“the respondent”)

Tribunal Members:

David Preston (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to issue an Order for Payment by the respondent to the applicant in the sum of Two thousand eight hundred pounds (£2800).

Background

1. The applicant seeks an Order for Payment in respect of arrears of rent due by respondent in terms of the Private Residential Tenancy Agreement between the parties dated 14 December 2021. The application sought an order for £1425 representing arrears plus £950 by way of the deposit due in terms of the Agreement. By email dated 8 June 2022 the applicant sought to amend the arrears to the sum of £3325 being the balance due when the tenant returned the keys on 8 June 2022. In view of the fact that the tenancy had come to an end the claim for deposit was removed from the application, leaving the balance sought of £3325.
2. A Note of a Case Management Discussion (CMD) held on 17 May 2020 was issued along with the Direction to the parties and a full hearing was scheduled for 5 July 2022 at 10:00am.

3. The hearing took place as scheduled. Ms Jacqui Ridley, Solicitor, Blacklocks represented the applicant and appeared along with Ms Joanne Cumming, Letting Agent and the respondent attended on her own behalf.

Preliminary matters

4. The convener confirmed the amendment of the application to the sum of £3325.
5. The convener noted that the respondent had sought to lodge further productions with the tribunal prior to the start of the hearing. He advised that the tribunal would not be taking account of this material as it had not been submitted in accordance with the Rules of Procedure and Guidance Notes issued along with the papers which had been served on the respondent. The respondent said that she had previously attempted to lodge this material on 28 May 2022 but had not heard anything further. The tribunal had not received such documentation and the convener advised that, if it had included video evidence, the respondent would have been advised of the process for seeking to have that referred to.
6. The parties agreed that the issues to be addressed were those contained in paragraph 6 of the CMD Note dated 17 May 2022. In addition, the tribunal addressed the question of when the respondent vacated the property.

Evidence

7. The respondent said that she had left the property on 16 May 2022 and had attempted to contact the landlord and the letting agent at that time to ask what she should do with the keys but had received no response and had therefore sent them to the letting agent by special delivery on 7 June 2022. She said that she had no details of the landlord as the address stated in the Agreement was not his and the telephone number and email address were those of his mother.
8. Ms Cumming advised that the first she had been made aware of the respondent vacating the property was when the postman delivered the keys on 8 June 2022.
9. Ms Ridley said that at the CMD the respondent had accepted that she had only paid half the rent in January, February and March. Invoices and receipts had been lodged on behalf of the applicant to show that: the property had been cleaned in December 2021; a new carpet had been laid; cabinets and blinds had been cleaned; and that a mattress had been bought for the respondent to move in. She acknowledges that it was a second-hand mattress. With regard to the dampness and mould, she referred to the Environmental Health Report which had been lodged which confirmed that the walls had been tested with a protimeter and no dampness was detected. It was concluded that the mould growth was due to condensation about which advice had been given on how to prevent this in the form of heating and ventilating the property. The mould growth was not created by any building defects. She said all the issues raised by the respondent had been dealt with. She submitted that the respondent was therefore not entitled to withhold any rent.

