



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1467

Re: Property at 25 Buchanan Court, Bo'ness, EH51 0NR ("the Property")

Parties:

Ms Katy Salkeld, Hay Park, 28 Grange Terrace, Bo'ness EH51 9DA ("the Applicant")

Mr John Carlyle, 51 Bute Crescent, Shotts, Lanarkshire, ML7 4HF and Ms Hayley Ingham, c/o Mrs Caroline Ingham, 34 Arden Craig Road, Castlemilk G45 0EL ("the Respondents")

Tribunal Members:

David Preston (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment of ONE THOUSAND TWO HUNDRED AND EIGHTY NINE POUNDS 74 PENCE (£1289.74) be made in favour of the Applicant.

Background

1. This is an application for payment of £3744.74 arising from Private Residential Tenancy Agreement between the parties dated 1 June 2018, representing rent arrears and damages incurred to the leased subjects.
2. A Case Management Discussion (CMD) was held on 16 December 2020 at which the applicant was represented by Ms Anna Duff, Solicitor and the first respondent attended in person. The second respondent was neither present nor represented. Following thereon, a Direction dated 16 December 2020 was issued by the tribunal.
3. The papers before the tribunal comprised:

- a. Application form;
 - b. Invoices:
 - i. Star Joiners (undated) - £630 of which £500 was claimed;
 - ii. Terry Dray (13.8.19) - £1000 of which £500 was claimed;
 - iii. Terry Dray (25.3.18) - £540;
 - iv. Gavin Walker (23.8.19) - £1950 of which £975 was claimed;
 - v. Jean the Clean Genie (25.8.19) - £150;
 - vi. A Gibson (29.8.29) - £600;
 - vii. McAvoy Plumbers (23.4.19) - £236.40.
 - c. Two bundles of photographs taken before and after the tenancy;
 - d. Tenancy Deposit Proposal;
 - e. Private Residential Tenancy Agreement dated 1 June 2018 with Inventory of Contents;
 - f. email correspondence between RGM Solicitors and the respondents;
 - g. bundle of photographs lodged by the second respondent taken from the Inventory of Contents at entry.
4. In addition to the invoices listed above, additional copies were lodged by the applicant providing breakdowns of the invoices and details of the sums claimed. Numbers iii and vii were lodged as evidence of the work carried out and did not form part of the claim.
5. Evidence was heard from the parties present, Ms Caroline Ingham and Mr David Harrison, RGM Solicitors, the Letting Agent.

Preliminary Matters

6. The applicant had lodged various documents and photographs in support of her position. On 30 March 2021 the first respondent sought to lodge documents and photographs in support of his position.
7. Representations were made by the second respondent on 30 November 2020 and 11 January 2021, but these were not included in the papers considered by the tribunal as they contained personal information and the second respondent had not consented to them being copied over to the other parties.

Hearing

8. The Hearing took place on 31 March 2021 by way of teleconference. The Applicant was present. The first respondent was personally present, and the second respondent was represented by her mother, Ms Caroline Ingham.
9. At the outset the tribunal dealt with the issue of the late lodging of productions by the first respondent. It was confirmed that these had not been crossed over to the other parties as they also contained personal information and no consent had been given. After discussion it was agreed that the photographs as well as other documents could be crossed over. It was noted that the photographs were copies of some of those which had been lodged by the applicant.
10. The tribunal confirmed with the parties that they accepted that the Note of CMD dated 16 December 2020 was an accurate statement of what had taken place at the CMD. It was agreed that the hearing today would deal with the "Issues to be Resolved" as outlined on page 5 of the Note.
11. The respondents maintained that they had been put under pressure to vacate the property. They were served with notices of eviction requiring that the property be vacated by 2 June 2019 which had given them significant difficulties in view of their disabilities, and they had been unable to complete the cleaning or removal of rubbish et cetera. Mr Harrison denied that the respondents had been put under pressure and referred to the fact that although the end date was 2 June 2019, the keys had not been returned until 12 June 2019. Accordingly, the respondents had been given plenty of opportunity to vacate the property in an orderly fashion.
12. Rent Arrears:
 - a. The applicant's position was that the tenants had failed to pay rent for April, May and 1-12 June 2019 totalling £1719.74, although she had recovered the deposit of £700 in full leaving balance of £1019.74.
 - b. Mr Harrison said that the leak under the kitchen sink had been reported to his office, but he was unable to confirm the date on which the complaint had first been made. He maintained that it had been acted upon and McAvoy plumbers had attended the property on Saturday, 30 March 2019. They reported to him that they had secured the leak by turning off the water to the sink and reported that the drain was blocked. A contractor was then instructed to clear the blockage which was done on 5 or 6 April 2019 which then allowed McAvoy to return on 12th April 2019 to fit new taps, connectors and waste kit as per their invoice dated 23 April 2019. Thereafter he heard no more about the leak and therefore assumed that the work had been carried out satisfactorily. He thought that he had emailed the respondents on 18 April 2019 for confirmation that all was in order, but it transpired that the email had been wrongly addressed and

