



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/CV/21/1341

Re: Property at 69 Auchinraith Avenue, Hamilton, ML3 0JG (“the Property”)

Parties:

Umali Limited, 77 Victoria Street, Larkhall, ML9 2BL (“the Applicant”)

Caitlin Murphy, Miss Abbey-Louise Sneddon, Mr Dylan Traynor, 12 Wilson Street, Hamilton, ML3 0NH; Unknown, Unknown; Unknown, Unknown (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondents)

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

BACKGROUND

1. The Applicant is a Limited Company and is Landlord of the Property. The First Respondent, Caitlyn Murphy is the Guarantor in relation to the tenants’ obligation in a lease of the property. The Second and Third Respondents, Abbey-Louise Sneddon and Dylan Traynor are the tenants;
2. The lease between the parties is dated 1 January 2020. The lease is a private residential tenancy agreement and the lease itself appears to have been a standard model private residential tenancy agreement with relevant parts in relation to the parties and dates etc. inserted. The lease contained provisions whereby the First Respondent assumed obligations as Guarantor;
3. The tenancy came to an end. Mr Dylan Traynor, the Third Respondent, appears to have vacated the property at an earlier stage although the exact

date of his removal from the property is uncertain. The Second Respondent (and it appears also the First Respondent) continued in occupation of the property until 16 July 2021 on which date a previous order of the Tribunal granting an Order for Eviction was enforced;

4. As at the date of eviction there were rent arrears. The Applicant raised proceedings seeking an order for payment of those arrears and also seeking an order for payment of other sums for a variety of different reasons, all as detailed below;
5. A Case Management Discussion was held on 20 August 2020. At that Case Management Discussion a Hearing was assigned. The Tribunal, at that time, indicated that, in relation to certain parts of the claim, it would require to be addressed in relation to the reasonableness of certain costs being incurred and, separately, the legal basis upon which the Respondents were claimed to be responsible for the same;

THE HEARING

6. The Hearing was assigned for Monday 4 October 2021 at 10am and was conducted by teleconference. The Applicant was represented by Graham Murray and Mr Rok Lasan, two of its Directors;
7. None of the Respondents participated in the Hearing. The First Respondent and the Second Respondent both participated in the Case Management Discussion. Both were aware of the proceedings. Both had received intimation of the date and time of the Hearing together with the joining instructions. The Third Respondent had not participated in the Case Management Discussion although it would appear that he had forwarded an e-mail to the Tribunal on the morning of the Case Management Discussion. His up to date address was not known. The Tribunal was in receipt of a certificate confirming that the date and time of the Hearing, together with information as to how to obtain joining instructions, was advertised on the First Tier Tribunal for Scotland Housing and Property Chamber Website and that for a period of more than 15 days prior to the Hearing. In the circumstances, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules") that the Respondent had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;
8. The Tribunal, considering that the Respondents had not appeared, intimated at the commencement of the Hearing that it was satisfied in relation to certain parts of the claim which was being made. That was on the basis of the detailed written Submissions which had been presented and various supporting documents. The Tribunal advised that, unless the Respondents wished to say anything further in relation to these matters, it already had sufficient information to justify the granting of an Order for payment in relation to the following:-

- a. Rent arrears - £1,825.00.
This amount is less than was originally claimed by way of rent arrears. The Applicant had provided information to the effect that following the raising of the proceedings there had been a partial payment towards rent arrears and, separately, they had succeeded in recovering the tenancy deposit in the sum of £900. The balance due thereafter was £1,825.00;
 - b. Removal of rubbish at exterior and interior of the property - £800.
The Applicant had provided detailed submissions in relation to the refuse left both within and outside the Property, supported by photographic evidence and supported by an invoice from a tradesman in relation to these costs. The £800 cost included the cost of hire of a skip together with the cost of labour and materials;
 - c. Carpet cleaning - £140. The Applicant had produced detailed written submissions, supported by photographic evidence and an invoice, showing that the carpets in the property required cleaning at the termination of the tenancy and confirming the need for, and cost of, this work;
 - d. Decoration of walls and kitchen cupboards damaged by fixtures etc. - £750.
The Applicant had provided detailed written submissions, supported by photographic evidence and an invoice from a local tradesman, confirming the need for, and cost of, this work;
 - e. Repair of damaged bedroom door, walls, unit etc. - £180.
The Applicant had provided detailed written submissions, supported by photographic evidence and an invoice from a local tradesman, confirming the need for, and cost of this work;
 - f. Replacement of oven due to misuse - £120.
The Applicant had provided written submissions in support of this part of the claim together with a photograph of the oven at the end of the tenancy and an invoice in relation to the cost of replacement. Further comment is made in relation to this specific item below;
 - g. Extraordinary work to repair unkempt garden - £110.
The Applicant had provided detailed written submissions, supported by photographic evidence and an invoice from a local tradesman confirming the need for, and the cost of, this work;
9. The Tribunal thereafter advised that it wished to be addressed in relation to various other parts of the claim made by the Applicant and, in particular, the following:-
- a. Sheriff Officers fee for eviction - £474.08.
The Tribunal declined to make an award in relation to this matter. The reasons for the same are set out below;

- b. Locksmiths charge to replace locks - £213.60.

