



Statement of Decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) under 70(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/1716

Re: Property at 5 Balloch View, Alford, AB33 8HJ (“the Property”)

Parties:

Mr Peter Lamparter, 2 Wellheads Cottage, Huntley, AB54 4UX (“the Applicant”)

Sandy Thain Car Sales, Tumulus Way, Midmill Business Park, Kintore, AB51 0TG (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)
Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal determined to make an order for payment in the sum of Three hundred and twenty five pounds (£325) in favour of the Applicant against the Respondent

Background

- 1 The Applicant applied to the Tribunal for an order for payment against the Respondent. In particular the Applicant sought the return of his tenancy deposit which had been retained by the Respondent.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 1st August 2019.
- 3 The Respondent subsequently provided written representations to the Tribunal in response to the application in the form of photographs of the property at the termination of the tenancy together with copy text messages between the Applicant and the joint tenant.

The Case Management Discussion

- 4 The Case Management Discussion took place on 1st August 2019. Mr Lamparter was personally present. The Respondent was represented by Mike Cameron. Mr Cameron clarified in response to questions from the Legal Member that the property had been sold by Sandy Thain Car Sales Ltd in April of this year and the new owner was George Shearer as per the title deeds obtained by the Tribunal.
- 5 The Legal Member noted the Applicant sought compensation for the Respondent's failure to place the deposit in an approved tenancy deposit scheme. The Legal Member advised that the Tribunal could not consider such a claim as part of the current application which was for return of the tenancy deposit itself. The Legal Member advised that the correct remedy would have been an application under the Tenancy Deposit Scheme (Scotland) Regulations 2011. It was however noted that the Applicant was now beyond the statutory timescale for making such an application.
- 6 Mr Cameron advised the Tribunal that the deposit had been retained to cover the costs of repainting the property following Mr Lamparter's departure. The Legal Member therefore noted that the issue in dispute between the parties was whether the Respondent was entitled to retain the sum of £375, being the entirety of the deposit paid by the Applicant. A hearing was fixed on that basis. Neither party expressed an indication to lead any witnesses at the hearing other than the Applicant and Mr Cameron.

The Hearing

- 7 The hearing took place at Credo Centre, Aberdeen on 18th September 2019. Mr Lamparter was personally present. The Respondent was again represented by Mike Cameron.
- 8 The Legal Member explained the purpose of the hearing. The Tribunal then determined to hear evidence from the Respondent first on the basis that the onus was on the landlord to justify any deductions from the deposit. The Respondent's evidence from Mr Cameron can be summarised as follows:-
 - (i) In response to questions from the Tribunal Mr Cameron explained that the property had to be painted following the end of the tenancy as it was too dirty to clean. It was less maintenance to just paint the walls. The Tribunal highlighted text messages submitted by the Applicant with the application which suggested that the Respondent had initially indicated no painting would be required. Mr Cameron explained he meant painting following repairs relating to a hole in the wall made by the tenant with his permission, not painting in the general sense. Mr Cameron explained that the property had been rented out for approximately four years and had been painted before the tenant took up occupation. He thought the work required was more than just general fair wear and tear. Initially he had brought a cleaning contractor in to assess the work required but she had advised that the property

could not be cleaned and would require repainting. Mr Cameron further advised that the oven filters required to be replaced, as did lightbulbs, light fittings and lampshades and the toilet seat which was badly stained. A rug doctor machine had been hired to clean the carpet. In normal circumstances he wouldn't have a problem with such issues but he had been frustrated by the condition the property had been left in.

- (ii) In response to questions from the Tribunal Mr Cameron conceded that no inventory had been taken prior to the Applicant taking up the tenancy, which was a requirement of Clause 2.5 of the tenancy agreement. He had carried out an inspection at the end of the tenancy but did not have any inventory to undertake a comparison. Mr Cameron further conceded that no inspections were carried out during the Applicant's tenancy. Prior to his inspection of the property at the end of the Applicant's tenancy, Mr Cameron had not been in the property for at least three years. Mr Cameron explained that he had entered the property at the end of the tenancy and had initially been quite happy with everything he had seen apart from the cleanliness of the property.
- (iii) With regard to the cooker hob, Mr Cameron explained that no attempt had been made to clean it and upon further inspection it was concluded that it was beyond cleaning. The Tribunal questioned again whether Mr Cameron had viewed the condition of the property before the Applicant had moved in. He advised that he had not. He conceded in response to questions from the Tribunal that the cooker may have been in the condition he had found it in at the end of the tenancy when the Applicant had moved in and it may therefore have been the fault of previous tenants. In response to further questions from the Tribunal Mr Cameron explained he would not attribute the entirety of the costs he had incurred to the Applicant. He accepted that there would be a degree of fair wear and tear.
- (iv) The Tribunal noted that the receipts provided by the Respondent amounted to £406.09 however the entire deposit of £750 had been retained. Mr Cameron advised that the receipts did not include labour costs. He and his family had spent around three weeks in the evenings restoring the property to a lettable condition.
- (v) Mr Cameron concluded by explaining that he had thought Rachelle Thain was the lead tenant and she had no objection to the retention of the deposit, which he had taken as consent to retain the full amount. He advised that Ms Thain had not made any effort to clean the property before she left.

