



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Part II of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/CV/21/0277

Re: Property at 60 Seaton Walk, Aberdeen, AB24 1SH (“the Property”)

Parties:

Mr Alistair Shaw, 29 Aston Avenue, Winsford, Cheshire, CW7 2HS (“the Applicant”)

Mrs Sephi Coleman-Tunney, 7 Belrorie Circle, Dyce, Aberdeen, AB21 7LT (“the Respondent”)

Tribunal Members:

Graham Dunlop (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent to the applicant of the sum of £734.24 should be made.

Background

1. The applicant sought an order for payment of rent together with cleaning costs, and the cost of a locksmith to change door locks.
2. The applicant and respondent entered into a tenancy agreement (“the agreement”) in 2013. The agreement provided to the Tribunal is unsigned but the parties did not take issue with the absence of any signatures.

3. The agreement refers to English legislation throughout. The agreement makes no reference to termination provisions in the event that the respondent, as tenant, wished to terminate the agreement.
4. During early 2020 the respondent and applicant entered into discussions regarding the sale of the property to the respondent. These discussions were not fruitful.
5. The applicant asserts that in September 2020 a notice to quit was served on the tenant terminating the tenancy as at 1st January 2021. The September notice was not produced to the Tribunal, although the case did not turn on the absence of this notice.
6. The respondent (tenant) vacated the property on or about 22nd October 2020 and returned the keys to the applicant by recorded delivery signed for by the respondent on 24th October 2020.

Hearing

7. The hearing was split into 3 chapters of evidence, namely (i) rent arrears, (ii) cost of locksmith, and (iii) cleaning costs. The Tribunal heard from the applicant, respondent and also Lewis Muirhead on behalf of the applicant.
8. The respondent conceded the issue of the cleaning costs. The cleaning costs were £432. The applicant had applied the respondent's deposit of £250, and accordingly the sum of £182 remains outstanding and is included in the sum awarded.
9. The applicant accepted that the agreement did not contain any termination provisions in respect of the respondent as tenant. The applicant asserted that returning the keys with a note indicating that "we have vacated the property" was not a clear notice that the tenancy/agreement had either been

abandoned or terminated. The applicant insisted that the agreement subsisted until 1st January 2021.

10. Notwithstanding this view the applicant instructed the property to be entered to be cleaned for sale in late October or early November.
11. The respondent stated that the applicant had indicated that no notice was required to terminate the agreement and relied on a letter from the respondent dated 26th July 2020.
12. The Tribunal considered the letter but considered that properly interpreted the letter identified that the applicant had previously offered a window of (up to) 7 months during which the agreement could be terminated without penalty. Properly interpreted the letter was not a waiver of the applicant's right to a period of notice for all time coming.
13. However the applicant did not present a case that a minimum period of notice was required under any statutory provision and rather relied on the assertion that the letter received on 24th October 2020 was not an adequate notice by the respondent. Therefore the case did not concern any minimum period of notice but rather whether the terms of notice were sufficient.
14. The Tribunal found that a reasonable landlord would consider the returning of two sets of the keys with a note that the property had been vacated as sufficient to indicate that a tenant no longer wished to remain bound by the agreement. It is recognised that the note is brief but conveyed the essential message.
15. The respondent did not provide notice until 24th October 2020. The Tribunal found that the respondent had not paid any rent for October 2020. The

monthly rental was £700, and accordingly rent arrears of (£700 x 12/365 x 24) £552.24 are due.

16. The keys returned by the respondent were operational at the time of their return. At a later date the keys stopped working. The Tribunal were invited to find that the respondent/tenant had returned to the property in November and tampered with the door locks or changed the locks. This was a finding which the Tribunal was asked to reach based on inference without any direct evidence of inappropriate conduct by the respondent or anyone on her behalf.

Findings in Fact & Reasons

17. The Tribunal found that there were no termination requirements under the agreement. The Tribunal found that a reasonable landlord would consider the note and returning of the keys as sufficient 'notice' of a tenant indicating that they no longer wished to remain in a property. The applicant's conduct in sending Mr Muirhead and cleaners to the property in late October 2020 is consistent with this analysis. Accordingly the respondent terminated the agreement on 24th October 2020.

18. The Tribunal found that the letter of 26th July 2020 did not waive any statutory minimum period of notice. The reason for this conclusion is that properly interpreted the letter was referring to a past concession by the applicant, being the previous 7 months,

19. In any event the applicant relied on the notice being insufficient in its terms and did not seek to rely on any minimum period of notice under any statutory provisions. The Tribunal were not prepared to attempt to direct itself to a proper period of notice as the status of the unsigned agreement drafted under English legal provisions was unclear.

20. The Tribunal found that there was no evidence of the respondent interfering with the door locks. The Tribunal recognised that inferences can be used to establish findings but was not satisfied that the applicant had discharged the burden of proof incumbent upon him as the applicant. There was no credible explanation why the respondent would seek to tamper with the door locks weeks after terminating the agreement.

Decision

21. The Tribunal found that the respondent was liable for the rent due for October 2020 up to and including 24th October 2020. The respondent conceded the cleaning costs less the deposit.

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.

Graham Dunlop

12th July 2021

Legal Member/Chair

Date