



**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/19/3773

**Re: Property at Flat 1, 5 Colquhoun Square, Helensburgh, G84 8AD (“the
Property”)**

Parties:

**Mrs Mary Brown, 11 Rosebery Place, Livingston, West Lothian, EH54 6RP (“the
Applicant”)**

**Mr Ashley Walker, sometime Flat 1, 5 Colquhoun Square, Helensburgh G84
8AD, whose present whereabouts are unknown (“the Respondent”)**

Tribunal Member:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be decided without a Hearing
and made an Order for Payment by the Respondent to the Applicant of the sum
of £2,616.49.**

Background

By application, received by the Tribunal on 25 November 2019, the Applicant sought an Order for Payment against the Respondent in respect of unpaid rent that had become lawfully due in respect of the Property and the cost of repairs for which the Applicant contended the Respondent was liable following the termination of the tenancy. The amount sought for rent was £1,797 and the amount sought for repairs was £820, in respect of a broken tap, missing dryer, decoration, and replacement of silicon round the bath.

The application was accompanied by a Rent Statement showing arrears as at 11 October 2019 of £1,797, when the amount awarded in a previous Decision of the Tribunal was deducted. No vouching was provided in respect of repairs costs.

On 2 December 2019, the Applicant advised the Tribunal that the Respondent had signed a Trust Deed, appointing Mr Donald McKinnon of Wylie & Bisset, 168 Bath Street, Glasgow, as his Trustee, and on 11 December 2019, the Tribunal wrote to the Applicant, asking if she had lodged a claim with the Trustee. The Tribunal also asked the Applicant to provide evidence of the repairs undertaken, such as photographs of the damage and invoices or estimates, and to provide any submissions as to why these costs were recoverable from the Respondent under the lease.

On 15 December 2019, the Applicant provided the Tribunal with a “cut and pasted” excerpt from an email, presumably from the Trustee, indicating that the Respondent had agreed to make monthly payments to the Trustee over a period of 48 months and that, if he continued to make these payments, creditors would receive a dividend of 12p in the £. The Applicant also stated that the repair costs were plumbing works to replace the bathroom basin taps £62, replacement of a damaged pendant light fitting £15, repair of the bathroom shower light £12.50, call out charge £35, repair to the front door handle £35, paint removed from same approximately £30, removal of clothes drier £110, and damage to the living room door and the bedroom £150. The Applicant provided photographs showing certain aspects of the Property before and after the letting.

On 13 January 2020, the Applicant told the Tribunal by email that the first claim was for £4,940 and the second was for £2,617, a total of £7,557. The Respondent, she said, admitted to owing £6,912, which left a balance of £645, which was for a new handle for the front door, supply and fitting of two bathroom taps, replacing the damaged silicon on the bath and replacing the missing clothes dryer. She included an estimate for £1,650 for other works, principally redecoration of the walls and ceilings throughout the Property, but said that, whilst she had not used this contractor, the painting had still cost £1,000.

On 23 February 2020, the Applicant advised the Tribunal that she believed the Trust Deed was “closed” and that the Respondent had contacted her to say that he would pay the amount due in monthly instalments, but nothing had subsequently been paid.

Case Management Discussion

A Case Management Discussion held on 4 August 2020, was adjourned, as the Tribunal was not satisfied that the Respondent was aware of it. The case was continued to enable intimation to be made to him by advertisement on the Tribunal’s website.

Following the Case Management Discussion, the Tribunal issued a Direction, requiring the Applicant to lodge, no later than 25 August 2020, a copy of the lease between the Parties which sets out the legal basis for the claim for repayment, a breakdown of the sum sought by the Applicant, and vouching in relation to the sum sought, such as copy invoices or receipts in respect of outlays incurred.

The adjourned Case Management Discussion scheduled for 1 October 2020 was postponed and took place on the morning of 16 November 2020 by means of a telephone conference call. The Applicant participated but the Respondent was not present or represented. Intimation to the Respondent of the adjourned Case Management Discussion was by advertisement on the Tribunal's website from 12 October 2020 to 16 November 2020.