9 The Tribunal then heard evidence from the Applicant. It was noted that a comprehensive narrative of the Applicant's position had been lodged with the application which the Tribunal had regard to. The Applicant's verbal evidence at the hearing can be summarised as follows:-

- (i) The Applicant confirmed that Rachelle Thain had made no effort to clean the property at the end of the tenancy. He had cleaned up after himself. He confirmed that the cooker hob was black and stained when he took up the tenancy. He further advised that any works required to the property were no more than fair wear and tear. The Applicant advised that he had moved out of the property around a week before Rachelle had moved out. If there had been issues that required addressed, the Respondent had never given him the opportunity to return and remedy these.
- (ii) The Applicant disputed that any of the deductions from the deposit were due. The painting was required due to fair wear and tear. The light bulbs and fittings were not broken as far as he was aware. Nothing was broken. However as previously stated if he had been given the opportunity to remedy any issues found by the Respondent he would have taken it.
- (iii) The Applicant explained that Rachelle Thain had received money from her mother to cover the deposit costs. She didn't care anymore, hence why she had agreed it should be returned to the Respondent. The Applicant also queried some of the photographs submitted by the Respondent, in terms of whether they were actually taken at the property. Even if they were, the Applicant did not consider they evidenced £750 worth of damage.
- (iv) The Applicant explained that there had been damp throughout the property. This was the responsibility of the Respondent. Mr Cameron disputed there was damp throughout the property, albeit did concede that there was a patch of damp in the living room at the gable end wall, at the recess to the fireplace. In response to questions from the Tribunal the Applicant confirmed that he kept a dog in the property. Mr Cameron explained that he had given consent to the previous tenant to keep a dog, but not to the Applicant directly. The Applicant explained that he would not have taken up the tenancy if he couldn't bring his dog.

Findings in Fact and Law

- 10 The parties entered into a Tenancy Agreement which commenced on 1st October 2016.
- 11 The Applicant paid a tenancy deposit of £375 to Stonehouse Lettings, as agent for the Respondent. The deposit was not lodged with an approved tenancy deposit scheme.
- 12 In terms of Clause 2.5 of the Tenancy Agreement the Respondent undertook to carry out an inventory of the subjects at the commencement of the tenancy. The Respondent did not do so.

- 13 The Respondent is entitled to deduct the sum of £50 from the Applicant's tenancy deposit in respect of the reasonable cost of cleaning the property at the termination of the tenancy.
- 14 The Applicant is entitled to return of the remainder of the deposit in the sum of £325.

Reasons for Decision

- 15 Having heard the evidence from parties at the hearing and having considered the terms of the application and the written representations the Tribunal considered it had sufficient information upon which to make a determination of the application before it.
- 16 The Tribunal accepted based on the evidence before it and in particular the photographs produced by the Respondent and the verbal submissions from Mr Cameron that the property was not left in a reasonable state of cleanliness and that a degree of cleaning was required that went beyond what would ordinarily be expected at the end of a tenancy. Whilst the Tribunal noted the Applicant's evidence that the joint tenant should bear the blame having failed to carry out any cleaning, it was clear from the terms of the tenancy agreement that he and the joint tenant were jointly and severally liable. Accordingly the Tribunal considered that having regard to the sum of £375 which had already been retained by the Respondent from the joint tenant, a further deduction of £50 from the Applicant's deposit would be reasonable.
- 17 However, the Tribunal did not accept that the Respondent was entitled to make any further deductions on the basis of the evidence before it. The Tribunal gave particular weight to the fact that there was no inventory carried out at the commencement of the Applicant's tenancy to evidence the condition of the property when he moved in, despite this being a requirement of Clause 2.5 of the Tenancy Agreement. This meant that there had been no inventory to assess the condition of the property against at the end of the tenancy. Further Mr Cameron had conceded that no inspections had been undertaken during the tenancy. He himself had not been in the property for around three years prior to inspecting it at the end of the Applicant's tenancy. The Tribunal therefore had to question whether he was in a position to undertake a proper assessment of what deductions were justified from the Applicant's deposit. The evidence of the Applicant was therefore preferred by the Tribunal and it concluded that it was unable to make any determination of liability on the part of the Applicant for the further deductions sought by the Respondent.
- 18 For the avoidance of doubt, the Tribunal noted the evidence from the parties regarding alleged damp at the property and the keeping of a dog by the Applicant however did not consider these matters to be relevant to its determination of the application for the reasons set out above.

19 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

4 October 2019

Legal Member/Chair

Date