

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/0874

Re: Property at 3B Parterre, Irvine, KA12 0DA (“the Property”)

Parties:

Ms Angela Bruce, 23 Poplar Way, Ayr, KA7 3PQ (“the Applicant”)

Miss Irene McCormick, 41 McKinlay Court, Irvine, KA12 8DP (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and James Battye (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of One thousand seven hundred and seventy nine pounds and forty six pence (£1779.46) and a time to pay direction requiring payment at the rate of £20 per fortnight.

Background

- 1 By application to the Tribunal dated 12 April 2021 the Applicant sought payment in the sum of £594 in relation to outstanding rent arrears due by the Respondent under the terms of a tenancy between the parties. In support of the application the Applicant provided copy Private Residential Tenancy Agreement, copy email correspondence and WhatsApp messages with the Respondent, rent statement and bank payments evidencing payments received.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President considered that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 9 June 2021.

- 3 On 11 May 2021 the Applicant contacted the Tribunal to advise that the tenancy between the parties had terminated. She provided a final rent statement confirming arrears of £1346 as at 14 May 2021 and copy email and WhatsApp correspondence with the Respondent.
- 4 Service of the application paperwork together with notification of the date, time and location of the Case Management Discussion was effected on the Respondent by Sheriff Officers on 11 May 2021.
- 5 On 25 May 2021 the Applicant submitted a request to amend the application to increase the sum sought to £2283.89 and include a claim for damages. In support of the request the Applicant provided a copy check-out inventory, accompanying photographs, copy email correspondence with the Respondent, copy invoices for rubbish removal, carpet cleaning and carpets and copy order for replacement window keys and schedule of damage costs.
- 6 On 22 May 2021 the Respondent submitted a time to pay application offering payments of £20 per fortnight. On 4 June 2021 the Applicant submitted a response confirming acceptance of the time to pay offer.

The Case Management Discussions

- 7 The first Case Management Discussion took place on 9 June 2021 by conference call. The Respondent was present. The Applicant was not in attendance. The Tribunal noted that it had questions for the parties prior to determining the time to pay application in light of the Applicant's request to amend the application to include the claim for damages and therefore agreed to adjourn the Case Management Discussion for both parties to be present. A Direction was issued requiring the Respondent to clarify the sums she accepted were due to be paid, details of any payments towards the debt and clarification on the time to pay offer (whether it was £20 per fortnight or £40 per month). The Applicant was directed to provide a response to any of the matters arising from the Respondent's representations.
- 8 The second Case Management Discussion took place on 14 July 2021 by conference call. The Applicant and Respondent were both in attendance. The Tribunal noted the Respondent had not provided a response to the Direction. She advised she was under pressure, but did not accept she should pay for all of the items set out in the Applicant's claim. She had completed the time to pay application without taking account of this. It was explained to the parties that the amount of the claim required to be determined by the Tribunal prior to the consideration of any time to pay application. The Respondent was therefore asked to submit a written response confirming what parts of the claim she accepted liability for and those that she did not. She confirmed she would do so. The Tribunal therefore adjourned the Case Management Discussion and issued a Direction requiring the Respondent to provide a note of the costs of the end of tenancy work that she accepted were due by her and a note of those costs that she did not accept and an explanation as to

why, together with copy of any photographs or paperwork she wished the Tribunal to see. The Applicant was directed to provide a written response to any of the matters arising from the Respondent's representations together with copies of any photographs or paperwork not already produced that she wished the Tribunal to see.

- 9 On 30 July 2021 the Applicant provided a written response to the issues raised at the Case Management Discussion. On the same date the Respondent emailed the Tribunal a photograph of a bank statement showing payments made to the Applicant and a copy of the check-in inventory with comments on the alleged damages. She also provided a photograph of her two dogs which she stated were black, not brown. Following receipt of the Respondent's representations the Applicant provided further written representations by email.
- 10 The third Case Management Discussion took place on 4 August 2021. The Applicant and Respondent were both present. The Respondent advised that she had been looking for assistance to help in presenting her case but had been unsuccessful so far. The Applicant advised that the Respondent had paid £120 to her which should be deducted from the claim and therefore she was seeking an order in the sum of £2,183.89. The Respondent's position was that the claim was too high and would take her a long time to pay. She was unable to say how much would be a reasonable figure and why. She confirmed that she accepted the rent arrears of £1356, the carpet cleaning of £70, the carpet cost of £318.75, the carpet fitting of £82.94 and the clearing out charge of £170. However she did not accept fully the remaining amounts. She advised that only one key was provided for the windows, that the lampshade had been left in the house, that the blinds were in poor condition and that the charges were too high.
- 11 The Tribunal therefore determined that a hearing was required to fully consider the heads of claim disputed by the Respondent. The Respondent was advised to seek help and advice in order to assist her with the hearing. Both parties were further advised to provide details of witnesses in advance of the hearing.
- 12 On 15 August 2021 the Applicant provided further written representations accompanied by a statement from Janice Robertson who had carried out cleaning and redecorating at the end of the tenancy and copy receipts from various shops showed sums incurred at the end of the tenancy. The documents were intimated to the Respondent by email on 16th August 2021.

