

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 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/0533

Re: Property at 2 Chestnut Court, Auchterarder, Perthshire, PH3 1RE (“the Property”)

Parties:

Mr Mark McArthur, 6 Windsor Gardens, Auchterarder, Perthshire, PH3 1RE (“the Applicant”)

Mr Russell Goodenough, Ms Fiona E Landy, Cromwell Farm, Ellon, Aberdeenshire, AB41 8DU; 180/7 3F1 (Flat 1 3rd Floor), Bruntsfield Place, Edinburgh, EH10 4DF (“the Respondents”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment would be granted in favour of the Applicant against the Respondents in the sum of SIX THOUSAND TWO HUNDRED AND NINETY POUNDS (£6,290). Payment of the principal sum was subject to a time to pay direction ordering payment at £200 per calendar month, the first payment to be made within 6 months from the date of service of the order for payment

Background

The Applicant was the owner of the Property. He had let the Property to the Respondents. The tenancy had come to an end but there was a dispute over rent arrears and other costs incurred by the Applicant at the end of the tenancy. The Applicant had applied to the Tribunal for a determination under Rule 70 of the First-tier Tribunal Housing and Property Chamber Procedure Regulations 2017 as amended

The Tribunal had before it the following documentation:-

- The Applicant's application to the Tribunal dated 18th February 2019
- Tenancy Agreement between the Applicant and the Respondent dated 30 November 2015
- Bank Statements from the Applicant covering the period of the lease
- A Condition Inventory of the Property dated 26 November 2015
- An invoice for £90 for carpet cleaning dated 23/11/17
- An invoice for £480 for monoblock cleaning dated 17/11/17
- Copy of the Applicant's title to the Property
- Confirmation of Service of the Tribunal papers on the Respondents

CMD

A Case Management Discussion was held at Inveralmond Business Centre, Auld Bond Road, Perth on 3 May 2019. The Applicant attended in person. The Respondents attended by telephone conferencing. Neither party was represented.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property to the Respondents from 30th November 2015 and the tenancy had terminated around November 2017;
- At the termination of the tenancy there were arrears of rental of £8400
- The tenancy deposit had been offset against the rental arrears to leave a balance of £6200
- The Applicant was entitled to charge an additional £90 for carpet cleaning
- The Applicant was not entitled to charge £480 for Monoblock cleaning
- In total the Respondents were due the Applicant the sum of £6290

Reasons for the Decision

The Tribunal based its decision primarily on the evidence led by both parties at the CMD. Although there was a degree of animosity between the parties due to historical events, they did agree on a number of matters.

The Respondents openly and readily acknowledged that there were rent arrears of £6200. It was accepted that payment was due. They did not wish to be in the position of owing the money but personal circumstances, which do not need to be narrated here, had meant both Respondents were facing financial difficulties.

The Respondents accepted that carpet cleaning in one room of the Property was required and that the payment sought of £90 in this regard was both fair and reasonable.

There was a disagreement over the payment sought for £480 for monoblock drive cleaning. The Applicant believed that the Lease required the Respondents to maintain this. He was of the view that it had degraded over the period of the lease to below standard and required to be cleaned. The Respondents were of the view that

the drive was to an acceptable standard and only fair wear and tear could have been said to have occurred.

The Tribunal had noted the condition of the driveway in the Condition Inventory produced. The Applicant was also able to produce pictures of the driveway before it was cleaned at the hearing. Whilst the Respondents were unable to view these, the Tribunal had the benefit of sight of them.

The Tribunal was satisfied that it was not appropriate for this charge to be levied against the Respondents. The lease specified that patios and paths required to be cleaned and maintained. Whilst the Applicant viewed this as covering the driveway the Tribunal viewed this as ambiguous and was not satisfied that the ordinary everyday usage of the words patio and paths would cover the driveway. In any event, the Tribunal was satisfied that the pictures taken at the end of the lease showed the driveway to be in a good standard. There were a few minor areas where moss had grown and some small weeds had grown in the gaps. Generally, however, the driveway looked to be in a good condition. The Tribunal accepted that the Applicant had high standards and held a genuine belief that the drive was below standard. However, the standard to be applied is not what the Applicant thought but what the average or reasonable person would view the condition of the driveway as. The Tribunal was content that the reasonable person would be satisfied with the condition of the driveway.

As stated above, the Respondents were not questioning the other sums sought. Rather the difficulty, they submitted, was in their ability to make payment in light of their financial circumstances.

A discussion took place on the financial position. The Applicant indicated he would be prepared to wait for 6 months before payments to him started, to give the Respondents time to get back on their feet. The Respondents indicated they could make payment at the rate of £200 per calendar month from that period. If Mr Goodenough received bonus or other payments then he indicated he would endeavour to make additional payments at that time.

On the basis that the parties effectively reached agreement amongst themselves as to a suitable time to pay arrangement, the Tribunal was happy to adopt this and grant a time to pay direction as set out.

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.

Ewan Miller

Legal Member/Chair

3/5/19

Date