The Tribunal wished to be addressed in relation to this specific matter as it appeared from the information presented to the Tribunal that the decision to change locks was one taken by the Applicant and appeared to be a decision which was not strictly necessary and, therefore, it was not reasonable for the Respondents to be liable for the same. The Applicant's representatives, however, confirmed to the Tribunal that, at the termination of the tenancy, they were unsuccessful in recovering the keys for the property from the Respondents and, in those circumstances, it was necessary to change the locks. That being so, the Tribunal considered it reasonable to make an order for payment of this amount;

- c. Replacement of door damaged by Police - £950.

The Tribunal declined to make an order for payment of this amount. The Tribunal's reasons are set out below;

- d. Replacement of kitchen floor due to a rip/damage - £350.

The Tribunal required to be addressed in relation to this matter. The Tribunal pointed out that there was an issue arising as a result of photographic evidence which had been provided. The Applicant provided photographs showing the Property prior to the tenancy agreement being entered into and also a photograph showing damage to the vinyl flooring of the kitchen at the end of the tenancy. The photographs, however, showed different vinyl. The Tribunal enquired as to that matter as it was unclear as to when the vinyl was changed, how long the vinyl had been in place, the cost of previous vinyl or the circumstances in which it came to have been changed previously. Separately, the Tribunal enquired as to whether the damage to the vinyl shown in the photograph – a tear of the vinyl causing a part of it to have been ripped and raised - was capable of repair rather than full replacement. Following a brief adjournment to enable the Applicant's representatives to obtain further information in relation to this particular matter, they advised the Tribunal that the photographs showing the condition of the property before the tenancy agreement were taken by an estate agent prior to their purchase of the property. They purchased the property in December 2019. It was accepted that the vinyl within the kitchen area at the termination of the tenancy was a different vinyl. They were not responsible themselves for having replaced this and could only assume that this had been done by the previous owners prior to their purchase for some reason. They advised also that they had made enquiry about the possibility of repairing the damage but were advised that, having regard to the size and nature of the tear within the vinyl, any repair would still leave an obvious mark and it would also give rise to health and safety issues as it would not be able to be repaired fully to leave it unblemished or to leave it flat. In those circumstances, having regard to the fact that the purpose of payment to be made would be to put the Applicant in the same

position it was in previously and not to allow for any betterment at the expense of the Respondents, the Applicant's representatives confirmed that they would be willing to accept an order for payment in the sum of £200 for this part of their claim. Considering that to be a reasonable amount in the circumstances, the Tribunal confirmed it was willing to make an Order in that amount;

10. The Tribunal, therefore, made an order for payment for the total sum of £4,338.60 made up as follows:-

Rent arrears	£1,825.00
Removal of rubbish etc	£ 800.00
Carpet cleaning	£ 140.00
Decoration/repair of walls and fixtures	£ 750.00
Repair of damaged bedroom door, units etc.	£ 180.00
Replacement of oven	£ 120.00
Gardening work	£ 110.00
Replacement of locks	£ 213.60
Replacement of vinyl in kitchen	£ 200.00

	£4,338.60

FINDINGS IN FACT

11. The Tribunal found the following facts to be established:-

- a) By Lease dated 1st January 2020 the Applicant let the Property to the Second and Third Respondents, Abbey-Louise Sneddon and Dylan Traynor;
- b) The First Respondent, Caitlin Murphy, signed a guarantee by which she guaranteed any sums due to the Applicant by the Second and Third Respondents arising from the tenancy agreement;
- c) The Tribunal previously granted an order for eviction against the Second and Third Respondents. The Third Respondent, Dylan Traynor, removed himself from the property although the Second Respondent remained within the property until Sheriff Officers enforced the order for eviction. That was done on 16th July 2021 and the tenancy ended on that date;
- d) As at the date of termination of the tenancy there were rent arrears in excess of £3,000. The Respondents subsequently made part payment of those. The Applicant secured the return of a tenancy deposit of £900 from the tenancy deposit scheme with which it had been lodged and applied that sum to the arrears of rent. As at the date of the hearing arrears of rent amounted to £1,825;
- e) The Second and Third Respondents are jointly and severally liable for payment of the arrears of rent. The First Respondent, by virtue of the guarantee provided by her, is also responsible for payment of that amount;

