



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/0015

Re: Property at 31 Viewforth, Edinburgh, EH10 4JE (“the Property”)

Parties:

Dr Emilie Petit, Mr Shamus Dermody, 31 Viewforth, Edinburgh, EH10 4JE (“the Applicant”)

Hannah Timlin, Flat 2 Palmerston House, 66A St Paul Street, London, N1 7EE (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to an order for payment for the amount of £1065 (ONE THOUSAND AND SIXTY FIVE POUNDS)

Background

1. An application was received by the Housing and Property Chamber which was signed on 2nd January 2021. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on expenses claimed for a period that the Applicants were decanted from the Property to allow repairs to be undertaken by the Respondent.

Case Management Discussion

2. A CMD was held on 6th April 2020 at 10am by teleconferencing. The First Named Applicant was not present but was represented by the Second Named Applicant, Mr Seamus Dermody. The Respondent was present. She was represented by Mr Richard Anderson from DJ Alexander.
3. The case is based on the period of 16th July – 30th July 2020 when the Applicants had to remove themselves from the Property to allow essential repair to be undertaken.
4. Mr Dermody stated he was aggrieved that he had to search for a property to decant to for the period of the repairs. He considered that this was the duty of the Respondent. He did not understand why D J Alexander were not able to find a property for the period needed as they are a large letting agent. He had not done extensive searches but the search he had done related to the closest 5 properties to his house. This was done at the time of the application. This led him to ascertain that the nightly price would be between £150 – 200 per night. He believes that Air BnB was not open at the time he was considering or had only recently opened. As the Applicants were worried about being accommodated they elected to go on holiday as the costs would be directly similar to those of a local short term let. He seeks the costs of this accommodation and food but not the transport. The Tribunal noted that some of the receipts included such items as alcohol. It would not be reasonable to claim for this. Mr Dermody appreciated this and would be able to amend what he was seeking. The Applicants have a property in Ireland but it was occupied so they could not go there. They were willing to go anywhere in the UK on the provision it has Wi-Fi and a garden for their 7 year old son. However, the Applicants did not conduct searches beyond Edinburgh.
5. Mr Anderson told the Tribunal that he was unable to find suitable alternative accommodation for the fortnight from within the stock held by his company as the Respondents required internet access to work from home. His firm has long term lets which have the internet disconnected so could not fulfil that request. He recommended that the Applicants seek their own accommodation. The price he had suggested was £50 per night which is slightly higher than the daily rate for the rent for the Property being repaired. As a good will gesture the Respondent was willing to give a further £300. The rent charge is £1470 per calendar month. A total of £735 was deducted from the Respondents' rent account as a rebate for the rent payment for the period the Applicants were out of the Property. The £300 good will offer has not been paid. Mr Anderson noted that he was willing to discuss a higher figure with the Respondent but did not accept that £150 per night was a minimum figure for a short term let in Edinburgh. Ms Timlin noted that she would be content to pay up to £90 per night but not with the £300 good will payment. This is £260 over what she had offered and paid. Her position remains that negotiations could have been entered into with short term let providers.

6. The Tribunal decided that as no agreement had been met that a hearing would be fixed to take evidence on the issue. It remained unclear exactly what the accommodation cost were at the time of the decant. Both parties would need to provide evidence of the cost of renting a like for like two bedroom property in Edinburgh during July 2020. The Applicants would need to be very specific as to what their costs entailed and how much they were actually seeking as a figure has not been included. This means separating the holiday costs from reasonable costs incurred during the decant. The Tribunal noted that the parties may benefit from discussing the amounts to be considered further to see if there could be an agreement reached.
7. The Tribunal identified the following issues to be addressed at the hearing, though not limiting the Tribunal to these issues.
 - a. Is £150 - £200 a reasonable amount for a two bedroom property with WI-FI?
 - b. Was £50 per night a reasonable amount for a like for like property for the period of the decant?
 - c. How much did a two bedroom flat with WI-FI cost in Edinburgh in July 2020 per night?
 - d. Was it reasonable to need a garden included or was it a preference? If it was a preference then would that have reduced the costs?
 - e. Was it reasonable for the Applicants not to extensively search for a property in or outwith Edinburgh?
 - f. What investigations had the Respondent done to find suitable alternative accommodation?
 - g. When did the short term letting companies such as Air BnB reopen after the lockdown of March 2020?
 - h. Was the cost of accommodation in Malta equivalent to that in Edinburgh for a like for like property similar to the Property?
 - i. How much were the costs for food? Is this a reasonable cost?
 - j. Could renting a self catering property for the duration of being in Malta have been cheaper than staying in a hotel?
 - k. What were the losses suffered by the Applicants?

Hearing

8. A hearing was held on 20th May 2020 at 10am by teleconferencing. The First Named Applicant was not present but was represented by the Second Named Applicant, Mr Seamus Dermody. The Respondent was present. She was represented by Mr Richard Anderson.
9. The Tribunal noted that the issue pertained around what the cost of a like for like property would be for the Applicants to lease during the period that they were required to vacate the Property. The Tribunal noted that they had gone on holiday but that the focus of the Tribunal was the cost of the like for like property. The cost of the accommodation while on holiday may be relevant for

discussions. Mr Dermody reiterated that this had been, in his view, the only option available under the circumstances. The Tribunal noted this. Mr Anderson restated his position that he felt the offer was reasonable. The Tribunal offered parties time to discuss to see if there was any scope for agreement. The Tribunal then adjourned to allow parties to negotiate. After allowing an adjournment the Tribunal reconvened. Both parties confirmed that there had not been an agreement reached. The Tribunal considered the matter before them.

10. It was noted that Mr Dermody's accommodation costs while on holiday amounted to €2138.88 which is equivalent of £1846.36 (based on €1 = £0.86). This equates to the daily cost of accommodation being £131.89 per night.
11. Ms Timlin, while on the hearing call, found a two bedroom property with a garden at £124.80 per night. The costs that she had calculated at the time of the original offer had not included a garden. She accepted that the garden would increase the price. She was willing to offer this per night. On his request, she sent Mr Dermody a link with the property. He looked at it while still on the call and confirmed that this would have been an acceptable property had it been available at the time. He had only been able to find properties around £180 per night when he had looked. He had considered that he would have accepted a lower amount of £150 per night.
12. With further discussions Mr Dermody and Ms Timlin reached an agreement of £132 per night which would cover the accommodation costs that he had incurred during that time. Given that he had seen a property in Edinburgh that would have suited him suggested by Ms Timlin, it was appropriate to restrict the amount awarded to this. Had he been in an appropriate flat in Edinburgh he would have had the same cost for his food as if he had been in his own tenancy. Mr Dermody accepted his frustration is that this matter had taken so long to be settled and that it required to go before a tribunal to do so.
13. The Tribunal noted that the agreement of £132 per night was less the amount already compensated by the non payment of rent for the time that they were not in the Property. This means the outstanding amount due is $£132 \times 14 = £1848$ less £783. This leaves an outstanding amount of £1065 due to be paid by the Applicants. Both parties were satisfied with this and did not wish to proceed to give evidence.

Decision

14. The Applicants are entitled to an order of payment amounting to £1065.

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.

Gabrielle Miller

20th May 2021

Legal Member/Chair

Date