The Hearing

- 13 The Hearing took place by teleconference on 13th October 2021. The Applicant and Respondent were both in attendance.
- 14 The Tribunal addressed a number of preliminary issues with the parties. The Tribunal asked the Respondent if she had sought help and advice with the

proceedings. She confirmed she had not been able to obtain this. She further advised that she was at her work and did not have access to any of the application papers, albeit she confirmed that she had received, and had previously had sight of, the documents, including those intimated to her on 16th August. She did not have any way of accessing the documents in her current location. The Tribunal asked if she was content to proceed, as there may be reference to the documents during the hearing. She confirmed she was. The Tribunal confirmed that it would therefore proceed to hear verbal evidence on the items in dispute, but that if any procedural issues arose during the course of the hearing which required the Respondent to have access to the documents this would be considered in terms of what action may be required

15 The Tribunal then noted that the Respondent had intimated her acceptance of various heads of claim, including the rent arrears, carpet cleaning and carpet replacement and removal of items from the property. The Respondent indicated that this was not correct. The Tribunal noted the discussion at the previous Case Management Discussion which indicated she had accepted these sums were due. The Respondent went on to state that she thought the matters had been discussed and decided upon at the Case Management Discussion. The Tribunal advised that was not the case, and that the hearing was the opportunity for her to fully set out her position regarding the application and for the Tribunal to then take a decision on the Applicant's claim. The Respondent then confirmed that she did accept those sums were due. On that basis the Tribunal proceeded to hear evidence on the matters in dispute which were:

- (i) *Costs of clearance and cleaning (including emptying belongings from cupboards, lifting laminate and removing mats glued to stairs) in the sum of **£250***

The Applicant explained that these were costs that had been incurred by Janice Richardson who had been employed by the Applicant to clear the flat and redecorate following the end of the tenancy. The Applicant stated that Ms Richardson had charged her a total sum of £951.61 in respect of this work, £250 of which related to this item. In response to questions from the Tribunal the Applicant confirmed that some of the receipts she had produced related to items purchased by Ms Richardson and some related to items she had bought herself. Janice Richardson had removed belongings, cleared out cupboard and reinstated the property to a reasonable condition. It required substantial cleaning as a result of pet hair and urine. The Applicant confirmed that she had given permission for the Respondent to keep the dogs, however the level of cleaning required as a result was excessive. The Respondent had not asked permission to lift the carpets and put down laminate flooring, which subsequently had to be removed.

The Respondent advised that she considered the costs sought to be excessive and the Applicant had gone "over the top" with the cleaning.

She conceded that there had been rubbish left in the property, she had run out of money and could not get anyone to clear it for her. She just wanted to move and get out of the property, to avoid her bills from increasing further. She confirmed that she had not sought permission to put down the laminate floor but should have. In response to questions from the Tribunal the Respondent confirmed that she had done a bit of cleaning, she had been cleaning as she went along. She further confirmed that the photographs produced by the Applicant were an accurate representation of the property at the end of the tenancy. She was prepared to pay for the carpets and the rent, but not anything else.

