

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 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/4074

Re: Property at 8 Lying Hills, Forfar, DD8 1LR (“the Property”)

Parties:

Mr Charles Leslie, Mrs Sheena Leslie, 9A Dunnichen Road, Kingsmuir, Forfar, DD8 2RQ (“the Applicant”)

Mr Stan Chrystall, present whereabouts unknown and Mrs Karen Keith, present whereabouts unknown, but sometime 4 Vinney Place, Letham, DD8 2QA (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an Order for Payment should be refused.

Background

By application, received by the Tribunal on 23 December 2019, the Applicant sought an Order for Payment against the Respondent. The amount sought was £386.63 in unpaid rent for the Property and £866.24 in respect of damage to the Property.

The application was accompanied by copies of (i) a Private Residential Tenancy Agreement between the Parties commencing on 26 March 2018 at a monthly rent of £420, with a deposit paid of £420 (ii) a rent statement showing rent paid up to 25 October 2019 (iii) Estimates from Howdens Joinery Co. in respect of supply of a worktop (£94.80) and Invoices from that company dated 14 and 29 October 2019 for supplying a kitchen unit door (£37.66) and a drawer box (£31.80) (iv) an Invoice dated 31 October 2019 from Swift & Green Cleaning for cleaning the hob and oven (£52) (v)

an Invoice from Durward Plumbing & Heating for supplying and fitting a tap in the bathroom (£104.98) and (vi) an Estimate from Whittons Flooring Ltd for replacing the vinyl floorcovering in the kitchen and bathroom (£365). The Applicant was seeking reimbursement of those costs and £386.63 in respect of rent, as well as £40 for removal of rubbish left in refuse bins at the Property, £60 for general cleaning and £50 for gardening.

The Applicant also provided the Tribunal with two sets of photographs of the Property, one set dated 23 March 2018 and the other dated 25 and 26 October 2019. Copies of Invoices vouching the installation of a new kitchen and bathroom and fitting of carpet and vinyl flooring prior to the commencement of the tenancy, and copies of text and e-mail exchanges between the Parties were also submitted.

The Applicant stated that the Respondent had had, in effect, abandoned the Property on 25 October 2019. The Respondent had advised the Applicant, by text and email shortly before a property inspection scheduled for that date, that they had left. The Applicant contended that they had failed to give the 28 days' notice required by law and that rent was, therefore, payable for that period, the amount being £386.63. The Respondent also owed the Applicant for damage to one of the drawer units in the kitchen and to the door of the sink unit housing, staining of the bathroom vinyl flooring, a burn to the kitchen vinyl, damage to the wash hand basin tap, cleaning the oven and hob and generally cleaning the Property, disposing of items left in the Property and the shed, gardening and disposal of three bins full of mixed refuse.

On 28 January 2020, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 17 February 2020.

On 28 January 2020, the Respondent made written representations to the Tribunal. They stated that the Applicant had on several occasions threatened eviction on what they described as false claims. The kitchen drawer had fallen off through no fault of theirs and the matter was reported to the Applicant with a request that it be fixed. When the drawer fell off, they had noticed the chip on the unit door. It seemed that the drawer had hit the unit as it fell. The stain on the bathroom vinyl was, in their opinion, the result of water bouncing back up out of what was a shallow basin. At the time of leaving the Property, the Respondent had not been aware of a burn on the kitchen worktop and it had not been there at the time of the inspection on 4 October 2019. The tap in the basin in the bathroom had been broken when the Respondent had moved in and had been reported to the Applicant. The oven had always been cleaned when they lived at the Property and the Applicant had never had an issue with the cleanliness of the house during that time. During the tenancy, the Respondent had had a gardener, who also removed the garden waste. They had used the correct bins and had never had a problem with the bins uplift. There was no invoice to prove the cost of emptying and sorting the bins. They could be left at the roadside and emptied at no cost and there was a refuse centre in Forfar. The items in the shed belonged to the Applicant. The Respondent commented that the decision from SafeDeposits Scotland regarding the rent arrears claimed by the Applicant was awaited, and the Applicant had not submitted to the Tribunal any of their inspection paperwork, which would disprove much of their claim. There was a small scratch on the vinyl flooring, but it was extreme that the Applicant felt the whole flooring had to be replaced and the damage was wear and tear.