had not been received by the respondents. He said that in his opinion the respondents were not entitled to retain or withhold the rent and maintained that the repair had been carried out in time and the applicant had fulfilled her obligations.

- c. The respondents admitted that the rent for the periods stated had not been paid. They said that they had withheld the rent because of the problems in relation to a leak at the kitchen sink which had caused them considerable inconvenience over a prolonged period of weeks when they were forced to wash dishes et cetera in the bath upstairs and were unable to use the washing machine properly. The first respondent said that he had to carry out temporary repairs before he was eventually able to get any response from Mr Harrison. The work carried out by McAvoy had not been effective and he maintained that the problem continued until they vacated the property. Ms Ingham said that she had been made aware by her daughter of the problems that she was having in cleaning the water from the kitchen floor and to her recollection the problem had been ongoing over a number of weeks. The first respondent referred to the emails of 3 April 2019 and, in particular, his notification that he would not pay for the rent until the problem had been resolved. He also said that the issue, which he maintained had lasted for a prolonged period had caused him frustration and stress and he blamed the situation for causing a breakdown in his relationship with the second named respondent and the loss of his job.

13. Repairs and damage:

- a. The applicant referred to the invoices and photographs. She described the condition of the property as having been fine when the respondents moved in, having been freshly decorated, but in a disgusting state at the end. She explained that she had adjusted the sums claimed to take account of wear and tear and had deducted items which she accepted were her responsibility: the cost of changing the locks and the removal of the shed (£130); 50% of the carpeting costs; 50% of the re-decoration costs. She said that the laminate flooring and underlay downstairs and the carpets and underlay on the stairs and in the bedrooms had to be lifted due to their condition. She said that the carpets and flooring had smelt strongly of dog urine and described the smell in the house as significant. She said that the photos showed the debris and refuse left in the property which had to be removed.
- b. Mr Harrison, who had taken the photographs both before and after the tenancy confirmed that the carpets and floor coverings had been described as in "average" condition in the Inventory of Contents and was of the opinion that they would have been required to be replaced at the end of the lease, although a deep clean might have been sufficient, but this had not been tried. He said that food had been and left in the fridge as shown in the photos, but he could not recall food being left in other kitchen cupboards. He said that if food had been left, he would have

photographed it for the condition report at the end of the tenancy. He also said that if there had been specific areas of damage to the carpets or paintwork, he would have photographed that. The applicant said that the carpets were 3 or 4 years old. Mr Harrison was of the view that landlords should expect to replace carpets after 3 or 4 years but did express the view that he would regard it as reasonable for the tenants in this case to contribute towards the cost of the carpets in view of their general condition. He did not recall any excessive smell, apart from the fact that it was obvious that dogs had lived in the property. He did not refer to a strong smell of urine and said that he had not gone on to his knees to check.

