



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/CV/20/1510

Re: Property at 90 Carledubs Avenue, Uphall, Broxburn EH52 6TE (“the Property”)

Parties:

Mr Gordon Bow, 9A Union Road, Broxburn EH52 6HR per Lothian Homea 4 Let, Unit C/2, Linbar House, 48 North Bridge Street, Bathgate EH48 4PP (“the applicant”)

Miss Lynne Thomson, 73 Moncrieff Way, Knightsbridge, Livingstone EH53 8LW (“the respondent”)

Tribunal Member:

David Preston (Legal Member)

Decision:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order for payment by the respondent to the applicant of the sum of ONE THOUSAND FOUR HUNDRED AND EIGHTY EIGHT POUNDS AND NINE PENCE (£1488.09) should be made.

Background

1. By application dated 29 June 2020 the applicant applied for an order for payment in respect of a balance of rent arrears and the cost of works required to the property following the respondent’s departure amounting in total to £5770.79 as detailed in the application and supporting documentation.
2. By Decision dated 9 July 2020 a Convener of HPC having delegated power for the purpose, referred the application to the tribunal under rule 9 of the Rules.
3. On 10 September 2020 a CMD was convened by telephone. In attendance were: Ms Samantha Fraser, representing the applicant; and the respondent representing herself. Thereafter a Note of the Discussion dated 11 September 2020 (“CMD Note”) was prepared and issued to the parties along with a Direction requiring the parties to provide further details of the claim and responses thereto.

4. On 30 September and 13 October 2020, the applicant provided breakdowns and details of the claim together with further dated photographs of the property. The respondent did not provide any further details until 25 October 2020 when she submitted an email together with supporting emails and documents.
5. The tribunal had before it the documents and papers enumerated at paragraph 3 of the CMD Note as well as:
 - a. Email from the applicant dated 30 September 2020, together with:
 - i. list of items deducted from the deposit by agreement,
 - ii. detailed breakdown of invoice from Forever Flooring,
 - iii. bundle of photographs dated 17 February 2020,
 - iv. bundle of photographs dated 11 April 2013,
 - v. detailed invoice from LRF Painting & Decorating dated 18 March 2020.
 - b. Email from the applicant dated 13 October 2020 together with:
 - i. detailed invoice dated 21 February 2020 From Tommy's Handyman Services,
 - ii. breakdown of Howden's invoices,
 - iii. Howden's Account Invoice dated 21 March 2020,
 - iv. Cairnie Construction Invoice dated 23 March 2020,
 - v. statement from Tracey Marshall dated 13 October 2020.

Hearing

6. A hearing took place by telephone on 27 October 2020. Present at the hearing were: Ms Samantha Fraser on behalf of the applicant; and the respondent who represented herself.
7. After introductions and introductory remarks by the convener the tribunal considered as a preliminary issue whether it would agree to accept the late lodging of the documents accompanying her email of 25 October which had been received by the tribunal first thing this morning. Ms Fraser advised that she had also received the email and documents first thing in the morning and had only briefly read the submissions but had not sufficient time to investigate her records. The tribunal asked the respondent to explain the reason for the late lodging productions. She said that she had been unwell and had been unable to either submit the papers or to advise the tribunal that further information was to be produced by her. The tribunal decided that it would not consider these late productions, but this did not prevent the respondent from providing oral evidence as to the contents as was deemed appropriate and reference could be made to the documents under reservation of the applicant's position.
8. The convener referred to the CMD Note and the parties confirmed that it was an accurate summary of the discussion which had taken place. He noted the items which had been agreed between the parties as set out in the Note, namely that: the tenancy started on 10 May 2013 and lasted until 17 February 2020 when the respondent left property; the full deposit of £600 had been retained by the applicant

to be set against the expenses detailed in items i, ii and iii of paragraph 3g of the CMD note, although the respondent contested the inclusion of that part of Tommy's Handyman Services Invoice relating to the lifting and disposing of the laminate flooring; and the balance of rent arrears remaining outstanding amounts to £193.04.

9. The tribunal heard the parties' positions in relation to the items which remained in dispute which broadly fell into four categories: Flooring; Kitchen units and appliances; Painting; and balance of rent arrears.

