

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) under Section 71 of The Private Housing (Tenancies) Act 2016

Chamber Ref: FTS/HPC/PR/20/2505

Re: Property at Housemaster's Flat, Duffus House, Duffus, Elgin, IV30 5QB ("the Property")

Parties:

Ms Chen Zhao ("the Applicant"), and

Mr Edward Dunbar, The Old Manse, Duffus, Elgin, IV30 5QD ("the Respondent")

Tribunal Members:

**G McWilliams- Legal Member, and
A Khan- Ordinary Member**

Decision

1. The Tribunal, having considered the parties' evidence and submissions, makes an order for payment of the sum of £770.00 to the Applicant by the Respondent.

Background

2. This is an Application for a payment order contained in documents received on 3rd November 2020. It originally proceeded in terms of Rule 78 (Application for compensation for misrepresentation or concealment by landlord) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure ("the 2017 Rules") and then in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of the 2017 Rules.
3. The Applicant seeks payment of the sum of £4000.00, in respect of losses arising from a claimed breach of the parties' tenancy agreement, from the Respondent.

Case Management Discussion

4. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 25th March 2021. Reference is made to the Notes on the CMD.

Hearing

5. An evidential Hearing took place remotely by telephone conference call on 10th June 2021. The Applicant Ms C. Zhao and the Respondent Mr E. Dunbar attended. An interpreter, Ms Ng, attended to assist the Applicant. Ms K Xie and Mrs E McLeod, friends of the Applicant, also attended as Observers.
6. The Applicant stated that she would endeavour to conduct the CMD herself but would seek help from the interpreter in respect of any points arising which she found to be unclear.
7. The Applicant and Respondent had lodged written submissions, with supporting papers, in advance of the CMD and Hearing.
8. The Applicant stated that she was suffering from an eczema condition and that may affect her ability to concentrate and she may require assistance from the interpreter if that were to be the case. She stated that she had contacted her GP regarding her eczema condition in November 2020, was advised to apply cream, and did not obtain any written documentation from her GP.
9. The Applicant required assistance from the interpreter at the beginning of the Hearing regarding the Tribunal’s explanation of their role and the process to be followed at the Hearing. The Applicant did not require any further assistance from the interpreter throughout the Hearing.
10. At the commencement of the Hearing the parties agreed that the issues to be focused on were, firstly, whether or not there had been a breach of the parties’ tenancy agreement and, secondly, if the Tribunal determined that there had been a breach, the amount of any compensation, in respect of losses arising from the breach, which was to be awarded. The parties agreed that their previous attempts to resolve matters had proved fruitless and it was now for the Tribunal to make findings and a determination. The parties also agreed that their evidence and representations had been fully set out in the papers which they had already lodged with the Tribunal.

Evidence and Submissions

11. The Applicant stated that she relied on the terms of her Application and the representations and documentation which she had submitted in advance of the CMD and Hearing. The Applicant stated that, ordinarily, she did not wish to provide any additional oral or written evidence at the Hearing. She stated that she had hoped to lodge a piece of material showing some mould growth from the surface of a window in the Property, but she had not been able to locate this. In this regard the Respondent stated that it was accepted that there had been fungal growth in the Property.
12. The Respondent stated that he relied on the terms of the statements, representations and documentation which he had previously submitted to the Tribunal. The Respondent also said that he did not intend to provide further oral or written evidence.
13. Each party confirmed that they did not wish to ask questions of the other.
14. In response to questions from the Tribunal the Applicant stated that, as a result of the dry rot works which were being carried out at the Property she and her then 15 year old daughter were not able to use what she described as the “big room” on the second floor of the Property. She stated that the windows were not capable of being opened in that room. She said that the Respondent had not carried out regular inspections of the Property. The Respondent stated that he was aware that the Applicant had been keeping the Property in good order and, being respectful of her privacy, had not arranged regular inspections until the dry rot issue had arisen.
15. The Applicant submitted that there had been a breach of the tenancy agreement by the Respondent when the dry rot issue was discovered. She stated that at that stage the Respondent should have given her and her daughter 3 months’ notice to move out of the Property. She stated that she did not receive full information from the Respondent. The Applicant stated that she based her claim for compensation on her experience of renting houses in other countries, usually in China. She also stated that she had carefully read the terms of the parties’ tenancy agreement. She re-iterated that she should have been given 3 months’ notice when the outbreak of dry rot arose, which was when she considered that the Property was no longer habitable. The Applicant stated that she and her daughter were held there. She stated that they had to continue to pay rent for 3 months and that this period happened to coincide with the period of notice monies which she was also claiming. The Applicant also re-iterated her claim for emergency accommodation and taxi costs and for mental and physical stress and inconvenience. She stated that she had