- c. The applicant said that the property had been redecorated before the tenancy started and referred to the invoice which detailed the work carried out in March 2018 at a cost of £540. She said that as a result of scuff marks it had to be re-decorated after the tenancy. She referred to the damage to the door in the living room which had to be replaced. Mr Harrison referred to the photos and again indicated that had there been specific areas of excessive damage to the paintwork it would have been photographed.
- d. The applicant referred to the photos showing the amount of rubbish, debris and food left in the property at the end of the tenancy and therefore held the respondents liable for the cost of the cleaning by Jean the Clean Genie. She was asked to explain the reference in the invoice to cleaning builders' plaster and dust from the bathroom. The applicant said that she had re-fitted the bathroom and kitchen and the cleaning had been carried out thereafter. The tribunal noted that the invoice also referred to removing 'protective covering' in the kitchen and vacuuming carpets, which had been replaced by that time.
- e. The applicant referred to the photos of the garden which showed the condition at the end of the tenancy. There had been issues with its state throughout the tenancy and the Environmental Health Department had been involved as a result of complaints from neighbours.
- f. The respondents denied the claims. They questioned the need for the carpets and floorcoverings to be lifted. They accepted that there had been rubbish bags and cardboard cartons left in the property which they had not had time to remove properly. Neither had they been able to clean the carpets, which could have been restored by cleaning, and nor did they accept that they should be responsible for the cost of removal or replacement of the carpets and floorcoverings. The laminate flooring had gaps at the start of the tenancy as could be seen in the pre-tenancy photos. Damage to the kitchen floor had resulted from the leak from the sink and the blocked drain, which had not been attended to properly or in good time.

- g. The respondents denied that the carpets had been affected by dog urine. The dogs had never fouled inside and had always gone out of the house. They denied the reference to nicotine as the first respondent had not smoked inside the house but had gone outside to do so. The second respondent did not smoke. He referred to the pre-tenancy photos a number of which showed various damaged areas of carpet and pointed out that there were no photos of damaged paintwork. He accepted responsibility for the damage to the lounge door which had been hit with a coffee table during the removal.

Findings in Fact

14. The tribunal made the following findings in fact:

- a. The Private Residential agreement between the parties commenced on 1 June 2018 and continued until 12 June 2019.
- b. The tenancy ended when the applicant served a Notice to Leave on the basis of Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016, namely that the applicant intended to sell the property. The end date in the Notice to Leave before which an application to the Tribunal for eviction could not be made was 1 June 2019.
- c. The respondents responded to the Notice to Leave and sought to vacate the property by 1 June 2019, although they did not achieve that date and vacated on 12 June 2019.
- d. Prior to the start of the tenancy the property had been re-decorated. The carpets were 3 or 4 years old at that time and were described as being in an average condition. The laminate flooring was in 'reasonable' or 'average' condition and in the kitchen was in 'poor' condition. The garden was not in a neat and tidy condition at that time.
- e. During the tenancy there was a leak from the kitchen sink and the drain was blocked. This was reported to the letting agents prior to 30 March 2019. The first respondent had carried out a temporary repair. McAvoy Plumbers attended on 30 March 2019 and secured the leak by turning off the water. On 5 or 6 April 2019 drainage contractors cleared the blockage and on 12 April 2019 McAvoy fitted new taps, connectors and drainage kit. Thereafter the letting agents received no further complaints about the leak.
- f. The respondents withheld rent payments for the months of April and May 2019 and for the period 1-12 June 2019 totalling £1719.74. The applicant recovered the deposit of £700 against the arrears, leaving a balance of £1019.74.

- g. The respondents left rubbish and debris in the property and neither cleaned it nor arranged for it to be cleaned. During the removal a door was damaged and required to be replaced by the applicant. The garden was left in a similar condition to that in which it had been at the start although there was a number of items of rubbish and a small amount of dog mess.
- h. The respondents had been permitted by the applicant to keep dogs in the property.
- i. The applicant required to hire contractors to clear the rubbish and debris from the property.
- j. The applicant determined to re-decorate the property and replace the laminate flooring on the ground floor and the carpets on the stairs and in the bedrooms on the first floor.