Flooring

- a. The respondent accepted that she was responsible for the replacement of some of the floorcoverings which had been damaged by her children and the dog. She contested the applicant's position about the condition of the laminate flooring and said that she did not agree that it required to be removed. She therefore contested that part of the Tommy's Handyman Services Invoice relating to the removal and disposal of the laminate flooring. She said that during the tenancy there had been a number of flooding issues arising from problems with the central heating and referred to leaking radiators and to the boiler needing to be replaced. This, together with water leaks from the bathroom damaged the flooring in more areas than just the kitchen.
- b. It was noted that the property had been carpeted throughout following the removal of the laminate from the hall, living room and kitchen.
- c. Ms Fraser referred to the photographs taken on 17 February 2020. She said that they showed that there was water damage to the laminate, which she said had been in areas of the property which had not been affected by any water damage. She accepted that there had been water leaks in the bathroom which had caused flooding in the kitchen which had been attended to by the landlord and accepted that some of the damaged flooring had been as a result of that. She also referred to a damaged ceiling in the kitchen caused by that flood for which the respondent was not being held responsible.
- d. The only reason given as to the necessity of removing the laminate floor as opposed to laying carpet over was that it had been damaged.
- e. Ms Fraser accepted that the damage to the flooring in the kitchen had resulted from the bathroom leak referred to and did not insist on that element of the claim.

Kitchen

- f. We were referred to the photographs of the kitchen dated 17 February 2020 which showed the condition of: the doors and drawers of the units; worktops; oven and hob; and fridge freezer.
- g. The respondent said that the damage to the kitchen units was not as extensive as was being made out. She accepted that there had been damage to the doors and worktops but not to the extent that they required to be entirely replaced. In her undated letter to Lothian Homes, she said that the fridge/freezer had broken down in 2015 and she had obtained her own to use instead as the landlord had not repaired it. It had therefore been unused for a number of years which had contributed to its condition and would have had to be replaced in any event. She accepted that the oven and hob required to

be cleaned and should have been covered by the deep clean which she also accepted she had not been able to attend to before leaving.

- h. Ms Fraser on behalf of the respondent, said that the damage to the kitchen units had been greater than would be expected on the return of the property.
- i. The respondent accepted that there had been some damage to these items but much of the apparent damage could have been resolved by the deep clean which she accepted had been necessary. Ms Fraser referred to the statement of Tracie Marshall, the cleaner in relation to the difficulty she had in cleaning the unit door handles.

Painting & Decorating

- j. The respondent accepted that early into the tenancy she had agreed with the landlord that she could change the colour of the walls but that if she painted the walls, she would require to return them to Magnolia on her removal, which she had not done. She therefore accepted liability for the cost of painting the walls but did not accept that she should be responsible for the ceilings or the woodwork.
- k. Ms Fraser said that the ceilings had to be repainted as they were splashed with paint from the painting of the walls by the respondent. She said that the woodwork had been damaged with paint which had not been removed by cleaning. She referred to the statement of Tracie Marshall, the cleaner who said that "...the doors and windows had fingerprints and other marks on them which I was able to remove a lot of but again the stains cause discolouration in areas..".

10. Ms Fraser was asked by the tribunal whether any account had been taken for fair wear and tear in light of the length of the respondent's occupancy of the property as a family home. She said that she thought that it would have but was unable to be specific as to the effect on the claim. She said that if the carpets and floorcoverings had been well maintained and regularly cleaned, they would be expected to have lasted about 8 years.

Reasons for Decision

11. Having had careful regard to the photographs and invoices presented to us as well as the oral evidence of Ms Fraser and the respondent, we are satisfied that the applicant is entitled to recover a sum to represent excessive damage to the property as acknowledged by the respondent. Ms Fraser told us that she had not been handling the property throughout the tenancy but did tell us that she had carried out regular inspections. However, we were not provided with the reports of such inspections which might have identified the extent of damage during the lease.

