



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/18/1876

Re: Property at 2 St Brandons Close, Banff, AB45 1AE (“the Property”)

Parties:

Mr Alan Robertson, 9 Redwell Drive, Whitehills, AB45 2RG (“the Applicant”)

Miss Joanne Thomson, 1 Institution Street, Macduff, AB44 1UT (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal Member) and Linda Robertson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment by the Respondent in the sum of £3208.54.

Background

1. By Application dated 23 July 2018 the Applicant applied to the Tribunal for an order for payment by the Respondent on the grounds that she had accrued rent arrears under a private residential tenancy agreement and had also caused damage to the property that had incurred the applicant in additional costs and loss of rent. The Applicant provided a copy of the tenancy agreement, an inventory, evidence of damage and an estimate of the cost of repairing the damage to the property.
2. By Notice of Acceptance date 20 August 2018 a legal member with delegated powers accepted the application and a Case Management Discussion was assigned to take place at Banff Sheriff Court on 2 October 2018.
3. Both parties attended the Case Management Discussion and reference is made to the Note provided by the legal member on that date.

4. Following the Case Management Discussion a full hearing of the Tribunal was assigned to take place at Banff Sheriff Court on 26 November 2018.
5. The Applicant lodged further written representations prior to the hearing. The Respondent did not lodge any written representations.

The Hearing

6. The Applicant attended the hearing. There was no appearance by the Respondent and no explanation for her non-attendance. The tribunal determined to proceed with the hearing in the absence of the Respondent in accordance with Rule 29 of the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Rules”).
7. The Applicant submitted that as he had been unable to get the keys back from the Respondent until 12 July 2018 and even then the Respondent had retained the front door keys to the property necessitating the locks to be changed the tenancy had not ended until 12 July 2018. The Applicant referred the Tribunal to the text message exchanges between himself and the Respondent in the inventory lodged prior to the hearing in support of his claim.
8. The Applicant confirmed that the tenancy commenced on 10 February 2018 at a monthly rent of £510.00. He accepted that if the tenancy ended on 12 July the total amount of rent payable by the Respondent would amount to £2583.54. The Applicant said that the Respondent had failed to pay any rent throughout the duration of the tenancy. He refuted the Respondent’s position that she had within two months of the commencement of the tenancy been paying £445.00 per month in cash to him. The Applicant referred the Tribunal to the text message exchanges between the parties lodged prior to the hearing which he said made it clear that no payments were being made by the Respondent and for that reason was giving her notice that he intended to raise proceedings to evict her from the property. The Applicant went on to say the Respondent had produced no vouching to support her contention that she had made any cash payments to him.
9. The applicant confirmed that he had incurred cleaning and re-decorating costs amounting to £625.00 and referred the Tribunal to the invoice lodged with the inventory prior to the hearing. He said he had also incurred additional cleaning costs but had not produced an invoice for this.
10. The Applicant said that he was also claiming for an additional £510.00 for loss of rent on the grounds that the property had been returned in such a poor condition that it was not in a tenable condition. He said that in fact that it probably took two or three months to put back in good order but he was prepared to compromise on this figure and restrict it to one month’s rent. In reply to a question from the Tribunal as to when a new tenant took occupancy of the property the Applicant explained that the property was still not tenanted as he had decided to carry out additional renovations to the property and the

works were ongoing. The Applicant did not know if the Private Residential Tenancy Agreement provided for a tenant being liable for future loss of rent in the circumstances described.

11. The applicant confirmed that there were no other heads of claim that he was now seeking to pursue.
12. The Applicant sought an order for payment in the sum of £3718.54

Findings in Fact

13. The parties entered into a private residential tenancy agreement that commenced on 10 February 2018 and ended on 12 July 2018. The monthly rent was £510.00.
14. The Respondent failed to pay any rent throughout the period of her tenancy.
15. The amount of rent due by the Respondent at the end of the tenancy was £2583.54.
16. The Applicant incurred cleaning and re-decorating and associated costs of £625.00 following the termination of the tenancy.
17. The Applicant has not yet re-let the property and is carrying out renovation works to the property.

Reasons for Decision

18. The Tribunal was satisfied from the evidence provided by the Applicant that the Respondent had not paid any rent during the period of the tenancy. There was no evidence to support the Respondent's position that there had been an informal agreement to reduce the rent to £455.00 per month or that she had made cash payment to the Applicant. The text messages provided by the Applicant supported the Applicant's position.
19. The Tribunal was satisfied that the Applicant had incurred £625.00 in respect of cleaning, re-decorating and associated costs following the tenant's removal from the property. The invoice and photographs provided by the Applicant in his inventory supported his position.
20. The Tenancy agreement made no contractual provision for a future loss of rent claim by the landlord in the event of a breach of the tenant's obligations under the agreement whilst making provision for liability for the cost of repairing any damage caused. Furthermore the Applicant had decided to carry out renovations to the property which were still not completed. The Respondent therefore could not be said to have prevented the applicant from re-letting the property. The tribunal therefore did not support this head of claim.

21. Taking everything into account the Tribunal was satisfied that the Applicant was entitled to an order for payment in respect of his loss of rent from 10 February 2018 to 12 July 2018 in the sum of £2583.54 and for the cost of the repairs, redecoration and cleaning in the sum of £625.00 making a total of £3208.54.

22. The Tribunal's decision was unanimous.

Decision

23. Having carefully considered the evidence from the Applicant and the documentation before it the Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £3208.54.

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.

Ms Helen Forbes

Legal Member/Chair

26 November 2018

Date