Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: FTS/HPC/CV/18/2497

Re: Flat 2, Kelvinside House, 2 Beaconsfield Road, Glasgow ("the property")

Parties:

Ms Anne Galbraith, Flat 1/2, 339 Langside Road, Glasgow G42 8XT ("the applicant")

Mr Mark McGee, Apartment 4, The French Apartments, De Courcer Road, Brighton, BN2 5RZ ("the respondent")

Tribunal Members:

Adrian Stalker (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in the absence of the Respondent)

The Tribunal made an order for payment, by the respondent to the applicant, in the sum of £3,249.98.

Reasons for Decision

Background

1. This is an application under rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Regulations"). The applicant is the owner of the property, Flat 2, Kelvinside House, 2 Beaconsfield Road, Glasgow. On 18 August 2016, she let the property to the respondent, for a term of one year, at a monthly rent of £1,500.

2. The respondent left the property on or about 21 June 2017. In this application, the applicant seeks payment of three sums said to be due by him. These claims are

described in the Note of the Case Management Discussion ("CMD") in the case, dated 19 November 2018. In terms of that decision, the Tribunal accepted that the first of those claims, for the sum of £100 due in outstanding rent, had been made out, and the sum was due. At the top of page 3 of its decision, the Tribunal noted certain issues in relation to the other two claims, to be addressed at a subsequent hearing.

3. On 8 January 2019, a hearing took place. At that hearing, the applicant sought to lodge further productions, which are listed as items 1-10 in the Tribunal's decision of that date. The Tribunal decided to adjourn the hearing, in order for those productions to be intimated to the respondents.

4. The respondent did not appear, and was not represented, at the CMD or the hearing on 8 January 2019. He has not responded to the application.

Hearing

5. The adjourned hearing took place at 2pm, at the Glasgow Tribunals Centre, York Street, Glasgow, on 6 March 2019. The applicant was in attendance. The respondent did not appear, and was not represented. Intimation of the hearing was given to the respondent by letter dated 22 January 2019.

6. In the circumstances, the Tribunal decided to exercise its power, under rule 29 of the Procedure Rules, to proceed with the application upon the representations of the applicant, and all the material before it.

7. The applicant has two outstanding claims for determination.

8. The first is for the sum of £600, in respect of a fee rendered by Slater Hogg for marketing the flat for rental, after the Respondent requested early termination of the lease. At the CMD, the Tribunal had invited the applicant to produce an invoice from Slater Hogg, confirming payment of that sum. That was item 3, in the list set out in the decision of 8 January. This indicates that the sum of £600 in "introduction fees" was deducted by Slater Hogg from the rent due to the applicant, on 26 June 2017.

9. The applicant also gave evidence to the Tribunal that she had made a verbal agreement, with the respondent, that she would allow him to leave in advance of the termination date for the tenancy, as long as he paid the "finder's fee", in respect of her securing another tenant.

10. The Tribunal accepted the applicant's evidence. It accordingly found in fact that: the parties had a verbal agreement to the effect stated by the applicant; and that the amount paid by her to Slater Hogg, for the cost securing a new tenant, was £600. It finds in fact and in law that she is entitled to payment, in that amount.

11. The applicant's other claim is in respect of a bed, which she maintained was part of the furniture leased with the property, which was removed from the property by the respondent and placed in storage. She gave evidence that the respondent did not pay the storage fees, and consequently, the storage company disposed of the bed. Therefore, the bed was removed by the respondent, and never returned.

12. In respect of this matter the Tribunal noted, at the CMD, that clause 2.53 of the parties' tenancy agreement conferred on the applicant a right to replacement costs of any items removed by the tenant and not returned. The Tribunal also noted certain issues to be resolved in respect of this aspect of the applicant's claim. These are as follows.

13. *Was there a bed in the property at the commencement of the tenancy?* The applicant produced a photographic inventory of the property from Pinstripe Inventory Specialists dated 3 December 2015, showing the bed in Bedroom 1. The applicant maintained that the same bed was in the property, when the respondent took entry. The Tribunal accepted her evidence in this regard, and found in fact that the bed was in bedroom 1, when the respondent took entry.

14. *What type of bed was it?* The applicant produced photographs of the price tags for the divan (£1,899.99) and the headboard (£649.99). The cost of the mattress was included in the cost of the divan. The divan and headboard were "Superking" size. These were purchased from Bensons Beds. The Tribunal, accepting the applicant's evidence, found that the type of bed was a "Superking" divan, mattress and headboard, purchased from Bensons Beds. It also noted, however, that the cost of the bed was £2,549.98, rather than £3,000, as indicated in the application. The applicant accepted that the amount sought by her should be reduced, to that amount.

15. *Was there an agreement that the respondent would remove the bed and return it at the end of the tenancy?* and *If so, did he fail to return the bed?* In the view of this Tribunal, it is sufficient, for the purposes of a claim under clause 2.53 of the parties' tenancy agreement, for the applicant to show that the respondent removed the bed, and did not return it. The applicant produced two emails to her, from John Graham of Strongman Removals, dated 17 December 2018 and 10 January 2019. These indicate that the respondent rented a storage unit from 18 September 2016, for storage of a bed. However, he made no payments in respect of the storage. In February 2018, Strongman Removals sold the bed for £500, which was "nowhere near" the amount they were owed in storage costs. On the basis of this evidence, the Tribunal found in fact that the respondent had removed the bed, and had not returned it.

16. *Was the applicant entitled to the full replacement cost?* and *If so, how much would that be?* In the view of the Tribunal, the applicant is entitled to the full

replacement cost under clause 2.53 of the lease. The amount she seeks is the amount she paid for it: £2,549.98. The Tribunal accepted her evidence that this is not more than the full replacement cost of a "Superking" divan, mattress and headboard, purchased from Bensons Beds. It accordingly found in fact that the full replacement cost was £2,549.98. It finds in fact and in law that she is entitled to payment, in that amount.

Decision

17. The Tribunal accordingly granted an order for payment by the respondent to the applicant in the sum of £3,249.98, being: a) £100 unpaid rent; b) £600 for reimbursement of the Slater Hogg fee; and c) the full replacement cost of a "Superking" divan, mattress and headboard from Bensons Beds.

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.

Signed 

Date 6 March 2019