The Respondent said that they had deleted their texts from the Applicant and contended that those provided by the Applicant to the Tribunal were incomplete. The Applicant had not fulfilled their duty when the Respondent reported something requiring repair.

On 16 February 2020, the Respondent sent the Tribunal copies of the Report of Independent Adjudication by SafeDeposits Scotland, following an application by the Applicant for repayment of the deposit, dated 27 October 2019, and of a letter from the Applicant which included a copy of an email sent by the Applicant to the Scottish Association of Landlords, in which they stated that they would like to evict the Respondent.

Case Management Discussion

A Case Management Discussion was held on 2 March 2020. It was noted that the Applicant had received from SafeDeposits Scotland the sum of £307.62. The Tribunal noted that this sum included £27.62 by way of rent, leaving a balance of £359.01. The Applicant stated that they had made an error when applying to the tenancy deposit scheme and had given the wrong tenancy end date, so only received two days' rent. The Tribunal noted that the position of the Respondent, who was not present or represented, was that they were entitled to unilaterally terminate the tenancy agreement on 25 October 2019 in the light of the Applicant's conduct towards them and they had advised the Applicant of this by text. This was wholly denied by the Applicant. The Applicant's position was that there had been no agreement to waive the 28-day notice period.

The Tribunal noted that the Applicant had stated in the written submissions that the kitchen units were new at the start of the tenancy. The drawer unit and door were both damaged by the Respondent, who had carried out unauthorised repairs to the drawer unit. The bathroom vinyl had also been new. It had been stained by the Respondent and the stain could not be removed, so the vinyl had to be replaced. The kitchen vinyl had been burned by the Respondent and could not be repaired. The vinyl flooring had not yet been replaced, but it was their intention to replace it. The Respondent's position in relation to these matters was set out in their written representations. The Tribunal noted that the Applicant had received £130 from the deposit in respect of these repair items, so the outstanding sum was £399.26.

The Applicant stated that the tap for the wash hand basin in the bathroom had been broken during the tenancy. The replacement cost was £104.98. The Respondent's position was that it had been broken when they moved in.

The Applicant's view was that due to the failure by the Respondent to clean the oven and hob, they required a professional clean at the end of the tenancy. The Respondent had also had to spend time cleaning the Property after the Respondent left. The Tribunal noted that the Applicant had received £75 from the deposit towards the cost of cleaning, leaving a balance of £37. The Respondent's written submissions stated that they had kept the oven clean during the tenancy and it would not, therefore, have required a professional clean. The Applicant had never raised any concerns during the tenancy about the cleanliness of the Property.

It was agreed by the Applicant that the head of claim relating to gardening should be removed, as the full sum claimed (£50) had been returned from the deposit.

As regards the cost of sorting mixed refuse, the Respondent had argued that they had used the correct bins at all times and that, in any event, the Applicant had failed to produce any Invoices to justify the cost claimed by them (£40). The Applicant stated that the Respondent had left mixed refuse in the three bins and the Applicant had carried out themselves the work of sorting it.

The Applicant had claimed £50 for their time in removing items left behind by the Respondent. The Tribunal noted that the Applicant had received £25 from the deposit in respect of this matter, leaving a balance claimed of £25. The position of the Respondent was that any items left in the shed belonged to the Applicant.

The Tribunal noted that the total sum claimed after deduction of the proportion of the deposit that had been awarded by SafeDeposits Scotland to the Applicant was now £965.25 and determined that a Hearing should be fixed in order to determine the issues still in dispute.

