



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/21/0503

Re: Property at 14 Wellside Gardens, Kingswells, AB15 8EU (“the Property”)

Parties:

Mr Ross Martin, Ms Lyndsey Martin, 11 Wellside Gardens, Kingswells, AB15 8EU; 11 Wellside Gardens, Kingswells, Aberdeen, AB15 8EU (“the Applicants”)

Miss Christina Attia, Mr Mohamed Nizar Attia, 52 Castleview Avenue, Kintore, Inverurie, AB51 0SA (“the Respondents”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Linda Reid (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 £4651.81 (FOUR THOUSAND SIX HUNDRED AND FIFTY ONE POUNDS AND EIGHTY ONE PENCE)

Background

1. This is an application in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for payment of the sum of £5514.51 in terms of s16 of the Housing (Scotland) Act 2014.
2. On 25th March 2021, all parties were written to with the date for the Case Management Discussion (“CMD”) of 29th April 2021 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 15th April 2021.

3. On 25th March 2021, sheriff officers served the letter with notice of the hearing date and documentation upon both of the Respondents by leaving it with personally with the second named Respondent, Mr Mohamed Nizar Attia. This was evidenced by Certificate of Citation dated 25th March 2021.
4. Along with the application, the Applicants submitted:
 - a) Check out document for the Property dated 28th July 2020;
 - b) Rent account for the period 25th June 2018 – 10th August 2020;
 - c) Various quotes for repairs and cleaning arising from the tenancy;
 - d) Letting Protection Service Adjudication Decision
5. The parties entered into a Short Assured Tenancy on 25th July 2016 until 25th July 2018. The lease was then continued for a further 24 month period from 25th July 2018 to 25th July 2020. An AT5 was signed by both parties on 11th July 2016. The rent payments of £1200 were due on the 25th day of each month until the rent was renegotiated to reduce the rent to £1150 per month from July 2018 onwards. The Respondents gave two months notice on 27th January 2020 with the intention to leave on 28th March 2020. This was in advance of the end of the tenancy. An agreement was made between parties that the rent payments would not be due for the remained of the tenancy if it was able to be re let. The Applicants were not successful in reletting the Property.
6. The Applicants seek an order for £5514.51 for outstanding rent (£3837.81), late payment fees (£504) and end of tenancy charges for repairs and cleaning (£1172.70).

Case Management Discussion

7. A CMD was held on 29th April 2021 at 2pm by teleconferencing. The Applicants were represented by Ms Lisa Campbell from Stonehouse Lettings. The Applicant also attended. Both the Respondents were present.
8. The Respondents disputed that the amount due was owed. They dispute that they owe the rent. They consider that they had given suitable notice and that they had left as repairs had not been completed as requested by them. They dispute the cleaning costs as the Property was not cleaned until 4 months after they had left the Property. Other people such as the Applicants and trades people had been in the Property after them. Their view is that had it been cleaned sooner then it would not have cost as much. They dispute the garden repairs. They did not comment on the repairs to the Property. As matters are disputed a full hearing will be fixed.
9. The Respondents left the Property on 28th March 2020 and returned their keys to the letting agent by depositing them in the letterbox. The Tribunal considered if this continuation was a Short Assured Tenancy was done after 1st December 2017. It may fall under the Private Housing (Tenancies)(Scotland) Act 2016 (Commencement No 3, Amendment, Saving Provision and Revocation)

Regulations 2017. It may be that this continuation falls within this regulation in which case the Short Assured Tenancy may have continued and the outstanding rent is due. If it does not then the tenancy will default to a Private Rented Tenancy and the notice period may be sufficient meaning the rent is not due. The Tribunal reserved its position regarding this point. This was to be addressed at the hearing. The Respondents were told they needed to lodge any submission on this point prior to the hearing. Ms Campbell disputed that it is a Private Rented Tenancy. The Tribunal was open to any submissions that she wished to make on the issue.

10. The Tribunal will consider the sum sought in the application at a full hearing. The case was adjourned to a hearing on 8th June 2021 at 10am by teleconferencing. A direction was issued requiring further information to support the parties' position.

The Hearing

11. A hearing was held on 8th June 2021 at 10am by teleconferencing. The Applicants were represented by Ms Lisa Campbell from Stonehouse Lettings. The Applicant, Mr Ross Martin, also attended. Both the Respondents were present.
12. The matter of the rent arrears was discussed first. The case had been continued from the CMD to allow the Respondents to determine whether the tenancy was a Short Assured Tenancy or not. The Respondents were not able to instruct legal advice. They did not make a further submission on this point. They were happy to proceed. No further argument was presented against the tenancy being a Short Assured Tenancy, the Respondents noted that there were repairs that were not completed for a substantial for a period of time. The Tribunal considered this point. It noted that advice had been given to the Respondents by the local council that a case could be made to the Housing and Property Chamber for a repairing standard case to deal with the repairs. The Respondents had not done this. The Tribunal was satisfied that the tenancy was a Short Assured Tenancy and that the arrears were due. The Tribunal considered that the late payment fees were also due as they were a contractual term of the lease. The Tribunal considered that £4341.81 should be awarded for the arrears and the late payment fees.
13. The cleaning costs were next considered. Ms Campbell told the Tribunal that there would normally be a clean done after a tenancy but not a deep clean. There would then be a surface clean again before the next tenancy commenced. The Tribunal discussed the leaving inventory with her. It generally stated that the Property needed to be dusted or wiped. The Tribunal asked for further information regarding the number of hours cleaned and what had occurred as only the quote had been included in the information. Ms Campbell was not able to provide that but stated that the cost was the same as the quote. She believed that the hourly rate was £19.50 plus VAT. She noted that the carpets had been cleaned too. The Applicants had reduced the costs to £558

as the they had paid for their own light bulbs to keep costs down. The Respondents disputed that the Property needed a deep clean noting that he had shampooed the carpets prior to leaving. Ms Campbell confirmed that the cleaning was not instructed to be undertaken until the tenancy ended on 25th July 2020. The clean itself was not undertaken for a further month. In addition to this a further clean was not undertaken for the new tenants as they had moved in shortly after the clean in August. The Applicant noted that there were no trades people in the Property until the lease had ended. All the keys were at the letting agent's office. Due to Covid 19 restrictions the letting agent's office was closed. It was only once the tenancy ended the Applicants went into the Property to check it.

