



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/18/1704

Re: Property at 87 Overhaugh Street, Galashiels, TD1 1DL (“the Property”)

Parties:

Europe Investment Ltd, 30 East Main Street, Darvel, KA17 0HP (“the Applicant”)

Ms Grace Willow Smith AKA Kellie-Marie Carter, 4 Fisher Avenue, Hawick, Roxburghshire, TD9 9NB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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 Respondent in the sum of £1000.00

Background

1. By application dated 6 July 2018 the Applicants applied to the Tribunal for an order for payment from the Respondent in respect of rent due from the lease by the Respondent of the property. The applicants provided the Tribunal with a copy of the lease and a Statement of Account.
2. The Application was accepted and a Case Management Discussion held at Galashiels on 11 October 2018. An order for payment of £1000.00 was granted by the Tribunal against the Respondent in her absence.
3. Following a request for a review by the Respondent the Tribunal on 8 November 2018 recalled its Decision and the Order and a further Case Management Discussion was assigned.

4. A Case Management Discussion was held at Galashiels on 20 December 2018 at which it was determined that a hearing should be fixed for evidence to be heard.

The Hearing

5. The Hearing took place at Langlee Community Centre, Marigold Drive, Galashiels on 15 March 2019. It was attended by Mr Kenneth Johnstone on behalf of the Applicants and by the Respondent who was represented by Ms Susan Di Lorenzo of Apex Scotland.
6. The parties acknowledged the background to the case and it was accepted by them that the principal issue to be decided was whether the lease of the property had been terminated by mutual agreement at the end of February 2018. It was the Applicants' position that it had not and the Respondent's position that it had.
7. The Respondent made reference to the fact that her health had suffered as a result of dampness in the property. This had led to respiratory problems requiring hospital treatment. According to the Respondent by January 2018 the property was uninhabitable there was mould to the extent that she and her son could only live in the front room. The property was properly ventilated but was very cold and damp. She had requested Social services visit to inspect it. She was subsequently treated as being homeless and offered Council accommodation in Hawick.
8. For the applicants, Mr Johnstone disputed that the property was damp. He said that the property had been inspected in January 2018 by the Environmental Health Department who had concluded that the mould was caused by condensation through lack of ventilation. Following the Respondent leaving the property it had been re-let and there had been no further complaints of damp and no return of any condensation.
9. The Respondent had in advance of the hearing provided the Applicants with a disc of recordings she had made of conversations with the Applicants' representative Mr Johnstone. It was the Respondent's position that these recordings confirmed that there was an agreement between the parties that the lease of the property would be terminated early if the Respondent applied for Housing Benefit and brought the rent up to date for January and February 2018. According to The Respondent Mr Johnstone had been aware that the conversations were being recorded. For his part Mr Johnstone denied that he had known that the conversations were recorded until he was told about them in text messages afterwards. He said he had consulted his solicitor and had been advised that as he had not consented to the recordings being made they could not be heard in evidence.
10. The Tribunal adjourned the proceedings to consider whether it should listen to the recordings. In light of the decision of the Employment appeal Tribunal in *Vaughan v The London Borough of Lewisham* (2013) and *Singh v Singh and*

Others [2016]EWHC 1432 the Tribunal concluded that it could if necessary hear the recordings if the interests of justice demanded it.

11. Following the adjournment the Respondent explained to the Tribunal that she had been aware that she could only get out of the contract with the landlord if early termination was agreed between them. She said that this is what had happened during the meeting that had taken place at the property with Mr Johnstone sometime around the beginning of February 2018. She spoke of him making her complete Housing Benefit forms before he would agree the early termination date.
12. For the applicants, Mr Johnstone accepted he had asked the Respondent to complete the Housing Benefit forms and had offered to take them to the Benefit office but had not agreed to an early termination of the lease.
13. In light of the clear disparity between the evidence of the parties the Tribunal was of the view that the interests of justice would best be served by hearing the recording.
14. The recording included discussion between the Respondent and Mr Johnstone about it being necessary for the Respondent to complete Housing Benefit forms before Mr Johnstone would consider what appeared to be an early termination date. The recording did not clearly include an agreement between the parties to terminate the tenancy early.
15. The respondent's position after hearing the recording remained that it had been agreed that if the rent was paid up to the end of February 2018 the Applicants would not seek any further payment.
16. For his part that was denied by Mr Johnstone. No early termination date had been agreed. Any talk about four weeks in the recording had been about when the Respondent could leave the property not about when her obligations under the lease would end and in any event even the 4 week period had not been agreed. Mr Johnstone said once the Respondent had left the property he had taken all reasonable steps to find a new tenant as quickly as possible. The sum claimed represented the shortfall due after the deposit had been repaid to him for the rent due for March 2018 being the rent for April and May at £450.00 per month and a further 4 months at £25.00 per month as the property had subsequently been rented out at a lower rent of £425.00 per month.
17. Ms Di Lorenzo on behalf of the Respondent accepted that if the lease had not been terminated early by mutual agreement the sum claimed would be correct.

Findings in Fact

18. The Parties entered into a tenancy agreement that endured from 23 October 2017 until 22 October 2018. The monthly rent was £450.00.

19. The Respondent was in breach of contract by removing from the property in February 2018.
20. There was no agreement between the parties that the Respondent would not be liable for rent due after 23 February 2018.
21. The Applicants re-let the property in June 2018 at a rent of £425.00 per month.
22. The Respondent's deposit of £450.00 was repaid to the Applicants for rent arrears.
23. The total amount due by the Respondent to the applicants amounts to £1000.00.

Reasons for Decision

24. Although the Respondent may have felt that the property was in poor condition and affecting her health the Tribunal was not satisfied the evidence provided was sufficient to conclude that the property was not inhabitable and therefore the Respondent could not unilaterally rescind the contract.
25. The Tribunal was satisfied that the Respondent and Mr Johnstone on behalf of the Applicants had discussions at the property that included the possibility of Mr Johnstone agreeing to the early termination of the tenancy agreement if the rent arrears were brought up to date. However the recording of the conversation heard by the Tribunal did not go so far as to confirm that such an agreement had been reached. The Tribunal was satisfied that the Respondent genuinely believed that she did have such an agreement. However, it requires both parties to be in agreement and the Tribunal was satisfied from the evidence of Mr Johnstone that he had not agreed to the lease being terminated early.
26. The Applicants had acted appropriately to mitigate their loss and find a new tenant for the property and were entitled to recover their loss in the sum of £1000.00.

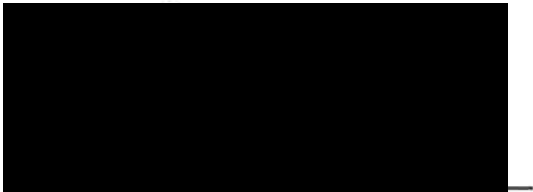
Decision

27. Having carefully considered the evidence before it the Tribunal finds the Applicants entitled to an order for payment by the Respondent to the Applicants in the sum of £1000.00.

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

15 March 2019

Date