On 10 March 2020, the Applicant responded to the written representations from the Respondent. They denied that the Respondent had reported that the drawer had been broken. It had been discovered by the Respondent at an inspection on 4 October 2019. The Respondent had, it appeared, tried to repair it and had made two holes in the face of the drawer. The drawer falling out could not have caused the damage to the door of a kitchen unit as the unit was some four feet away from it. The staining on the bathroom vinyl had been caused by dye from a unit the Respondent had placed next to the wash hand basin. The damaged work surface had not been obvious at the visit on 4 October. The burnt area had a pitted feel, whereas the rest of the worktop surface was smooth to the touch. The tap in the wash hand basin had been new when the Respondent moved in and, if that was not the case, it should have been recorded in the Inventory taken at that time, or at least reported to the Applicant. The oven and hob had been in a dirty state on 4 October 2019 with burnt on grease. The refuse centre had refused to accept the bins because of the mixed refuse. This had necessitated the Applicant bringing the bins to their home to sort out the refuse. If the items in the shed belonged to the Applicant, why had the Respondent not pointed this out when the Inventory was taken? Any damages reported to the Applicant were dealt with immediately and the Respondent had not provided specific proof to the contrary.

The Applicant provided copies of the Inspection Reports completed during the tenancy. They were dated 27 June 2018 and 19 April 2019 and were signed by both parties. A third Inspection Report, dated 4 October 2019, was not signed.

The Hearing

Due to the COVID-19 outbreak and lockdown restrictions, the Hearing did not take place until 24 August 2020 and was held by way of a telephone conference call. The Applicant, Mrs Leslie, participated in the Hearing and was supported by her husband, the Applicant Mr Leslie. The Respondent was not present or represented. As the Respondents' whereabouts are unknown, intimation to the Respondent of the Hearing was by advertisement on the Tribunal's website between 23 July and 24 August 2020. The Legal Chair told the Applicant that the issues in dispute were rent, repairs, cleaning, sorting of refuse and clearing of items. They would be dealt with in turn.

1. Rent

The Tribunal asked the Applicant to comment on the finding of the SafeDeposits Scotland Independent Adjudication that the tenancy had ended on 27 October 2019, the date on which the Applicant had applied for return of the deposit. Mrs Leslie stated that she had arranged to inspect the Property on the Friday evening (25 October), but the Respondent had sent her a text shortly beforehand to say that the Applicant needn't bother coming round, as the Respondent had left. The view of Mrs Leslie was that this meant the Respondent had abandoned the Property and she had, therefore applied to SafeDeposits Scotland. In that application, she had inadvertently put 27 October rather than 27 November as the end date of the tenancy. She had not realised she had to wait the 28 days' notice period that the Respondent ought to have given before making the application.

Questioned by the Tribunal, Mrs Leslie confirmed that she had not at any time reminded the Respondent of the requirement to give 28 days' notice and said that she had been extremely relieved when the Respondent moved out. She confirmed that new tenants had moved into the Property on 8 November 2019.

2. Repairs

The Applicant told the Tribunal that the Respondent had tried to repair the drawer in the kitchen unit, but this had resulted in their putting nails through the drawer front. As a result, the drawer was dangerous and had to be replaced. Mrs Leslie said that she had not investigated the possibility of repairing the worktop and that it was important that the Property should look nice for new tenants. For the same reason, she was entitled to have the vinyl in the kitchen and bathroom renewed. When asked by the Tribunal about the cost of the replacement vinyl (£365, as opposed to £174 in 2018), Mrs Leslie said that she had not been happy with the contractor in 2018, so had decided to use a local firm instead. She was content for the Tribunal to award less than the full replacement estimate, to take account of that fact. She accepted that the vinyl was still usable and confirmed that it had not in fact been replaced, as she could not afford it.