informed the Respondent of her intention to move out of the Property on 14th September 2020, and referred to the copy messages which she had lodged with her Application. She stated that she had fluctuated between trying to leave the Property and trying to manage daily life there. The Applicant concluded by saying that it was very important that the parties honour the truth.

16. The Respondent submitted that the principal issue for initial determination by the Tribunal was whether or not the property met the Repairing Standard during the course of the parties' tenancy agreement. He stated that whilst the "big room", being the large bedroom, and part of the communal staircase had to be sectioned off when rot was discovered, the rest of the property was habitable. He stated that the Applicant had not asked for a rent rebate until 3rd October when she sought a reduction of £125.00 per month. The Respondent submitted that he had offered 4 months reduction of £125.00 per month by proposing to the Applicant, in October 2020, that she did not pay rent for November 2020, having already paid full rent for October on 1st October, before she sought the reduction. The Respondent stated that after the Applicant indicated that she was looking for another property, on 14th September 2020, he told her that they would not hold her to her notice period, given the fact that works were going on. He stated that he felt that at all times he had made the right decisions. He had made offers to help the Applicant by offering her some temporary stays in other holiday accommodation owned by his business. He stated that they had received some cancellations which made such offers possible. The Applicant had not taken him up on these offers. The Respondent stated that the discovery and requirement for treatment of the dry rot had been a new experience and he had tried to do his best in the circumstances. He stated that he had done his best to keep the Applicant informed. The Respondent concluded his submission by repeating his apology made at the CMD. He apologised again and stated that he had tried to do his best in what was a difficult situation.

17. After hearing the Respondent's submission the Applicant thanked him for his apology and, to the parties' credit, the Hearing concluded on that positive note.

Findings in Fact and Law

18. The parties' Tenancy Agreement commenced on 1st January 2019. The tenancy ended on 6th November 2020, when the Applicant, having left the Property on 30th October 2020, removed all her belongings.

19. On 14th July 2020, the Applicant drew fungal mould, within the property, to the attention of the Respondent.

20. The Respondent arranged for an inspection to be carried out by Richardson and Starling, in respect of the fungal mould, and they reported that there was dry rot within the property, on 28th July 2020. The Respondent thereafter arranged to carry out works to remedy the dry rot problem in the Property and in the larger property which the Property forms part of.
21. The Applicant and her daughter were not able to use a large bedroom in the property as a result of the ongoing works to eradicate the rot, in August, September and October 2020.
22. The Respondent offered the Applicant short respite stays at nearby holiday accommodation on several occasions during the period of the parties' tenancy agreement when works. The Applicant did not take the Respondent up on these offers.
23. The Applicant asked for a rent rebate of £125.00 per month on 3rd October 2020. In reply the Respondent proposed to the Applicant that she did not pay the monthly rent, of £500.00, in November 2020. The proposal was not accepted or rejected.
24. The Applicant and her daughter left the property, on 30th October 2020. They moved into emergency accommodation arranged by a friend, at a cost of £300.00, before securing alternative accommodation. They made payment of taxi costs, in the sum of £95.00, in their travel to and from the emergency accommodation. The Applicant removed her belongings from the Property on 6th November 2020.
25. The Respondent returned the deposit monies, of £500.00, to the Applicant after she left the Property. He waived rent for the period 1st to 6th November 2020.
26. In terms of the Clause 18 of the parties' tenancy agreement, the Respondent's duty was to ensure that the Property met the Repairing Standard throughout the duration of the agreement. In particular the Respondent's duty was to ensure that the Property was wind and watertight and in all other respects reasonably fit for people to live in.
27. The Property was not fully habitable during the term of the parties' tenancy agreement. As a result of the dry rot works being carried out, the Applicant and her daughter were not able to use the large bedroom in the Property. They were not able to access part of the communal staircase in the Property when the works were ongoing.

