



**Decision with Statement of Reasons 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/19/0421

Re: Property at 25 James Weir Grove, Uddingston, G71 7PL (“the Property”)

Parties:

Clyde Valley Property Services, 50 Scott Street, Motherwell, ML1 1PN (“the Applicant”)

Mr William Wilson, Ms Lisa Wallace, 29 East Avenue, Glasgow, G71 6LG (“the Respondents”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondents to the Applicant in the sum of £3884.28 with interest at the rate of 4% per annum on said sum until payment.

Background

1. By application received by the Tribunal on 7 February 2019 the Applicant’s representatives’ BTO Solicitors LLP, Glasgow applied to the Tribunal for an order for payment to the Applicant by the Respondents in respect of damage to the property arising from the Respondent’s tenancy of the property under a Short Assured Tenancy. The Applicant’s representatives provided the Tribunal with a copy of the Tenancy Agreement, AT5, Landlord’s lease, Tenant Account Statement, Letter from Applicant to Respondent enclosing repair invoice and a series of photographs of the interior of the property at the end of the tenancy.

2. By Notice of Acceptance dated 22 February 2019 a legal member of the Tribunal with delegated powers accepted the application and a case management discussion was assigned.
3. Intimation of the case management discussion was given to the parties and was held at Glasgow Tribunals Centre, 20 York Street, Glasgow on 5 April 2019. The Applicant was represented by BTO solicitors at the case management discussion. There was no appearance by the Respondents. The Tribunal continued the case management discussion to a further case management discussion to be held at Glasgow Tribunals Centre, 20 York Street, Glasgow on 13 May 2019 in order that the Applicant's representatives could provide further specification of the claim.
4. The Applicant's representatives provided the Tribunal with further specification of the claim including detailed invoices by letter dated 16 April 2019. Copies were provided to the Respondents.
5. Intimation of the continued case management discussion was given to the Applicant's representatives by post on 13 April 2019 and to the Respondents by Sheriff Officers on 16 April 2019.

The Case Management Discussion

6. The continued Case Management Discussion was held at Glasgow Tribunals Centre, 20 York Street, Glasgow on 13 May 2019. It was attended by Ms Irvine of BTO Solicitors LLP, Glasgow on behalf of the Applicant. There was no appearance by the Respondents. After being satisfied that the Respondents had been given proper intimation of the hearing the Tribunal continued with the proceedings in the absence of the Respondents in accordance with Rule 29 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations").
7. Ms Irvine confirmed the Applicant was seeking an order for payment in the sum of £3887.28 with interest at the rate of 8%. She referred the Tribunal to Clause 15.4 of the Tenancy Agreement which provided for the tenants being liable for the cost of repairs to the property caused wilfully, negligently or accidentally. She submitted that it was apparent from the photographs submitted and the extent of the works required that no reasonable person would have left the property in the condition it was left in by the Respondents. She went on to say that throughout the duration of the tenancy the Respondents had made no complaints about the condition of the property. The extent of the damage to the property had been so great that it had required complete redecoration in addition to the replacement of all flooring and the removal of rubbish and flea eradication and repairs to walls and skirtings. Ms Irvine stated that the damage clearly went far beyond what could be considered fair wear and tear and the Respondents had been given an opportunity to make submissions to the Tribunal but had not done so.

8. Ms Irvine invited the Tribunal to award the Applicant the full amount of the sum sought together with interest at the judicial rate.

Findings in Fact

9. The parties entered into a Short Assured Tenancy Agreement that commenced on 13 January 2016 and ended on 4 September 2018.
10. At the termination of the tenancy the Respondents left the property in a dirty and damaged condition.
11. The Applicant required to carry out all the items listed in its Works Order Log for the property under Job numbers 182435, 181631, 181975, 182499, 183655 and in addition supplied a new fridge freezer to the property.
12. The total cost of the repairs to the property amounted to £4522.28.
13. The Respondents were liable for the cost of the repairs incurred by the Applicant in terms of the Tenancy Agreement entered into between the parties and dated 13 January 2016.

Reasons for Decision

14. The Tribunal was satisfied from the documentary and photographic evidence provided by the Applicant's representatives that the condition of the property at the end of the tenancy was such that all of the costs incurred by the Applicant were in the circumstances wholly justified. Although the Applicant did not provide photographs of the property at the commencement of the lease the Tribunal noted that the Respondents had chosen not to lodge any written submission opposing the order sought nor had they attended the case management discussion to seek to oppose the application. Furthermore the Applicant's representative advised the Tribunal that the Respondents had made no complaints to the applicant regarding the condition of the property throughout their period of occupation of the property. The Tribunal was therefore satisfied that the damage to the property had been caused by the Respondents. The Tribunal was also satisfied that the damage fell far beyond what might be considered fair wear and tear and that therefore the Respondents should be held liable for the whole cost of repair of the property.
15. With regards to interest the Tribunal noted that the tenancy agreement provided for interest being applied to rent arrears at the rate of 4% above the Bank of England Base Rate but did not mention a rate of interest to be applied in respect of sums that may be due in respect of damage to the property. Accordingly as proper intimation of the Applicant's claim for interest had been made to the Respondents it fell to the Tribunal to decide an appropriate rate in terms of Rule 41A(2)(b) of the 2017 Regulations. Having considered the terms of the tenancy agreement and the general rates of interest in the marketplace the Tribunal considered that it would not be appropriate to award interest at the judicial rate of 8% but that 4% would be appropriate.

Decision Having considered the documentation, photographs and submissions on behalf of the Applicant the Tribunal finds the Applicant entitled to an order for payment by the Respondents to the Applicant in the sum of £3884.28 with interest thereon at the rate of 4% per annum 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.


Legal Member/Chair

13 May 2019
Date