In relation to the tap for the wash hand basin, the Applicant said the suppliers would have been asked to replace if the Respondent had reported it as requiring repair. There was no evidence that they had reported it and at no time had the Respondent said that it was not working. The lever had come loose and, due to the screw having become worn, it could not be screwed back on tightly, so the tap had to be replaced.

The door of the kitchen unit had not been damaged at the time of the inspection on 4 October 2019, so the damage could not have been caused when the drawer, which was four feet away anyway, had fallen out. It had been damaged between 4 and 25 October and it looked as though a sharp object had hit it. Mrs Leslie accepted that it did not render the door unusable, but any responsible landlord with a pride in their property would have replaced it before new tenants moved in, as it could not simply be repaired. The Applicant's son was a carpenter, so it was only the cost of supply, not fitting, that was sought.

3. Cleaning

The Applicant confirmed that they had done the general cleaning themselves but had felt it necessary to have the oven and hob cleaned by a professional firm.

4. Sorting of Refuse

The Applicant had taken the three bins in their trailer to the refuse centre, but the staff there had refused to take them. They would not allow grass cuttings or foodstuffs to be tipped into general waste. Mrs Leslie added that the Respondent had said that they had paid for garden rubbish in the appropriate bin to be collected, but, had that been the case there would have been a sticker on the bin indicating that the necessary fee had been paid. There was no sticker on the garden refuse bin.

5. Clearing of Items

The Respondent had stated in the written representations that any items in the shed had been there from the start and belonged to the Applicant. Mrs Leslie told the Tribunal that the items were mainly BMW parts. The Respondent had had a BMW. The Applicant did not own a BMW.

The Hearing then ended, the Applicant left the conference call and the Tribunal considered all the oral and written evidence before it.

Reasons for Decision

It was clear to the Tribunal that the relationship between the parties had broken down before the Respondent left the Property. The main cause of their dispute at that time related to the installation of a driveway at the Property, and there were allegations and counter-allegations regarding the conduct of the Parties towards each other, but these were not matters relevant to the present application.

The Tribunal considered each of the heads of claim in turn.

1. Rent

In order to determine how much, if anything, the Applicant was entitled to recover from the Respondent, the Tribunal had to determine when the tenancy ended. The Respondent had not given 28 days' notice, so had not complied with the notice provisions in the tenancy agreement, but they had

contended that they had felt harassed by the Applicant, who had copied to them an email written to the Scottish Association of Landlords in which the Applicant had stated their wish to evict the Respondent. The Applicant denied the allegation of harassment and was claiming the full 28 days' rent under deduction of the amount refunded from the deposit, the net sum being £359.01.

The Tribunal noted the decision of the Independent Adjudication of SafeDeposits Scotland that the tenancy had ended on 27 October 2019, as that was the date on which the Applicant had applied to SafeDeposits Scotland seeking repayment of the deposit. The Applicant had stated at the Hearing that they had inadvertently put the wrong termination date in the application, but The Tenancy Deposit Schemes (Scotland) Regulations 2011 do not permit a landlord to apply for repayment of a tenancy deposit before the tenancy has ended. It is for that reason that the application form requires the landlord to specify that date. Had the Applicant put in 27 November 2019 as the end date, the application would have been rejected as premature.

The Tribunal also noted that the Applicant had told the Hearing that they were extremely relieved when the Respondent left and it was evident to the Tribunal that the Applicant had not then waited for the 28 day notice period to elapse before taking possession of the Property. The correct procedure would have been to apply to the Tribunal for an Eviction Order on the ground that the Respondent had abandoned the Property. The Applicant had recovered possession on 25 October 2019 and had applied for repayment of the deposit two days later. The Tribunal agreed with the conclusion of the Independent Adjudication that the Applicant had accepted that the tenancy was at an end. In addition, during the period in respect of which the Applicant was claiming rent, the work of replacing the kitchen worktop, the drawer box and unit door and cleaning the oven and hob had been carried out and, whilst the invoice for replacing the tap for the wash hand basin in the bathroom was undated, it was possible that this too had been done during that time. Finally, the Tribunal noted that the Applicant had confirmed that the Property had been re-let only 13 days after the Respondent had moved out.

