



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/2499

Re: Property at 59(I) Marischal Street, Aberdeen, AB11 5AB (“the Property”)

Parties:

Mr Mohammed Hussain Mehrabadi, 3 Queens Den, Aberdeen, AB15 8BW (“the Applicant”)

Miss Sonia-Gabriela Stocia, 59(I) Marischal Street, Aberdeen, AB11 5AB (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application be dismissed.

Background

1. By application received between 2 and 16 December 2020 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a payment order for rent due arising from a private residential tenancy agreement between the Parties. The Application comprised an application form, copy private residential tenancy agreement showing a monthly rent of £410.00, a statement of rent due and paid between March and October 2020 amounting to £1,980.00 and a claim for damage to a door amounting to £350.00.
2. On 6 January 2021, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 11 February 2021 at 10.00 am by telephone conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties.

CMD

3. The CMD took place on 11 February 2021 at 2.00 pm, having been adjourned from earlier in the day, by telephone conference call. The Applicant and the Respondent both took part. The Tribunal was assisted by Ms. Anca-Simona Varaticeanu.
4. The Applicant advised that the sum sought is the sum specified in the Application plus a further £820.00 for the months of January and February 2021 bringing the total sum claimed as due to £3,150.00. The Respondent disputed that this sum is due.
5. From the CMD, the matters to be resolved were:
 - i) The rent due and paid by the Respondent;
 - ii) The damage to the door and what is the liability of the Respondent in this respect?;
 - iii) Was the rent reduced in January 2021?;
 - iv) Is the Respondent withholding rent and is she entitled to withhold rent?
6. A Hearing on evidence was fixed for 11 March 2021 at 10.00 am.
7. The Tribunal issued the following Direction:-

The Applicant is required to provide:

 1. *A written statement of all rent due and paid by the Respondent from 4 September 2019 to 4 February 2021;*
 2. *Bank statements to show the lodging or payment of rent from 4 September 2019 to 4 February 2021. The bank statements should be redacted to remove details of transactions and personal details which are not connected to the Application and*
 3. *Evidence of the damage to the door and either (i) a receipted invoice for the repair or replacement or (ii) an estimate for the repair or replacement and*
 4. *Evidence, if any, in support of the claim that the damage to the door was caused by the Respondent, or, on the balance of probabilities, can be shown to have been caused by the Respondent.*

The Respondent is required to provide:

5. *Receipts, if any, of the rent paid by her from 4 September 2019 to the 4 February 2021;*
6. *Evidence, if any, that the rent was reduced in January 2021;*
7. *Evidence, if any, that she is entitled to withhold rent due to the condition of the Property;*
8. *Evidence, if any, that she notified the Applicant that she was withholding rent due to the condition of the Property and*
9. *Any evidence which she might have to refute or dispute the Applicant's claim that the damage to the door was caused by her.*

If the Parties do not have documentary evidence to support their claims, they should bring witnesses, if any, to speak to the facts.

10. *The Applicant and Respondent are both required to provide a list of witnesses, if any.*

*The said documentation and witness list should be lodged with the Chamber and should be copied to each other no later than close of business on **Thursday 4 March 2021.***"

8. In response to the Direction the Applicant lodged pages from a bank statement for the months of March, April, July, August and December 2021 and February 2021 purporting to show payments made by the Respondent and a covering letter stating that he agreed with the Respondent that the rent would be £350.00 per month from January 2021 and that he had not been able to obtain an estimate for the cost of replacing the door.
9. The Respondent did not lodge any documents.

Hearing

10. A Hearing took place on 11 March 2021 at 10.00 am. The Applicant did not appear and was not represented. The Respondent both took part. The Tribunal was assisted by Ms. Anca-Simona Varaticeanu. The Respondent had two witnesses to speak on her behalf, Mr. Marius Stoic, her brother, and Mr. Maruis Stacs, her boyfriend.
11. With regard to the Applicant's claim for rent due, the Tribunal had regard to the information before it being the Application and the bank statement lodged, neither of which provided a clear explanation of the sum sought. The Tribunal noted that the Applicant had not complied with the Direction and had not provided evidence of the sum sought.
12. Accordingly, there was no need to hear evidence by and on behalf of the Respondent.

Findings in Fact.

The Tribunal made the following findings in fact: -

- i) There is a private residential tenancy agreement between the Parties;
- ii) The monthly rent was £410.00 until reduced by the Applicant.

13. There being insufficient evidence before it, the Tribunal could not make a finding in fact in respect of rent or other sums due and owing by the Respondent to the Applicant.

Decision and Reasons for Decision

14. There being insufficient evidence before it to show that there is rent or other sums due and owing by the Respondent to the Applicant, the Tribunal dismissed the Application.

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.

Karen Moore

11 March 2021

Legal Member/Chair

Date