- f) As at the date of termination of the tenancy the property was left in a poor condition both internally and externally;
- g) A significant amount of rubbish was left within the property and in the exterior parts of the property. This required the engagement of a tradesman, to include the hiring of a refuse skip, to enable this to be removed from the property and disposed of. The total cost of that was £800 and the Second and Third Respondents are jointly and severally responsible for that cost. The First Respondent, by virtue of the guarantee provided by her, is also responsible for payment of that amount;
- h) The carpets throughout the property were left in a poor condition at the termination of the tenancy and require to be professionally cleaned. Cleaning was undertaken at a cost of £140. The Second and Third Respondents are responsible for payment of that amount. The First Respondent, by virtue of the guarantee provided by her, is also responsible for payment of that amount;
- i) Various walls, cupboards and other parts of the property were damaged as a result of various fixtures and fittings being attached to them and causing damage when removed. It was necessary for work to be undertaken to repair the damaged areas and to decorate where required. The cost of doing so amounted to £750. The Second and Third Respondents are jointly and severally responsible for payment of that amount. The First Respondent, by virtue of the guarantee provided by her, is also responsible for payment of that amount;
- j) A bedroom door within the property and various other fixtures within the property were damaged and required replacement or repair at the termination of the tenancy. The cost of that work amounted to £180. The Second and Third Respondents are jointly and severally liable for payment of that amount. The First Respondent, by virtue of the guarantee provided by her, is also responsible for payment of that amount;
- k) The oven within the property was left in a condition which resulted in it being unable to be used. The oven was replaced by the Applicant with a second hand oven which was obtained at a modest cost of £120. While the oven within the property at the termination of the tenancy could have been professionally cleaned, its replacement at a cost of £120 was reasonable in the circumstances. The Second and Third Respondents are jointly and severally responsible for payment of that amount. The First Respondent, by virtue of the guarantee provided by her, is also responsible for payment of that amount;
- l) The garden of the property was left in a poor condition and required work to be undertaken to remedy that. The cost of the work undertaken was £110. That work was necessary. The Second and Third Respondents are jointly and severally responsible for payment of that amount. The First Respondent, by virtue of the guarantee provided by her, is also responsible for payment of that amount;
- m) At the termination of the tenancy the Second and Third Respondents failed to return the keys for the property to the Applicant. As a result, it was necessary for the locks at the property to be replaced. That was done at a cost of £213. That work was necessary. The Second and

Third Respondents are jointly and severally responsible for payment of that amount. The First Respondent, by virtue of the guarantee provided by her, is also responsible for making payment of that amount;

- n) The vinyl flooring within the kitchen area of the property was, at the termination of the tenancy, damaged by virtue of it having been ripped. It was not possible to effect a repair of the damaged part. The cost of replacing the final flooring amounted to £350. That amount, however, would have included an element of improvement (or betterment) for the Applicant and would not have taken account of any reduced value of the vinyl flooring having regard to previous wear and tear. £200 is a reasonable estimate of the loss to the Applicant in having to replace the vinyl flooring earlier than would otherwise have been required. The Second and Third Respondents are jointly and severally liable for payment of that amount. The First Respondent, by virtue of the guarantee provided by her, is also responsible for payment of that amount;
- o) The Applicant instructed Sheriff Officers to serve notices of removing on the Second and Third Respondent and also to trace the Third Respondent when it became known that he was no longer residing at the Property. The Sheriff Officers were also instructed to eject the Second Respondent (and the First Respondent) from the property. The cost of tracing and serving notices on the Third Respondent, who had already removed himself from the property, were neither necessary nor reasonable. The cost of serving Notices and enforcing an eviction in relation to the Second Respondent (and First Respondent also) were not costs for which the Respondents were responsible;
- p) On 20th July 2020 entry was forced to the property by police officers. In forcing entry the police officers damaged the front door of the property which required to be replaced at a cost of £950. This damage was caused by police officers. It was not caused by the Respondents. It was not caused as a result of any identifiable fault or negligence on the part of the Respondents nor anyone within the property at their request. The Respondents are not responsible for payment of this amount;

REASONS FOR DECISION

- 12. The Respondents did not participate in the Hearing and the Tribunal, therefore, required to proceed on the basis of the information provided by the Applicant. There was no contradictor before the Tribunal in relation to the information presented;
- 13. Despite that, the Tribunal enquired in relation to various parts of the claim which did not appear to be amounts for which the Respondents were legally

obliged to make payment. Having done so, the Tribunal determined the following:-

14. Sheriff Officers fees for Evictions etc.

The Applicant undoubtedly instructed Sheriff Officers to serve a charge of removing on the Second and Third Respondents, to trace the Third Respondent who, it transpired already removed himself from the Property, and thereafter to enforce the eviction of the Second Respondent (and it seems the First Respondent also). Given that there were various different aspects to the Sheriff Officers fees, the Tribunal required to consider different issues arising as follows:-