12. We took into account that the property is a family house which was occupied by the respondent along with her four children and a dog. The tenancy agreement at Clause 13 prohibited the keeping of pets, except with the landlord's express permission and subject to the tenant accepting "...liability for all and any damage, silage, dilapidation to the fixtures, effects, furniture and décor..." We were told that the respondent initially acquired two dogs following the death of her father and she kept one. The landlord agreed to the dog remaining and we accept that the above terms of the tenancy agreement would apply. Reference was made by Ms Fraser specifically to

damage caused by the dogs by way of urine staining. There was no other reference to damage caused to the property by the dogs.

13. We had regard to the length of tenancy, namely seven years which is above average for occupancy of property in the private sector. We consider that the condition of the carpets, paintwork and kitchen fittings and fixtures would have been largely contributed to by their age which must result in a significant deduction from the sums claimed by the applicant.
14. We found both Ms Fraser and the respondent to be reliable witnesses. We were able to accept their evidence at face value. The respondent had lived in the property as a family home for a period of seven years and it would be inevitable that the condition of the property would deteriorate. There was little in dispute apart from the extent of the respondent's liability. We have no doubt that the applicant would have made provision in his accounts for depreciation and for dilapidations, but this was not reflected in the sums being sought from the respondent. However, we also accepted the evidence of Ms Fraser that the extent of such damage is greater than might have been expected. The respondent was frank in accepting responsibility for elements of the claim such as the cost of the deep clean, returning the wall colour to Magnolia, accepting partial responsibility for replacement of carpets and the damage to the worktops.
15. We do not consider that it is appropriate for the respondent to be responsible for the removal of the laminate floor coverings in the hall, kitchen and living room. We were not satisfied by the evidence presented to us that the condition was such as to necessitate its removal, particularly in view of the fact that in these areas it was replaced with carpeting which could have been laid over the laminate flooring. Ms Fraser conceded that the flooring in the kitchen required to be replaced as a result of water damage for which the landlord had accepted responsibility.
16. We find, and indeed the respondent accepts, in her undated letter that the carpets in the three bedrooms, upper landing and stair the cost of which, according to the breakdown provided by Forever Flooring amounts to £1067 for which we consider that the respondent should be responsible for 15%, amounting to £160.05. This is calculated on the basis that the life expectancy of carpeting in these areas in a family house is approximately eight years whether there was any damage caused by pets or not. With regard to the damage caused by pets we would have considered that it would be appropriate for such issues to be raised in the course of the regular inspections carried out by the letting agents and remedial works carried out at the time to avoid excessive deterioration.
17. In respect of the work carried out to the kitchen units, fixtures and fittings we note that the photographs are dated 17 February 2020 but the invoice for the clean is dated 26 February 2020. We did not have sight of the condition of these items following the clean the cost of which was accepted by the respondent. The sum claimed per the Howden's breakdown and copy invoice attached to the email of 13 October 2020 amounts to £1284.40. We were told that the Cairnie Construction invoice of 23 March 2020 erroneously included the fitting of two doors other than in the kitchen, but we were not provided with any value for that and have therefore applied an estimate in calculating the respondent's share. We have allowed the sum of £600 plus VAT totalling £720 for the work done to the kitchen. Adopting a similar

calculation to that applied in respect of the carpets but taking the life expectancy of the units, worktops and appliances at 10 years we find that the respondent is responsible to contribute 20% ie £400 in respect of the cost of materials and fitting to take account of the fact that the damage was more extensive than would be expected as wear and tear.

18. With regard to the painting, we were provided with no evidence in respect of damage caused to the ceiling by the tenant and we do not accept that the tenant should be responsible for cost of repainting the woodwork. We did not consider that the photographs produced demonstrated excessive damage to skirtings or doors. We find that the respondent is liable to pay the cost of three coats of Magnolia to the walls totalling £690 plus cost of stripping one wall as accepted by her being £125.
19. The respondent accepted that rent amounting to £193.04 and accordingly we find that she is liable to the landlord in that sum.
20. Accordingly, the total sum due by the respondent to the applicant amounts to £1568.09.09 from which falls to be deducted the sum of £80 being the figure in the Tommy's Handyman Services invoice for removal and disposal of the laminate flooring leaving a balance due by the respondent of £1488.09.

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.

2 November 2020