The view of the Tribunal was that all of the evidence suggested that the Applicant had accepted that the tenancy had come to an end when the Respondent moved out. The Applicant had acted immediately on that assumption by applying for repayment of the deposit and taking possession and instructing work to be carried out. The Applicant might argue that they were merely trying to minimise their loss, but the fact remained that the Applicant's actions indicated that the tenancy had ended on 25 October 2019. On that date, the Respondent emailed the Applicant at 16.58 to say they had moved out as they "could not handle the stress anymore" and, at 18.45, the Applicant had responded "That's fine".

Having considered carefully all of the evidence on this matter, the Tribunal determined that the tenancy ended by mutual consent on 25 October 2019.

The rent had been paid up to and including that day, so the Tribunal refused to make an Order for Payment in respect of rent.

2. Repairs

The Applicant's claim was for the balance of the costs which had not been refunded by way of the deposit. This amounted to £399.26, with a further £104.98 for the tap for the wash hand basin in the bathroom. The Independent Adjudication of SafeDeposits Scotland had awarded £130 towards the cost of repairs but had not broken this down across the heads of claim, other than to reject completely the claim for the tap for the wash hand basin. Accordingly, the Tribunal could not attribute any part of the refunded deposit to any particular item of repair and had to consider the "gross" cost of the items claimed (£529.26) and then deduct the £130 already received in deciding whether any further sum should be paid by the Respondent.

The principal item was the replacement cost of vinyl in the kitchen and bathroom (£365). At the Hearing, however, the Applicant had confirmed that, more than nine months after a new tenant moved in, the vinyl had not in fact been replaced. The Tribunal, therefore, dismissed this element of the claim, as the Applicant had suffered no actual loss. The Tribunal was not persuaded by the Applicant's statement that they could not afford to replace it. They had re-let the Property within two weeks of the Respondent's tenancy coming to an end.

As regards the kitchen worktop, drawer and unit, the Tribunal determined, on the balance of probabilities, that these items were damaged by the Respondent, and so the claims were justified, but the total cost of replacing these items (£164.28) could not be allowed, as it was not clear to the Tribunal that all were completely unusable or beyond repair. An award of £100 was considered by the Tribunal to be appropriate for these items, allowing for fair wear and tear.

The "gross" claim was £529.26, but the Tribunal's decision was to award £100 and, as that was less than the £130 already received by the Applicant from SafeDeposits Scotland, the Tribunal refused to make an Order for Payment in respect of the floor vinyl, kitchen worktop, drawer or unit door.

The Tribunal also agreed with the conclusion of the Independent Adjudication of SafeDeposits Scotland and rejected the Applicant's claim in respect of the tap for the wash hand basin in the bathroom. The Applicant had told the Hearing that it had to be replaced because of a worn screw. There was no evidence of misuse by the Respondent and the Tribunal decided that the problem with the tap had been caused by fair wear and tear, for which tenants are not responsible.

3. Cleaning

The Tribunal was not prepared to reimburse the Applicant the notional cost of their time (a balance of £37, when the amount refunded from the deposit was deducted) in the general cleaning of the Property. Landlords must

expect to have to spend time between lets in making the Property look its best for incoming tenants. The deposit refund on this matter had been £75, which was in excess of the cost of the professional cleaning of the hob and oven.

4. Sorting of Refuse

As with the cleaning, the Tribunal was not prepared to reimburse the Applicant the notional cost of their time (£40).

5. Clearing of Items

Again, the claim here was for the notional cost of the Applicant's time (a balance of £25 when the amount refunded from the deposit was deducted), so was refused by the Tribunal.

Decision

The Tribunal did not uphold any of the heads of claim and determined that the application for an Order for Payment should be refused.

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 Clark

24 August 2020

Legal Member/Chair

Date