



**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/21/0484

Re: Property at 51 Links View, Aberdeen, AB24 5RG (“the Property”)

Parties:

Mrs Joanne Moynan, 7A Claremont Crescent, Edinburgh, EH7 4HX (“the Applicant”)

Ms Denise Thomas, 79 Hutcheon Low Drive, Aberdeen, AB21 9WJ (“the Respondent”)

Tribunal Members:

Lesley Johnston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted for payment in the sum of £3,193.74.

Background

1. By application dated 2 March 2021 and lodged on 3 March 2021 the Applicant sought an order for payment under section 16 of the Housing (Scotland) Act 2014 (“the Act”) and in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (‘the Rules’). On 29 March 2021 the application was accepted by the Tribunal and a Case Management Hearing fixed.

2. The application seeks an Order in the sum of £4,057.74. The sum applied for comprises rent arrears; late rent fee; damage to furnishings and cleaning costs in respect of the Respondent's tenancy at 51 Links View, Aberdeen, AB24 5RG.

3. The property at 51 Links View, Aberdeen is owned by Joanne Moynan and Peter Moynan. The application is made in the name of Joanne Moynan. Peter Moynan has provided his written consent for the application to proceed to the Tribunal.

4. The documents lodged with the application were as follows:
 - (i) Paper apart to the application;
 - (ii) Tenancy agreement dated 17 October 2019;
 - (iii) Tenant statement dated 3 March 2021 from 10 October 2019 to 26 February 2021;
 - (iv) Stonehouse Lettings Check Out Inventory dated 15 January 2021;
 - (v) Lomond Aberdeen Property Services Check In Inventory dated 18 October 2019;
 - (vi) TGC Facilities Invoice dated 1 March 2021;
 - (vii) Email from Stonehouse Lettings to the Respondent dated 3 March 2021

The Case Management Discussion

5. The CMD took place on 6 May 2021 at 11.30am by telephone conference. The Applicant was represented by Ms Campbell from Stonehouse Lettings, 27/30 Carden Place, Aberdeen, AB10 1UP. The Applicant was also personally present. The Respondent was neither present nor represented. The start time of the hearing was delayed for 15 minutes to allow the Respondent further time to attend the hearing. The Respondent did not attend.

6. The Tribunal was satisfied that notice of the hearing had been appropriately given to the Respondent, the citation having been served on the Respondent

personally by Sheriff Officers on 6 April 2021. The Tribunal was content to proceed in the Respondent's absence in terms of Rule 29.

Submissions for the Applicant

7. Ms Campbell submitted that there were significant arrears on this account which had accrued since shortly after the commencement of the tenancy. She advised that the Applicant had already been granted an Order for Payment by the Tribunal in the sum of £4,950. The Order was granted on 16 October 2020 in terms of application reference FTS/HPC/CV/20/1543.
8. Ms Campbell confirmed that the outstanding rent arrears accrued following the Tribunal's decision of 16 October 2020 amounted to £2,470.14 which sum was confirmed to the Respondent in the Applicant's agent's email dated 3 March 2021. The Respondent vacated the property on 8 January 2021.
9. Ms Campbell advised that the Respondent was fully aware of the outstanding arrears. The Respondent had previously offered to pay £100 per month in relation to the arrears however, the Applicant did not receive any payment, which was evidenced by the Tenancy Statement lodged by the Applicant.
10. Ms Campbell advised that the Applicant had recovered the tenancy deposit lodged by the Respondent in respect of the tenancy but that had already been applied to the outstanding rent before the application was made to the Tribunal. The sum claimed of £2,470.14 already took account of that sum having been received and remained outstanding in full.
11. In relation to the late fees for rent (amounting to £864) Ms Campbell submitted that the Applicant was entitled to recover late rent charges in terms of the Tenancy Agreement. The late payment charges related to entire duration of the tenancy. The Tribunal had sight of the decision of the Tribunal dated 16 October 2020 in which it was noted that the Applicant applied for late fee payments at that time totalling £432. The Applicant's representative had been asked to address the Tribunal on this issue and whether the late payment fees

charged and the related clauses in the tenancy agreement fell within the scope of the Consumer Rights Act 2015 and the Unfair Contract Terms guidance issued by the Competition and Markets Authority on 31 July 2015. At that time, the Applicant's representative had advised that the lease had been prepared with the benefit of legal advice and she presumed that the terms fell within the boundaries of the law and guidance but chose to withdraw the application at that time.

12. This Tribunal also asked to be addressed on the application of the Consumer Rights Act 2015. Ms Campbell provided the same submission as had been made at the hearing on 16 October 2021. The Tribunal indicated that it would like to be addressed on this point more fully. Ms Campbell withdrew the application and did not insist on the late payment charges.