28. The Respondent is in breach of the parties' tenancy agreement as the Applicant was not able to reside in all of the rooms in the Property whilst the works were being carried out.
29. As a result of the breach of the parties' tenancy agreement, to the extent described above, the Applicant suffered losses. She did not have full enjoyment of the property. It is reasonable that the rent that she paid, of £500.00 per month, during the period of the works, for 3 months, in August, September and October 2020, be abated by the sum of £125.00 per month, total £375.00. It is not reasonable that the Applicant be entitled to a refund of rent paid for the months August, September and October 2020.
30. The Applicant, as a result of not being able to use the property fully, due to the ongoing works, suffered inconvenience in having to find and travel to and from emergency accommodation. It is reasonable that the Applicant be compensated for her losses in this regard, in the sum of £395.00.
31. The Applicant was obliged to provide formal notice of intention to leave the Property, in terms of the parties' tenancy agreement, but she did not do so. The Respondent indicated, in the parties' communications, that he was prepared to forego the notice due in the event that the Applicant wished to end the parties' agreement. It is not reasonable that the Applicant be found entitled to any payment from the Respondent in respect of a notice period under the parties' agreement.
32. The Applicant suffered losses and inconvenience a result of the Respondent's breach of the parties' tenancy agreement. She is entitled to payment of compensation from the Respondent in the sum of £770.00.

Reasons for Decision

33. Section 71 of The Private Housing (Tenancies) Act 2016 provides as follows:

- (1) In relation to civil proceedings arising from a private residential tenancy-
- (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than-
- (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.

34. Accordingly, the Tribunal has jurisdiction in relation to claims by tenants (such as the Applicant) for payment in respect of a private residential tenancy agreement, such as the parties' tenancy agreement.
35. The Tribunal considered all of the documentary and oral evidence and submissions.
36. Both the Applicant and the Respondent gave evidence and made submissions in a candid, straightforward manner. They helpfully lodged written representations and documentation which assisted the Tribunal. Having considered all of the evidence, in particular the parties' oral evidence, the Tribunal found, on a balance of probabilities, that the Respondent had breached the terms of the parties' tenancy agreement as he did not provide the Applicant and her daughter with a fully habitable home for them to enjoy during the months August, September and October 2020, when works to eradicate dry rot were ongoing. The Tribunal found that the Respondent investigated the fungal mould as soon as this was brought to his attention by the Applicant, carried out works to eradicate the dry rot which was discovered and made offers of alternative accommodation, and abatement of a month's rent, to the Applicant. The Tribunal found that, nevertheless, the Respondent was in breach of the parties' agreement to the limited extent that a bedroom and staircase were not able to be used by the Applicant and her daughter, and that the Applicant should be compensated for her loss and inconvenience suffered as a result of that breach.
37. The Tribunal carefully considered the issue of the level of compensation to be awarded to the Applicant for her loss and inconvenience, and determined that it was fair and proportionate to make an order for the Respondent's payment to her of the sum of £770.00. The Tribunal found that this sum will reasonably compensate the Applicant for not being able to enjoy all of the Property's accommodation, as the bedroom and staircase were not habitable during the said months August, September and October 2020. The sum ordered will also reasonably compensate the Applicant for her emergency accommodation and travel costs. The Tribunal found that it was not reasonable to award the Applicant compensation for a notice period, nor for full rent paid in August, September and October 2020, as she did have use of the majority of areas of the Property during those months.
38. The Tribunal accordingly determined that the Applicant is entitled to compensation for the Respondent's limited breach of the parties' tenancy agreement in the sum of £770.00.

Decision

39. Therefore the Tribunal determined to make an order for payment of the sum of £770.00 to the Applicant by the Respondent.

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.

G McW

6th September 2021

Legal Member

Date