14. The damage to the Property was discussed next. Ms Campbell pointed out that this was detailed in the leaving inventory. There were 3 amounts of £10, £20 and £30 which totalled £60 altogether. The Respondent disputed these though did not have any evidence to support this. The Tribunal found it reasonable to grant this amount.
15. The garden damage was discussed next. In the front garden are 2 large trees that stand at the side of the drive. When the Respondents moved in the drive was clear. Over the years the trees became over grown encroaching on the driveway. The Respondent contacted the letting agent to get a landscaper to deal with it. The letting agent advised that it was the responsibility of the Respondents under the lease. The Respondents did not then instruct a landscaper. The Respondents then cut the side of the trees so that they no longer encroached on the driveway. However, it has left the side of the trees without any branches. The Applicants have been told that it will not grow back. The Applicants have decided to remove the trees. This work will cost £500 as it included excavation of the roots and disposal of the trees. The work has not yet been undertaken and the Property has been relet with the trees in this condition. The Tribunal considered that the Applicant did not necessarily need the trees to be removed but had elected to do this. However, the Respondent had caused damage to the trees and not complied with the terms of the lease.

Findings in Fact

16. The parties entered into a Short Assured Tenancy on 25th July 2016 for a 24 months period. The lease was then continued by a Minute of Lease for a further 24 month period from 25th July 2018 to 25th July 2020. An AT5 was signed by both parties on 11th July 2016. The rent payments of £1200 were due monthly until the Minute of Lease. The rent then was reduced to £1150 per month.
17. The Housing and Property Chamber received an Application signed 16th February 2021.
18. The Respondents left the Property on 28th March 2020. The keys were returned to the letting agents office. Due to Covid 19 restrictions the office was closed.

19. The arrears due to the Applicant amounts to £4341.81. This includes the late payment fee. The Letting Protection Scotland repaid £1200, the total amount of the deposit, to the Applicants.
20. There is damage to the Property which has resulted from the Respondents occupation of the Property. This amounts to £60.
21. The Respondents failed to maintain the garden in terms of the lease which has meant that remedial work requires to be undertaken. The Applicant is entitled to £250 for that damage.

Reasons for Decision

22. The Respondents has failed to make payment of the rent lawfully due in terms of the lease between the parties. The Tribunal was satisfied that there were no other issues of reasonableness before them. The Tribunal decided that the Respondents had persistently not paid the rent and were in arrears and the full amount of £4341.81 was due by the Respondents for arrears and late fee payments.
23. The Tribunal decided that the claimed costs for cleaning (including the carpets) the Property were not fair, proportionate or reasonable. The Tribunal did not make an award for any of the cleaning costs. The Respondents were in the Property for 4 years. It is reasonable that after such a time that the Property would need a thorough clean before the next let. The Property was cleaned sufficiently close to the next let that the pre tenancy clean did not need to occur. This was not deducted from the claimed cost nor was the standard end of tenancy clean deducted. It was very unclear what amount was over and above this. On balance, the evidence did not support that there were any overriding cleaning costs. The Respondents had vacated the Property 4 months prior to the end of the lease. This was 4 months before the inventory undertaken and 5 months before the clean was undertaken. It is reasonable to conclude that dust would have resulted during that time with possible odd bugs being present too. Given that this was at the beginning of the Covid 19 pandemic it would be reasonable to presume that the Applicants would be giving the Property a thorough clean prior to another household occupying the Property. The cost of the cleaning was not broken down. Evidence was not submitted that this was the most economical cleaning company or if there could have been a more economical one source. Over all, on balance, the Tribunal considered it not fair, proportionate or reasonable to make an award for any of the claimed cleaning costs.
24. The Tribunal decided that the claimed costs for the damage to the Property were fair, proportionate and reasonable. The Tribunal was content that £60 was the correct amount. The Tribunal included this in the award.
25. The Tribunal considered the claim in terms of the garden. The Respondent had undertaken the trimming of the tree himself. This had greatly affected the

aesthetics of the trees. It was clear in the lease that it was the responsibility of the Respondents to deal with the garden and its maintenance. The Respondents had contacted the letting agents requesting a landscape gardener but on the information that it was their responsibility took the matter no further. The state of the trees did not prohibit the Applicants from reletting the Property. The Tribunal noted that work would need to be undertaken but this did not necessarily require to be the removal of the trees. As the Respondents had allowed the trees to get to this point the Tribunal decided that half the amount claimed should be awarded, namely £250.

26. As a consequence the Applicants are entitled to be granted the Order for payment of £4651.81 against the Respondents.

Decision

27. The Applicants are entitled to for an order of payment of £4651.81 by the Respondents. The Order was granted against the Respondent.

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

8th June 2021

Legal Member/Chair

Date