The Tribunal told the Applicant that it could not make an Order for Payment, as it had not received from her the documentation required by the Direction of 4 August 2020. The Applicant stated that she had sent in a copy of the tenancy agreement and, with it, a note saying that she had just moved house and that the invoices and receipts for repairs were in a box she had not yet been able to unpack. The Tribunal was unable to trace receipt of the Applicant's letter, but, bearing in mind the level of disruption caused by the COVID-19 restrictions, accepted that it was possible that it had gone astray, so decided that the Case Management Discussion should be adjourned to a later date, to allow the Applicant to re-send the copy lease and to provide the documentary evidence, by way of invoices and receipts, to support her claim in respect of repairs to the Property and items damaged or missing at the end of the tenancy.

The Tribunal stressed that it could only make an Order in respect of items that were vouched and that, in any event, it would have to consider the extent, if any, to which any claim should be moderated to take account of fair wear and tear. The Applicant confirmed that the deposit of £600 had been accounted for in the sum sought in her first application to the Tribunal.

On 1 December 2020, the Applicant provided the Tribunal with a copy of a Short Assured Tenancy Agreement between the Parties commencing on 23 January 2016 at a rent of £600 per month with a deposit of £600, an undated document headed "Invoice", with no indication as to who it was from or to whom it was addressed, listing a number of items. These were repairs to indoor doors and painting of the Property, 5 days' labour and materials (£1,200), resealing of bath, materials and labour (£180), cleaning the oven, floors, windows and sills (£250), fares to view the Property and handover of keys (£80), "lease details" (£10) and a note of items "still to be done", electrical safety and new cooker, the existing one being damaged beyond repair (£480). The Applicant also provided a copy of an email from Kaleb Chown advising the Applicant that he had found "a perfect cooker in Argos" at a cost of £479.99 and an Invoice from Paul Campbell Electrical, Helensburgh for providing an Electrical Installation Condition Report, but including labour and materials for replacing the bathroom basin taps (£62), replacing a damaged pendant light fitting (£15) and repair to the bathroom shower light (£12.50).

The Case Management Discussion was reconvened by means of a telephone conference call on the morning of 7 January 2021. The Applicant participated but the Respondent was not present or represented. Intimation to the Respondent had been by advertisement on the Tribunal website from 19 November 2020 until 7 January 2021.

The Applicant advised the Tribunal that the document headed "Invoice" was prepared by her and asked that the items relating to fares to view the Property and handover keys and lease details be removed from the claim. Attempts to clean the oven had been unsuccessful and she had concluded that it was damaged beyond repair, so had replaced it. The item relating to cleaning the oven would, therefore, be excluded from the claim. Almost every wall in the Property had been damaged by the Respondent and it had been necessary to redecorate every room.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber (Procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

The Tribunal was satisfied that the sum claimed in respect of rent (£1,797) was lawfully due by the Respondent to the Applicant.

In the application, the Applicant had claimed £820 in respect of a broken tap, missing dryer, decoration, and replacement of silicon round the bath. She had subsequently provided vouching in respect of the bathroom taps (£62), replacement of a damaged pendant light fitting (£15) and repair of the bathroom shower light (£12.50). She had not, however, provided any Invoices for a call out charge, repair to the front door handle, paint removed from same, removal of clothes drier or damage to the living room door and the bedroom.

On 13 January 2020, the Applicant had stated in an email that the decoration cost was £1,000. The undated Invoice quoted £1,200 for material and labour (5 days), including repairs to indoor doors. The Tribunal determined that an element of fair wear and tear must be deducted from the redecoration costs. The tenancy had lasted for approximately three years and nine months. The view of the Tribunal was that redecoration might be expected every five years, so determined that the amount claimed in decoration costs should be reduced to £250.

The Tribunal was not prepared to award the cost of resealing the bath, as, even if it was damaged, this item would fall under the heading of fair wear and tear and is something that a landlord must expect to have to undertake every few years.

The Applicant accepted the evidence of the Applicant that the oven had had to be replaced as it was damaged beyond repair.

The Tribunal calculated that the vouched losses of the Applicant amounted to £2,616.49, being rent arrears (£1,797), replacement of bathroom taps (£62), replacement/repairs to light fittings (£27.50), the cost of the replacement cooker (£479.99) and the cost of redecoration (minus the fair wear and tear element) (£250).

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £2,616.49.

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.

George Clark

Legal Member/Chair

7 January 2021
Date