

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/20/2547

Re: Property at 7 Ewing Street, Lochgelly, Fife, KY5 9BB (“the Property”)

Parties:

Mrs Kathryn Baillie, 49 Sutherland Drive, Kinross, KY13 8BJ (“the Applicant”)

Mr Billy Wilson, 11 St Kilda Crescent, Kirkcaldy, Fife, KY2 6DW (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

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

Background

This matter called for a Hearing on 22 April 2021 at 10am by conference call. The Applicant was represented on the call by Ms Couser of Fife Letting Service and the Applicant was personally present on the call. The Applicant sought a Payment order in the sum of £3,580.26 in respect of rent arrears and repairs said to be necessary to the Property as a result of damage caused by the Respondent to the Property during his tenancy.

There had been a Case Management Discussion on 18 March 2021 at which certain Directions were made setting out case management orders. These included a Direction ordering the Respondent to fully set out in writing his defence to the Application. This had not been received by the Tribunal. This was explored further as a preliminary matter.

Preliminary Matters

The Tribunal began by trying to further understand the precise issues in dispute and trying to ascertain whether any issues were agreed. It had been established at the Case Management Discussion that the rent arrears of £1,142.26 were accepted. After some discussion, it was apparent that certain other heads of claim were accepted. There was no dispute that £200.00 was required to give the Property a deep clean at the end of the tenancy; £96.00 was due for changing the locks and issuing new keys; £440.00 was due for half the costs of replacing the carpets and the sums of £16.97 and £14.88 were due for replacing parts of a broken toilet. £500.00 had been recovered towards the repair costs from the deposit held by the Respondent and which had been held by an approved tenancy deposit scheme.

This left the following heads of claim still in dispute:

1. £500.00 towards redecorating costs;
2. £400.00 for removing items left in the garage and emptying contaminated bins;
3. £450.00 for restoring the garden to its condition pre-tenancy;
4. Curtain pole replacement costs of £109.00.

The Respondent was called upon to explain why he had not complied with the Direction ordering him to lodge a written defence. The Respondent indicated he had sent an email to an email address which the Tribunal noted was not the correct email address. This was despite the correct email address having been carefully explained to the Respondent at the Case Management Discussion.

The Respondent was informed again of the correct email address and the Hearing was briefly adjourned to allow the Tribunal to consider the preliminary matters and the further conduct of the Hearing. The Respondent was also encouraged to try and resend the email which had been sent to the wrong address.

When the Hearing recommenced, a new email from the Respondent had been located. It was not considered necessary to circulate this email to Ms Couser as the email was extremely brief and simply made broad denials of the costs in fairly vague terms. The Tribunal decided to hear evidence on the points remaining in dispute. The first and only witness for the Applicant was Helen Couser herself.

Helen Couser

Ms Couser works for Fife Letting Service who manage the Property. Ms Couser had never been in the Property but had consulted with colleagues who had inspected the Property and was familiar with the issues that had given rise to this Application. She was clearly familiar with the issues.

£500.00 George Philp Painter and Decorator.

Ms Couser had produced an invoice for painting and decorating said to have been necessary at the Property following on from the end of the tenancy. The Respondent's tenancy had begun in 2012 and ended on 29 March 2020 when the Respondent left having received a Notice to Quit.

Ms Couser gave evidence that the Property had been left in an extremely poor condition. A check-out report had been lodged with the Application which gave comments on the condition of the Property at the beginning and the end of the tenancy. It included a large volume of detailed photographs evidencing the entries recorded in the check-out report.

The first disputed head of claim was for £500.00 towards an invoice paid to George Philp painter and decorator which itself was for £2,450.00.

Only £500.00 was sought because the Applicant recognised that fair wear and tear should be accounted for and that certain parts of the Property were probably due to be redecorated.

Ms Couser directed the Tribunal to photographs which appeared to show the Property in a very poor state of decoration. The Tribunal carefully questioned Ms Couser on this issue and considered the terms of the check-out report and the images themselves. The Respondent himself was given the opportunity to ask questions on this point.

