



**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/18/1432

Re: Property at 2 Kincaidston Drive, Ayr, KA7 3XD (“the Property”)

Parties:

Mr Richard Munro, 2 Curtecan Place, Ayr, KA7 2RH (“the Applicant”)

Mr Alastair Stuart, 5 Wyburn Place, Ayr, KA8 9AY (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of rent arrears and incurred charges amounting to £1770 in relation to an assured tenancy for the Property. Noting that if deposit were returned to the Applicant then the total sum would be reduced to £1220.

The application contained a copy of the tenancy agreement; rent statement; copy photographs of the subjects, and 4 separate invoices for works done to the property after the respondent had left the property.

The Applicant was represented by Anne Browne, who was also the Applicant’s Attorney. There was no appearance from the Respondent.

The Notice of the Hearing had been served on the respondent by sheriff officers on 10 October 2018. As I was satisfied that the respondent had been given formal

notice of the today's case management discussion I was prepared to proceed with it in his absence.

The Hearing

The Applicant's representative advised that the rent arrears were still outstanding as at today's date. That there had been no payments to rent since the £300 payment in March 2018.

There had also been no communication from the Respondent since he left the property.

The applicant advised that the rent arrears had arisen in relation to unpaid rent from due for part of March and then April and May 2018. She advised that she had now deducted the repayment of the deposit from safe deposit from the amount of rent outstanding which now brought the outstanding rent arrears to £800 and this was the revised sum she was seeking.

The applicant advised that the respondent appeared to have left the property on 9 May 2018 leaving the keys through the letter box, however he had advised her by text that he would not be leaving until June 2018, which was the date that she had asked him to leave.

The applicant advised that she required to have various works carried out to the property as the condition he had left it in was poor and she had submitted invoices in support of the repairs works carried out the property, in relation to replacing a carpet; tidying up the garden; painting the master bedroom and repairing two holes in the walls; and costs for cleaning the subjects. The applicant referred me to Clauses 14, 15, 16 and 27 in support of her application to have an order to repay the costs of repair and damages to the property which costs amounted to £420.

She advised that the garden had been left untidy, the carpet had required to be replaced as the respondent's son had spilt juice on it which could not be removed; that the respondent had not aired the bathrooms and the ceilings were marked with mould. There had also been food and rubbish left in the house all of which required to be removed and cleaned out. The property was dirty and unclean. She referred me to photographs she had supplied in support of her position. The landlord advised the master bedroom had been re-decorated by the respondent and not to a good standard and there were holes in the wall where a TV had been put up.

Findings in Fact

The Tribunal found the following facts to be established:

A tenancy agreement existed between the applicant and the respondent for the property. It had been entered into on 7 July 2017.

Clause 5 of the tenancy agreement provided that rent of £1100 was to be paid and £550 monthly thereafter due per calendar month in advance by the respondent to the applicant.

The applicant had given the respondent two months' notice to leave the property on 11 June 2018.

The tenant had left the property in around 9 May 2018. The respondent appears to have advised by text that he would leave on 11 June 2017

The bank statements and email from the applicant up to February 2018 show that rent had been paid. Rent arrears appear to have accrued from end of February 2018 onwards. The arrears for the property arose from non-payment of £250 of rent for March 2018, and no payments in April and May 2018. That the deposit of £550 had been paid to the applicant.

That as at today's date there were rent arrears due of £800.

Clause 14 obliges the tenant to keep the property aired and heated.

Clause 15 provides that the tenant agrees not to make any alteration to the accommodation its fixtures and fittings, and not decorate without the prior written consent of the landlord.

Clause 16 obliges the tenant to ensure that any garden will be kept clean and tidy.

Clause 18 stipulates that the tenant will dispose of all rubbish in an appropriate manner.

Clause 27 provides that the tenant will be liable for the cost of repairs where the need for them is attributable to his fault or negligence or that of any person residing with him or any guest of his.

The photographs while not of a good quality appear to show the matters complained of by the applicant.

There were invoices lodged in support of the works claimed for amounting to £420

Reasons for Decision

Section 16 of the Housing (Scotland) Act 2014 provides that the Tribunal has jurisdiction in relation to actions arising following from a number of tenancies, including those arising under an assured tenancy within the meaning of section 12 of the Housing (Scotland) Act 1988.

As this tenancy is an assured tenancy I am content that I have jurisdiction to deal with this case.

There was no response or appearance from the respondent but he had been made aware of today's hearing.

The tenancy agreement created obligations between the landlord and tenant, one of those obligations was to pay rent, and the respondent has failed to do so. There was submitted a rental statement showing the arrears due and the period during which they were due.

I consider that the lease agreement placed a number of obligations on the tenant, including in relation to the clauses referred to by Applicant. I consider invoices for redecoration of the master bedroom, the replacement of the carpet under clause 27, the tidying of the garden to be valid claims under the terms of the lease. However, I do not consider that all the costs set out in the cleaning invoice, are costs which can be recovered under the lease and I am therefore only prepared find that one half of the cleaning invoice is a recoverable sum, under the lease.

On the basis of the evidence submitted, I consider that I am entitled to make an order for the sum sued for less £110.

Decision

I grant an order in favour of the applicant for ONE THOUSAND ONE HUNDRED AND TEN (£1110) STERLING against the respondent.

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.

M Barbour

Legal Member/Chair

26.10.18

Date

*Insert or Delete as required