Findings in Fact and Law

15. The tribunal made the following findings in fact and law:

- a. The tenancy contract between the parties commencing on 1 June 2019 is a Private Residential Tenancy agreement within the meaning of Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
- b. The respondents were entitled to keep dogs in the property.
- c. While tenants are entitled to withhold rent to ensure that necessary works are carried out to ensure that the property meets the repairing standard, tenants are obliged to release such retention on completion of the works.
- d. The respondents neither released the retained rent payments nor advised the applicant that the leak had not been satisfactorily repaired and are obliged to make payment of that sum to the applicant.
- e. While the respondents left the property in an untidy condition, there was no significant deterioration in its condition during the tenancy beyond what could be regarded as reasonable wear and tear, apart from the damaged door for which the respondents accepted liability as accidental damage during their removal. Apart from the rubbish, the garden was not in a significantly worse condition at the end of the tenancy.
- f. The respondents are liable for: the balance of arrears of rent (£1019.74); the cost of the replacement door (£90); the cost of removal of debris and rubbish from the house and garden (£180).
- g. The carpets and floorcoverings had reached or were reaching the end of their expected life and the applicant chose to replace them without making an effort to have them cleaned. Neither the condition of the laminate

flooring, nor the painter work and decoration significantly deteriorated during the tenancy.

Reasons for Decision

16. The photos, which had been taken by Mr Harrison both at the start and the end of the tenancy showed the condition of the property at the respective times. Mr Harrison said that he had taken or would take photos of particular issues such as specific areas of damage. Such damage was seen in both sets of photos. There was no significantly greater damage, either to the decoration or carpets on the post-tenancy pictures apart from the rubbish and debris. Neither were there photos of nicotine stains at start or finish of the tenancy nor did Mr Harrison mention that.
17. The tribunal preferred the evidence of the respondents in relation to any damage caused to carpets by the dogs. Their position was supported by the evidence of Mr Harrison who did not describe a particularly strong smell of dog urine and described the smell as that of dogs having been living in the house.
18. Mr Harrison said that he photographed specific areas of damage to carpets and decoration if there was any, as can be seen in the photos. While the post-tenancy photos showed the debris and rubbish throughout the property, they did not highlight any particular areas of damage to the carpets or decoration as having occurred during the tenancy apart from the damage to the lounge door and food left in the fridge. The tribunal accepted his evidence that if food had been left in the kitchen cupboards, he would have taken pictures of it.
19. The tribunal preferred the evidence of Mr Harrison in relation to the repair of the leak. It was satisfied that the leak had been repaired by 12 April 2019. If it had not been satisfactory, the tribunal was satisfied that the second respondent would be more likely to have reported that fact to the letting agents. The email regarding retention of the rent was sent on 3 April 2019 before the repair and, in the absence of any further complaint, the letting agents were entitled to consider that it had been done and the rent should have been paid.
20. The tribunal did not accept that the respondents should be responsible for the cost of replacement carpets or flooring. Mr Harrison and the Inventory of Contents described the carpets and laminate flooring as 'poor' or 'average' at the start and he would expect a landlord to replace the carpets after four years, which these carpets were. The respondents were not responsible for excessive damage or wear to the carpet.
21. There was no evidence of specific damage to the decoration apart from the lounge door and the applicant would have been likely to re-decorate in any event, particularly in view of her intention to sell.

22. The tribunal did not consider that the respondents were liable for the invoice from Jean the Clean Genie. The applicant had carried out considerable work to the property by replacing the kitchen and bathroom and had included the cleaning of builders' plaster and dust and removal of protective plastic. The carpets which had been vacuumed by that time were the replacement carpets and not those for which the respondents would have had any responsibility.
23. In relation to the garden, the tribunal is satisfied from a comparison of the photographs that the condition was largely similar at the start and the end of the tenancy apart from the rubbish and debris.

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

Legal Member/Chair

12 April 2021

Date