- a. In relation to Dylan Traynor he had already removed himself from the Property. Sheriff Officers, however, had invoiced for tracing Mr Traynor and thereafter serving a charge of removal on him. The Tribunal asked to be addressed in relation to the reasonableness of such a cost being occurred and, separately, the legal liability of the Respondents for payment. While the Applicant's representatives explained the reasons for instructing Sheriff Officers and, indeed, provided an e-mail from the Sheriff Officers themselves in which the Sheriff Officers expressed a view that this work was necessary, the Tribunal concluded that there was no necessity to trace and serve a charge for removing on a tenant who had already removed himself from the property;
- b. In relation to the Second Respondent, while she did not remove herself from the property until being evicted by Sheriff Officers, there was no provision within the lease for the tenants being responsible for such costs and if the tenants (the Second and Third Respondents) were not responsible for any such costs, the guarantor (the First Respondent) cannot be responsible as the guarantor is only liable to make payment of sums due by the tenants;
- c. The Tribunal was able to understand why the Applicant was seeking to be reimbursed for these amounts but concluded, as a matter of law, that there was no liability on the Respondents to make payment of them;

15. Replacement of door damage by Police.

The Tribunal was in receipt of information which confirmed that on 20 September 2020 Police Officers, apparently acting under authority of a lawfully granted warrant, forced entry to the Property and, in doing so, damaged the front door of the Property. The damage was such that the door required to be replaced. The cost of replacement was £950 and an invoice for the cost of the same was produced, together with a separate estimate from another provider for a significantly higher amount. While the Tribunal again, could understand why the Applicant would be keen to recover the cost of this, the Tribunal could not identify any legal basis upon which the Respondents were responsible for this cost. The lease required the tenants to take

reasonable care of the property (Clause 17) and also contained a provision to the effect that the tenant will be liable for the cost of repairs where the need for them is attributable to his or her fault or negligence or that of any person residing with him or her or any guest of him or hers (Clause 18). This damage, however, was caused by Police Officers. It was not caused by the tenants. While the Applicant's representatives attempted to persuade the Tribunal that an inference could be drawn that the Police actions were justified and were due to criminal behaviour on the part of the tenants, there was no information to support that nor to enable the Tribunal to draw such an inference. There was no information in relation to any items which were recovered as a result of any search by police officers nor any criminal offences committed by the Respondents. In the circumstances, there was no legal basis for the Respondents being liable for this cost;

16. Replacement of kitchen floor.

The Applicant provided photographic evidence which confirmed that at the termination of the tenancy there was damage to the vinyl flooring within the kitchen. Following detailed discussion in relation to this, and following an adjournment to enable the Applicant's representatives to obtain further information in relation to the vinyl, the age, value etc. of it, and having had a discussion with the Applicant's representatives in relation to the issue of betterment of their position, this part of the claim was restricted to one of £200. The Applicant's representatives confirmed their agreement with this;

17. Replacement of oven.

The Tribunal members initially had a difference of opinion in relation to this part of the claim but ultimately concluded that an order for payment in the sum of £120 was reasonable and appropriate in any event. The Legal Member was of the view that there was no evidence that the oven required replacement due to misuse. A photograph provided tended to show that it may have required to be cleaned, perhaps professionally cleaned, rather than replaced. The Housing Member of the Tribunal, while understanding the views of the Legal Member, was of the view that, even on that basis, the professional cleaning of an oven is likely to cost in the region of £120 in any event. Having regard to the fact that the claim that the replacement of the oven was a replacement with a second-hand item, and having regard to the restricted cost, the Tribunal ultimately concluded that this was, indeed, a reasonable claim by the Applicant and one for which the Respondents were responsible;

18. Gardening work.

The Applicant provided written submissions and photographic evidence in relation to the condition of the garden at the termination of the tenancy. There appeared to be no doubt that work to tidy/clear the garden was necessary and, in terms of the lease, the Respondents were liable for this. Indeed, having regard to the photographs provided, the amount claimed, being £110, may, on one view, be considered to be a modest amount;

19. Remaining parts of claim.

On the basis of the written submissions, photographic and documentary evidence provided, there was no basis for the Tribunal concluding anything

other than payment was due in relation to rent arrears (£1,825), removal of rubbish etc. (£800), carpet cleaning (£140), repair and decoration of walls, kitchen cupboards etc. (£750), repair of damage bedroom door/walls etc. (£180).

DECISION

The Tribunal granted an Order for payment by the Respondents to the Applicant in the sum of FOUR THOUSAND THREE HUNDRED AND THIRTY EIGHT POUNDS AND SIXTY PENCE (£4,338.60) STERLING

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.


Virgil Crawford

Legal Member/Chair

4 October 2021

Date