£400.00- Ogg & Brown

The next head of claim related to a £400.00 invoice paid to Ogg & Brown for removing items from the garage, lifting carpets and emptying bins.

Ms Couser again referred the Tribunal to images of clutter left in the garage and overflowing bins which were described as being contaminated in that they were full of the wrong type of rubbish applicable for that colour of bin.

The Tribunal noted that the clutter left in the garage appeared extensive and the images painted a grim picture of the overflowing contaminated bins.

The Tribunal carefully examined the photographs and the check-out report and questioned Ms Couser on this matter. The Respondent was also given the opportunity to ask questions and pointed out to Ms Couser that he did not in fact have four bins as some "were stolen".

The Respondent's questions effectively acknowledged that the pictures of the extensive clutter left in the garage were accurate and that the bins shown in the pictures were similarly an accurate snapshot of that aspect of the Property at the end of the tenancy.

£500.00 -Wright Job Fife

The Applicant also sought the sum of £500.00 towards an invoice paid to Wright Job Fife in respect of property maintenance said to have been necessary at the Property.

After careful questioning from the Tribunal however, it was acknowledged by Ms Couser that certain of the items included in this invoice were matters that were not the responsibility of the Respondent. These included repairs to a garage door that the check-out report narrated as being broken prior to the start of the tenancy and cleaning of the gutters which the Applicant acknowledged was not the responsibility of the Respondent. This effectively left only trivial repairs to certain items in the house which appeared difficult not to consider as fair wear and tear.

£450.00- B M Gardens Limited

The next head of claim related to a gardening invoice in the sum of £450.00 said to have been necessary as a result of the poor condition in which the gardens were left by the Respondent. Ms Couser directed the Tribunal's attention to photographs showing the front and back garden of the Property full of rubbish and with significantly overgrown weeds and unkempt grass. The Tribunal noted that these photos were taken only a matter of days after the Respondent left the Property. The Respondent was given the opportunity of asking questions on this matter and the Tribunal itself carefully questioned Ms Couser on this point. The pictures gave a very poor impression of the state of the garden.

£109.00 Curtain Poles

The Applicant sought recompense for £109.00 for curtain poles but on questioning from the Tribunal, no evidence could be put forward showing that this was the responsibility of the Respondent or caused by any of his acts or omissions.

The Tribunal considered Ms Couser to be a credible and reliable witness. She readily acknowledged the things she didn't know and couldn't prove when challenged and appropriately held her ground on those matters where she felt able to present evidence to support the Application. The Tribunal had no reason to doubt that she was being candid with the Tribunal.

The Tribunal then heard evidence from the Respondent.

Mr William Wilson.

The Respondent was an active participant in the Hearing and prior to giving evidence formally had made comments on various matters as they arose. At times this had been unhelpful to the conduct of the Hearing.

However, the Tribunal wished to ensure that the Respondent was able to fully set out his position. The Respondent's evidence was given in an unstructured way but the Tribunal asked relevant questions of the Respondent to help focus his evidence.

The Respondent's position was that the costs incurred in respect of the invoices were excessive. He also pointed out that the Property had not been renovated or decorated at all during his tenancy.

The Tribunal carefully listened to Mr Wilson and asked for his evidence on all the issues in dispute. Ms Couser was given the opportunity to ask questions of Mr Wilson. The Tribunal also asked questions of the Respondent.

The Tribunal was left with the impression that Mr Wilson didn't really comprehend just how poor a condition he had left the Property in. The garden for example was described by Mr Wilson as "*having a bit of rubbish in it*" when the pictures appeared to show the gardens as being completely filled with rubbish. The Tribunal did not find it could rely on Mr Wilson's accounts as accurate as he seemed to completely underplay the various issues which required repair in the Property.

The Tribunal also considered Mr Wilson's assertions that he should have been given the opportunity to fix these issues as being disingenuous as clearly Mr Wilson would have known exactly what the condition of the Property was in when he left. The Tribunal also noted that this position seemed to carry with it an acknowledgement that the Property required work carried out to bring it up to the condition that it had been in at the start, notwithstanding that fair wear and tear was to be expected.

