



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/21/0804

Re: Property at 43 Meadowpark Drive, Ayr, KA7 2LJ (“the Property”)

Parties:

Mr Alexander MacPherson, 15a Wattle Terrace, Plympton Park, Adelaide, SA 5038, Australia (“the Applicant”)

Mr Thomas Linden, 74A Culzean Road, Maybole, KA19 8AH (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal 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 three hundred and eighty three pounds and thirty four pence (£383.34) be made.

Background

1. This was a case management discussion ‘CMD’ regarding an application to recover rent arrears in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and s71 of the Private Housing (Tenancies) (Scotland) Act 2016, ‘the Act’.
2. The applicant attended the CMD. The respondent’s wife Mrs Anne Linden attended on his behalf. Mrs Linden’s friend Ms Janine Hogg also attended for support.
3. The tribunal had before it the following copy documents:

- (1) Application dated 27 March 2021.
- (2) PRT.
- (3) Rent statement.
- (4) Land certificate.
- (5) Document lodged by the applicant headed 'Transcript of the Messenger Log between the Tenant's wife and myself (43 pages).
- (6) Document lodged by the applicant headed 'Transcript between my sister Linda and myself (4 pages).
- (7) Written submission by the respondent dated 25 August 2021.
- (8) Photographs lodged by respondent on 31 August 2021.
- (9) Email from Mrs Linden to applicant on 9 December 2020.
- (10) Email from Mrs Linden to letting agent dated 18 September 2019.

4. Preliminary matters

- (1) . Mrs Linden lodged documents and submissions on 25 and 31 August 2021 (items 7 and 8 above). Mr MacPherson objected to the respondent lodging documents late. In terms of rule 13 a party can amend their written representations up to 7 days before a hearing. In terms of rule 23 any documents must be lodged 7 days before any hearing. Mrs Linden stated that she had endeavoured to lodge everything as early as she could, and she had not have very much time to do so. The tribunal considered Mr MacPherson's objection. It appeared that from a practical point of view, if Mr MacPherson was to be given more time to consider the documents lodged, this would lead to a delay in the proceedings and a further CMD being fixed. The applicant was keen to make progress and accordingly the tribunal noted his objection and allowed the documents to be received although late.
- (2) The tribunal sought to clarify the amount the applicant was seeking. Mr Macpherson had lodged two different rent schedules and it was not clear whether the deposit of £850 was available to apply towards the rent arrears. The applicant clarified that the full deposit was available as he had inspected the property and was not making any issue with the condition of it. Accordingly, he was seeking an order for the sum of £683.34.

The applicant's position

5. The applicant did not accept that the property was not wind and water tight for the duration of the tenancy. It was the applicant's position that the respondent had refused access to the roofer he had instructed on several occasions and as a result, the difficulty with the water ingress was only identified when the home report came back earlier this year. The applicant was unable to address the tribunal on the 43 pages of messages he had lodged. He was asked to identify the connection between the messages lodged and the attempts he had made to

get access to resolve the problem. Further, the applicant submitted that he did not receive Mrs Linden's email of 9 December 2020 indicating that the respondent was seeking to withhold rent. He conceded that he had recently found the email in his spam emails. The email was also sent to the letting agent, but it was the applicant's position that the letting agent did not contact him about the email either. The applicant submitted that the first he knew about the rent being withheld was when he checked his bank account. The applicant was aggrieved about the rent reduction as he has carried out numerous repairs to the property throughout the tenancy. He has replaced patio doors and had given the respondent a rent reduction in the summer of 2020 due to covid. He stated that if his roofer had been able to access the property the issue with the cavity wall and the roof would have been identified and sorted. It was his position that there was a 6 inch gap between the render and the inside wall and the water was running down the cavity wall and causing an ingress to the fireplace in the lounge. The applicant was not disputing the issue but he was disputing that the respondent gave him the opportunity to resolve the issue by allowing access. The applicant wished the tribunal to make a decision in connection with the application rather than adjourning to seek the lodging of the home report and a time line the documents lodged.

