

Housing and Property Chamber

First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)
Chamber Ref: FTS/HPC/CV/21/1626**

**Re: Property at 3 Sutherland Drive, Dumbarton, West Dumbartonshire, G82
3NT (“the Property”)**

Parties:

**Ms Margaret McPhail, 9 Kinnaird Place, Kirkcaldy, Fife, KY2 5FQ (“the
Applicant”)**

Mr David Nixon, whereabouts unknown (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. By Lease dated 10 March 2017 the Applicant let the property to the Respondent;
2. The rent payable was £650 per calendar month;
3. The Lease ended on 23 October 2018 on which date the Respondent vacated the property;
4. As at that date arrears of rent amounted to £2,249.18;

5. The property and garden ground were left in a poor state of repair requiring the Applicant to incur expense in repairing defects within the property and tending to gardening work and removal of refuse etc;
6. The Applicant presented an Application to the Tribunal seeking payment of a sum of £4,749.52 in relation to arrears of rent, loss of marketing and repair costs;

THE CASE MANAGEMENT DISCUSSION

7. The Applicant did not participate in the Case Management Discussion personally but was represented by Miss M Renton of Messrs Smith and Grant Solicitors, Leven;
8. The Respondent did not participate in the Case Management Discussion. The Tribunal was in receipt of a certificate of service by advertisement on the Tribunal's website confirming that the place, date and time of the Case Management Discussions and advising of contact details to enable the Respondent to participate in the proceedings. In the circumstances the Tribunal, 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;
9. Miss Renton advised the Tribunal that, as at the date of termination of the tenancy, arrears of rent amounted to £2,249.18. No payment had been made towards that amount and that amount remained outstanding;
10. The Applicant was seeking £940.18 for "loss of marketing". It was explained that this was due to the fact that it took 44 days to let the property following the termination of the previous tenancy, part of that delay being as a result of work which was required to the property. The £940.18 was calculated on the basis of the monthly rent being broken down to a daily figure and multiplied by 44 ($£650.00 \times 12 \div 365 \times 44$);
11. The Tribunal was not persuaded that this was a sum which could properly be claimed from the Respondent. There was no provision in the lease for an amount of this nature and, in any event, at the termination of most tenancies there is a period of time before a property is re-let to other tenants. Miss Renton, in the circumstances, accepted that the Tribunal would not be making an award in relation to this;
12. A separate amount of £335 was claimed for gardening work which was broken down as follows:-
 - Gardening works/weeds/hedges/grass cutting/shrubs and weed killer application - £165;
 - Fixed price long reach camera survey and gutter cleaning - £90;

- The removal and disposal of rubbish/mixed waste left in garden front and rear - £40;
- Pressure hosing of paths and patio areas - £40

The Tribunal enquired as to why the Respondent would be responsible for these costs and, in particular, the long reach camera survey and gutter cleaning and pressure washing of paths and patio areas. Those would not appear to be matters for which the Respondent would, in normal circumstances, be held responsible. Again, Miss Renton accepted the position but maintained that the cost of the gardening work and removal of rubbish was appropriately charged and provided for in the lease. Those two amounts of £165 and £40 making a total of £205, ought to be ordered to be paid by the Respondent;

13. The Applicant claimed £750 for repair, maintenance and decoration work at the Property. The Tribunal, again, enquired as to the necessity of this and the responsibility of the Respondent for it. Miss Renton advised that the property was left in a poor state of repair at the termination of the tenancy. A number of walls had holes within them, a number of walls had stickers or marks on them where items had been fixed and had not been repaired upon removal. The kitchen wall at the cooker area was excessively dirty and required work to be undertaken in relation to it. Items within the bathroom required to be disposed of, these being items which have ought to have been removed by the tenant. Having considered the position, Miss Renton accepted that redecoration work would often be carried out by a landlord at the termination of a tenancy and that the Respondent ought not to be responsible for the cost of all work undertaken. She maintained, however, that there were defects in the property which did require repair and redecoration and also items which required to be removed and disposed of. She restricted that the claim to one of £375;

14. The Respondent claimed £270 for cleaning costs. Again, the Tribunal enquired as to the responsibility of the Respondent for that. Landlords often undertake cleaning work at the end of any tenancy and this work appeared to be routine;

15. The Tribunal stated that it would make an Order for payment of £2,829.18, that being:-

- £2,249.18 by way of rent arrears,
- £205 for essential gardening work and refuse removal;
- £375 for repairs to damage within the property and cleaning of the kitchen/cooker area;

16. The Tribunal pointed out that in the application reference is made to the need to replace locks, the original locks having been replaced by the Respondent. There was no invoice provided for the cost of any locks nor any separate claim in relation thereto. The Lease, however, did prohibit the Respondent from replacing locks without permission. In the absence of any claim for the cost thereof, or any proof of the cost thereof, the Tribunal was unable to make any award in relation to that specific matter;

FINDINGS IN FACT

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

- a. By Lease dated 10 March 2017 the Applicant let the property to the Respondent;
- b. The rent payable was £650 per calendar month;
- c. The Lease ended on 23 October 2018 on which date the Respondent vacated the property;
- d. The property and garden ground were left in a poor state of repair requiring the Applicant to incur expense in repairing defects within the property and tending to gardening work and removal of refuse
- e. At the date of termination of the tenancy the Respondent was in arrears of rent in the amount of £2,249.18. That amount is due, resting and owing to the Applicant;
- f. The cost of necessary work to the garden, to include the removal of refuse therefrom, amounted to £205. In terms of the Lease the Respondent is liable to the Applicant for this cost;
- g. At the date of termination of the Tenancy the Property had been damaged by the Respondent and, in particular, a number of holes existed in walls, walls had been damaged by items having been affixed thereto and the kitchen wall at the cooker area was excessively dirty and marked with grease and food, all requiring repair and redecoration. £375 is a reasonable estimate of the cost thereof and is an amount for which the Respondent is liable to make payment to the Applicant;

REASONS FOR DECISION

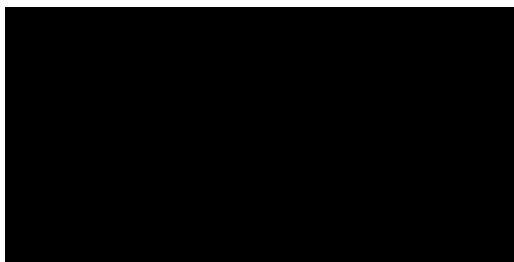
18. As at the date of termination of the lease rent was in arrears. No defence had been provided in relation to the same. There was no basis upon which the Tribunal should not order payment of the arrears;
19. The costs claimed in relation to work undertaken to the garden ground and exterior of the Property was excessive. In particular, there was no basis for the Respondent being responsible for cleaning gutters and pressure washing paths;
20. Similarly there was no basis for the Respondent being responsible for what appeared to be routine cleaning at the termination of a tenancy;
21. While a claim had been made for repair and redecoration, supported by a detailed invoice, again, part of what was claimed appeared to be for routine redecoration. The Tribunal was willing to allow an amount of £375.00 as a reasonable estimate of the necessary repair and redecoration for which the Respondent was responsible.

DECISION

The Tribunal granted an order against the Respondent for payment of the sum of TWO THOUSAND EIGHT HUNDRED AND TWENTY NINE POUNDS AND EIGHTEEN PENCE (£2,829.18) STERLING to the Applicant.

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

6 September 2021

Date