Mr Wilson also pointed out that when he left the Property, it was in the middle of a national lockdown and the recycling centres were closed. The Tribunal took the view that this could not excuse the very clear evidence about the extremely poor condition the Property was left in. That had nothing to do with whether recycling centres were open or not.

The Tenancy

The Tribunal noted the terms of the tenancy between the parties that set out the contractual obligations on both parties. A copy of the tenancy was produced with the Application. Condition 2.4.1. set out that the tenant was obliged "*to hold the interior of the Premises including any fixtures, fittings and contents in the same repair and condition*

throughout the tenancy as at the commencement of the tenancy.... Fair wear and tear due to reasonable and normal use...is excepted.."

After Hearing evidence, the Tribunal adjourned until 2pm to consider the evidence heard and the documentation produced.

Having done so, when the Tribunal reconvened at 2pm, the Tribunal wished to explore two further issues. The first related to the charge for the curtain poles where it was acknowledged that there was a paucity of evidence justifying these costs being the responsibility of the Respondent. The Tribunal gave Ms Couser another opportunity to address this issue, but it now seemed conceded that there was no evidence in support of this head of claim. The other issue related to the carpets. It had been noted by the Tribunal as not being in dispute that the Respondent should pay half the costs of replacing the carpets- a half share equalling £440.00.

But throughout the Tribunal, the evidence suggested that actually these carpets hadn't been replaced throughout the entire tenancy and the carpets were at least 8 years old and possibly older as they were in the Property even before the start of the tenancy. The Tribunal decided that after hearing about the age of the carpets and considering the issues of fair wear and tear, it seemed unfair for the Respondent to be liable for a 50 per cent share of their complete replacement.

Having heard extensive evidence on all the matters in dispute and having considered the documentation before it, the Tribunal made the following findings in fact.

Findings in Fact

- I. There was a tenancy between the parties at the Property.
- II. The Applicant was the landlord and the Respondent was the tenant.
- III. The Tenancy commenced on 29 October 2012 and terminated when the Respondent vacated the Property on 29 March 2020.
- IV. The Respondent left the Property owing rent arrears of £1,142.26
- V. The Respondent left the Property in a significantly worse condition than when the tenancy began.
- VI. The Respondent breached the terms of Condition 2.4.1 of the tenancy by leaving the Property in a significantly worse condition than when the tenancy commenced, and which could not be accounted for as being caused by fair wear and tear.

- VII. The Respondent is liable to the Applicant for the costs of making good the necessary repairs which cannot be attributed to fair wear and tear.
- VIII. The Respondent is properly liable for the sum of £500.00 paid towards the invoice to George Philp, Painter and Decorator. This sum is not excessive.
- IX. The Respondent is properly liable for the costs of £400.00 paid to Ogg & Brown. This sum is not excessive for the work required.
- X. The Respondent is not properly liable for the costs of £500.00 paid to Wright Job Fife.
- XI. The Respondent is properly liable for the costs of £450.00 paid to B M Gardens. This sum is not excessive for the work required.
- XII. The Respondent is not properly liable for the costs of £109.00 for the curtain poles.
- XIII. The Respondent is not properly liable for half of the costs of replacing the carpets throughout the property. It is reasonable to assume that the carpets had a useful life of 10 years and as the carpets had been in the Property for at least 8 years then the Respondent should only be liable for the costs of 20 per cent of replacing the carpets, being the sum of £176.00.
- XIV. The Respondent was also properly liable for other agreed repairs needed totalling the sum of £327.85 in respect of cleaning costs, repairs to the toilet and an invoice for changing the locks.
- XV. The Applicant had already received the sum of £500.00 from the Respondent's deposit which had been held with an approved deposit scheme.

Reasons for Decision

Having made the above findings in fact, the Tribunal made a Payment Order in favour of the Applicant against the Respondent in the sum of £2,996.11. The Tribunal ordered interest to run on that sum at the rate of 5 per cent from the date of the Hearing until payment.

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.

Andrew McLaughlin

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22/04/2021

Legal Member/Chair

Date