The Respondent's position

6. Mrs Linden stated that the main issue with the property was water ingress from the fireplace in the lounge of the property. She stated this problem has existed since the start of the tenancy and that she had drawn this to the applicant's attention on a number of occasions. She also stated that there was a second issue with a leak in the upstairs bathroom ceiling which emerged in January 2020. She stated that the applicant failed to address the problem with the wall in the lounge. She denied that the roofer had problems getting access to the property. She conceded there was furniture in the eaves in the upstairs bedroom which would have to be moved and this involved the roofer coming back on a second occasion. It was her submission that it was not necessary to see inside the house and that the roofer would identify the problem by gaining access to the roof. Mrs Linden submitted that over the course of the tenancy there was a smell from the lounge and the furniture had to be wiped down due to mould. She submitted that there were additional heating costs but no evidence of this had been lodged. The problem was worse over the winter. It was Mrs Linden's position that her husband was entitled to withhold rent for the property as by December 2020 the problem has still not resolved. She submitted that formal notice to leave was issued in October 2020. She accepted that she had not received a reply to her email of 9 December 2020 seeking a rent abatement.

Discussion

7. The applicant was unable to address the tribunal on the documents he had lodged, and it was not clear to the tribunal what the timeline of events was. On the one hand, the tribunal considered adjourning the hearing and make directions for the lodging of the home report and a timeline linking the events with the documents lodged. The tribunal also considered the proportionality of adjourning the CMD. The applicant was opposed to that, and he felt that the CMD had been lengthy, it had caused him inconvenience as it was very late in Australia, and he was keen to resolve matters. Regarding the notice period, it was the applicant's position that he is entitled to rent in lieu of notice in terms of clause 24 of the tenancy agreement. His position is that he would not have insisted on this head of claim had the respondent not withheld rent. Mrs Linden's position regarding the rent in lieu of notice was that the applicant had agreed that it was not necessary for them to give the full 28 days notice.

8. Findings in fact

- The property is owned by the applicant.
- The applicant entered into a private residential tenancy agreement 'PRT' with the respondent for let of the property on 24 May 2018 with a start date of 14 June 2018.
- The agreed deposit was £850 and the agreed monthly rent was £850 per calendar month.
- The agreed monthly rent was £850.
- The respondent withheld rent for December 2020, January and February 2021 and paid the lower amount of £550 for those months.
- The respondent gave the applicant notice on 18 March 2021 that he was leaving the property two weeks later. The respondent paid the reduced sum of £271.50 for the March 2021 rental payment.
- The agreed notice period for the respondent was 28 days.
- There was water ingress to the property through the fireplace in the lounge from Around July 2019.
- There was water ingress in the upstairs bathroom ceiling from around January 2020.
- The respondent decided against making an application to the tribunal for a rent relief order.
- The total arrears of rent accrued between December 2020 and 15 April 2021 was £1533.34 less the deposit of £850 giving a balance of £683.34.
- An abatement of £100 per month for December 2020, January and February 2021 to reflect the respondent's loss of amenity is reasonable in all of the circumstances.
- The net sum due to the applicant is £383.34.

Reasons

9. The tribunal considered how best to proceed. The tribunal considered the respondent's position. The tribunal was mindful of the need to proceed in a manner which is proportionate to the complexity of the issue and of the need to avoid delay so far as compatible with the proper consideration of the issues. The tribunal was satisfied that the application had made his case for the rent arrears. Mrs Linden did not dispute the level of arrears with the exception of the portion of the arrears relating to the notice period. The tribunal decided that there was a contractual agreement for a 28 day notice period and in the absence of clear evidence to the contrary, clause 24 of the agreement should prevail. Regarding the respondent's case for an abatement, it was not clear from the information lodged by the respondent that the property was not wind and water tight. There was clearly some water ingress in the lounge at times. There was also some water ingress in the upstairs bathroom from around January 2020 onwards. The property is three bedroom and taking the respondent's position at its highest level, if one room in the property was out of bounds completely, there was no issue with the other rooms. Taking a broad brush approach the tribunal decided that a reduction of £100 for each month that the rent was withheld was reasonable in all of the circumstances and reflected the fact that the respondent had some inconvenience due to the water ingress. The tribunal accordingly granted an order for £683.34 less £300 giving the sum due of £383.34.

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.

Lesley Ward

3 September 2021

Lesley A Ward Legal Member

Date