13. In relation to the cleaning costs of £483.60 Ms Campbell advised that the Applicant had paid the cleaning charges due to the cleaning company (TGC FM Limited) in respect of cleaning of items specified in the check-out inventory (£160 plus VAT); carpet cleaning to the hallway (£70 plus VAT); single oven valet (£68 plus VAT); and disposal of tenants belongings (£105 plus VAT). The Applicant sought to recover the charge. An invoice from TGC Facilities dated 1 March 2021 was presented in support of this claim totalling £504.60 inclusive of VAT. The discrepancy was accounted for by the inclusion on the invoice of a charge for a mattress protector in the sum of £17.50 plus VAT which sum was not included in the application to the Tribunal.

14. In relation to the cost for damages (in the sum of £240), Ms Campbell took the Tribunal through the check-out report detailing the damage which comprised a hole in a cupboard; staining/marks on walls and floors; staining to a blind; cracked bathroom tiles; water damage to a medicine cabinet; burn marks on the floor; staining/ring marks to a coffee table; beach stains to a footstool; and a crack to the fridge crisper. Photographs accompanied the detailed inventory.

15. Ms Campbell referred the Tribunal to the tenancy agreement in support of the Applicant's ability to recover damages in respect of cleaning costs and damage

to fixtures and fittings. The Tribunal noted that clause 20 of the tenancy agreement in terms of which the Respondent had a duty to take reasonable care of the property and any common parts including, *inter alia*, to ensure that the property and its fixtures and fittings are kept clean during the tenancy. In addition, the Respondent was liable to pay the reasonable costs of remedying a notable or material breach of or significant failure to comply with her obligations under the Agreement. In terms of clause 21.3 the Respondent was liable for the cost of repairs attributable to the Respondent's fault or negligence or that of any person residing with her or any guest. In addition, in terms of clause 28 the Respondent is liable for the reasonable costs of, *inter alia*, disposal of belongings left in the let property. Lastly, in terms of clause 29 of the tenancy agreement the Respondent agreed to replace or repair (or at the option of the Landlord, to pay the reasonable cost of repairing or replacing) any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the Tenant, anyone living with the Tenant or an invited visitor to the Let Property.

16. In the circumstances, the Applicant sought payment in the sum of £3,193.74.

Findings in Fact

1. The Applicant and Peter Moynan are the registered owners of the property.
2. The Applicant and the Respondent entered into a tenancy on 18 October 2019;
3. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
4. The initial agreed monthly rent was £600. The rent increased to £650 per month from 18 April 2020.
5. An Order for Payment of rent arrears was made by the Tribunal on 16 October 2020 under Tribunal reference FTS/HPC/CV/20/1543 in the sum of £4,950.
6. Since 16 October 2020 further rent arrears had accrued in the sum of £2,470.14 to 8 January 2021.
7. At check out cleaning was required to be undertaken to the property by TGC Facilities and was invoiced to and paid by the Applicant in the sum of £483.60.

8. At check out numerous areas of damage to fixtures and fittings were noted and amounted to the sum of £240.

Reasons for decision

16. The Respondent was not in attendance or represented at the hearing. No written representations were submitted on her behalf.
17. The Tribunal took account of the documents lodged on the Applicant's behalf including the tenancy agreement; the paper apart to the application; the tenancy statement; the detailed check-in and check-out reports, the invoice from TGC Facilities, the email correspondence to the Respondent dated 3 March 2021 and Ms Campbell's oral submissions.
18. The Tribunal accepted the withdrawal of the application in respect of late payment charges in the sum of £864. The Tribunal considered the remaining parts of the application relating to rent arrears; cleaning costs; and damage to property.
18. The Tribunal is satisfied that Respondent owed rent to the Applicant in the sum of £600 per month and that the outstanding rent from 16 October 2020 to 8 January 2021 amounted to £2,470.14. It is satisfied that the Respondent was made aware of the arrears and had taken no steps to make payment. Accordingly, the Tribunal considered that it was reasonable to grant the order for payment.
19. The Tribunal is satisfied, from the detailed check out reports lodged and referred to by the Applicant, that the property required significant cleaning at the conclusion of the tenancy. It is also satisfied from the evidence provided that there was damage to the property in the manner described in the check-out report dated 15 January 2021 and as narrated by Ms Campbell in her submissions. The Tribunal was satisfied that the Applicant was entitled, in terms of the Tenancy Agreement (outlined at paragraph 15 above), to recover

the cost of cleaning; removal of the Respondent's personal belongings and the reasonable costs of damaged contents, particularly taking account of the absence of any alternative explanation from the Respondent as to the condition of the premises at the conclusion of the tenancy. The Tribunal therefore concluded that the sums claimed (£483.60 in respect of cleaning and £240 in respect of damages) were reasonable.

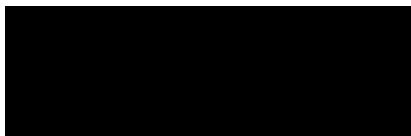
20. In all the circumstances of the case, the Tribunal considered that it was reasonable to grant the Order in the sum of £3,193.74.

Decision

The Tribunal granted an order for payment in the sum of £3,193.74.

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.



Legal Member/Chair

6 May 2021

Date