10. The respondent said that she had not withheld the rent and had always said that she would pay in full when the issues had been attended to. She had wanted to move into the property on 9 January 2022 but could not do so as repairs were needed to the property. In particular: the bedroom carpet had to be replaced because it was badly stained, which she said had been concealed by rugs when she had viewed the property; there was mould in the bedroom and elsewhere; she was unable to use the bed as the mattress was in poor condition and was lumpy; she was unable to use the sofa due to its condition and the smell; the blinds were cracked and dirty; the radiators did not work properly. She had complained about these issues and accepted that the carpet had been replaced. She said that when she moved in: the mattress could not be used; there was mould in the bedroom and wardrobe and elsewhere; the blinds still required to be replaced as they were damaged; and the radiators did not work.
11. Ms Cumming referred to the receipt for a mattress dated 17 December 2021 and suggested that, despite the price of £90 for a king size mattress, it could have been new. She said that the Inventory had mentioned the stains on the carpet, and she denied that they had been concealed. She said that she had discussed the stains with the landlord who had agreed to replace the carpet if an incoming tenant required. She said that a pre-tenancy inspection had been carried out and that she had not detected any bad smells in the property.
12. Ms Cumming said that the respondent had viewed the property in person the week before the Agreement was signed and there had been no rugs over the stains which had been obvious at that time. She denied that there had been any time limit on the viewings and that the respondent had as much time as she needed. She said that when she had the emails from the respondent, she had arranged for the issues to be dealt with. She had arranged for the carpet to be replaced and the other issues to be dealt with the following day etc. she had not seen the mattress which had been obtained during December and had been told that it was a new one. Having raised the issues about the radiator valves, the respondent had then said it was ok.
13. The respondent said she had been at the property twice before 8 January. On the first occasion she had viewed it but had only been there for 5 minutes and had not been able to check details such as the bed, sofa and radiators she said that she only had 5 minutes because there were other people viewing it. The bed had a mattress protector on it anyway. She said there was work going on in the property at the time and had been told it would be completed before she moved in. The second time she went to the property was to collect the keys.
14. The respondent referred to the Environmental Health Report and said that it showed that there were issues with mould in various places in the property. She pointed out that it referred to the soft furnishings as not being fire-proof.
15. The parties agreed that the Agreement had been signed on 14 December 2021 as indicated on it.

Reasons for Decision

16. In coming to its decision, the tribunal had regard to the written and oral evidence presented by and on behalf of both parties and the submissions made by Ms Ridley on behalf of the applicant.
17. The tribunal determined that the respondent was due to pay rent for the property until the keys had been returned to the landlord or his agents on 8 June 2022. The respondent had been in regular communication with the letting agent and was well aware that she was representing the landlord in relation to the tenancy and could have returned the keys either in person to the address provided in the Agreement or, as she ultimately did, by post.
18. The tribunal considered that the issues raised by the respondent had been dealt with promptly by the letting agent in arranging for the carpet to be laid and other issues attended to within 24 hours. Whilst there may have been some other matters outstanding, the tribunal does not consider that the respondent is entitled to retain such a high proportion of the rent.
19. The tribunal noted the invoices and receipts lodged by the applicant which showed that the issues complained of had been attended to within a reasonable time. The tribunal was concerned that the landlord had not replaced the carpet when the stains had been found and had preferred to leave the decision regarding that to an incoming tenant. It was also concerned at the effectiveness of any pre-tenancy inspection which had been inadequate. The landlord must pay proper regard to his obligations as landlord at the start of any tenancy and throughout its duration.
20. The tribunal noted the terms of the Environmental Health Report but did not accept that the respondent was responsible in any way for condensation or mould to have accumulated between her taking occupation in early January and the inspection being carried out in March. In any event the respondent had complained about the mould immediately on taking possession so could not have been responsible for that. The landlord must have been aware of the issue, which should also have been detected in an effective pre-tenancy inspection.
21. The tribunal considered that any pre-tenancy inspection carried out by the letting agent as required by section 19 of the Housing (Scotland) Act 2006 was inadequate. A proper inspection would have prevented the issues raised by the respondent continuing to be problems when she took possession. The tribunal found that certain works had been carried out to the property at or around the time of the property viewing and it was incumbent on the landlord or his agent to ensure that such work had been concluded satisfactorily and that there were no other issues, such as the mould, the condition of the mattress and sofa and the blinds, some of which were evident prior to the start of the tenancy.
22. The tribunal did not make any findings in relation to the complaints regarding the car parking arrangements which was not an issue raised by the respondent during the hearing and, in any event was one which would not be material to the outcome of the application.

23. In any event, however, the tribunal determines that in totality the problems complained of by the respondent were minimal and at most would have resulted in minor inconvenience to the respondent. It did not consider that there was any justification in withholding 50% of the rent from the 3 months' rent paid.

24. The tribunal considers that the sum of £525 would represent fair compensation to be respondent for the inconvenience caused to her by the issues found to exist in the property when she took entry. The tribunal was mindful that the majority of the issues had been resolved very quickly although they should not have been evident at the commencement of the tenancy. Issues of mould must have been evident prior to the commencement of the tenancy and appropriate measures ought to have been taken beyond simply cleaning and/or painting or, as suggested in the Environmental Health Report, a washer/dryer provided to avoid condensation.

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.

David Preston

5 July 2022