(ii) *Redecoration of the property in the sum of £715*

The Applicant confirmed that Janice Robertson had carried out this work, and her fee of £951.61 was inclusive of this sum. All of the rooms in the property required redecoration. This was due to a number of factors including stickers and blu tack on the walls, the repainting of a bedroom wall by the Respondent which had been done without permission and smoke damage. Every wall had to be scraped and painted to freshen it up because of the smell of smoke. The Applicant advised that she had compared the quote from Ms Robertson with quotes on a trade website and it was at least half of what a general decorator would charge. She considered it to be a reasonable cost and noted the fair wear and tear deduction. The property had been repainted when the Respondent's tenancy commenced in 2018. In response to questions from the Tribunal the Applicant confirmed that the tenancy agreement prohibited smoking in the property. All rooms required redecorated, not just the three bedrooms, one of which had stickers on the wall, one had blu tack and one had a wall that had been repainted by the Respondent.

The Respondent confirmed that the tenancy agreement didn't permit smoking, but stated that she had only smoked at the front door. The smoke must have blown back into the property. She confirmed that she had repainted a wall in a bedroom, it had holes in it and she had filled them in and painted them over. She confirmed that she had not sought permission to do this from the Applicant. She further advised that there were only two stickers left on the wall in another bedroom and they would have peeled off. She had to use blu tack in the third bedroom for the protection of her son, who could not have access to drawing pins. In response to questions from the Tribunal the Respondent confirmed that she felt a reasonable cost for redecoration would be £200 for the three bedrooms.

(iii) *Repair of broken tile in bathroom and damaged vertical blinds*

The Applicant confirmed that the tile in the bathroom was cracked, it did not need replaced but it did need repaired. There were various

broken chains on the vertical blinds that needed fixed as well. The £30 charge arose from the contractor who had undertaken both jobs.

The Respondent advised that the broken tile was caused by dampness and water coming through which had softened the wood and broken the tile. The blinds had been taken down by her at the start of the tenancy as she knew they would cause problems with her dogs. She had put them in a cupboard where they remained until the end of the tenancy. Before leaving the property she had put the blinds back up and left some of the weights and chains in a carrier bag beside the door. The Applicant advised that she had not come across the carrier bag when she first entered the property following the Respondent's departure. She had simply found the blinds with the broken chains.

(iv) *Replacement landshade in the sum of £10*

The Applicant confirmed that she would include this as fair wear and tear and it could therefore be deducted from the claim.

(v) *Replacement window keys in the sum of £6.60*

The Applicant confirmed, in reference to the check-in inventory, that four keys were in the property at the start of the tenancy and only one at the end.

The Respondent acknowledged that the check-in inventory referred to four keys, but there had only been one at the start of the tenancy. In response to questions from the Tribunal the Respondent advised that she had not raised this with the Applicant at the time, she had noticed several things in the inventory that didn't seem right but she didn't question it.

Findings in Fact

- 16 The Applicant and Respondent entered into a private residential tenancy agreement which commenced on 22 May 2018.
- 17 In terms of Clause 7 of the said tenancy agreement the Respondent agreed to make payment of rent at the rate of £495 per month.
- 18 In terms of Clause 16 of the said tenancy agreement the Respondent agreed to take reasonable care of the property.
- 19 In terms of Clause 17 of the said tenancy agreement the Respondent undertook to be liable for the cost of repairs where the need for them was attributable to her fault or negligence that of any person residing with her, or any guest of hers.

- 20 In terms of Clause 23 of the said tenancy agreement the Respondent undertook to remove all of her belongings when the tenancy ended.
- 21 In terms of Clause 24 of the said tenancy agreement the Respondent agreed to replace or repair any contents which were destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the Respondent, anyone living with the Respondent or an invited visitor to the property.
- 22 In terms of Clause 27 of the said tenancy agreement the Respondent undertook not to make any alterations to the property, its fixtures or fittings, nor to carry out any internal or external decoration without the prior written consent of the Applicant.
- 23 The tenancy terminated on 14 May 2021. As at the date of termination arrears in the sum of £1346 were outstanding.
- 24 The Respondent is due to pay the Applicant the sum of £1346 in respect of outstanding rent under the terms of the tenancy agreement between the parties.
- 25 During the tenancy the Respondent removed carpets within the property, installed laminate flooring and stair mats and redecorated a bedroom wall, all without the consent of the Applicant.
- 26 The Respondent failed to maintain the property in a reasonable state of cleanliness and failed to leave the property in a reasonable condition upon vacating at the end of the tenancy.
- 27 Damage was caused to paint work throughout the property by the Respondent and those living or visiting with her through the fixing of stickers and blu tack to the walls and by persons smoking within the property. The damage caused to the paint work went beyond fair wear and tear.
- 28 The vertical blinds were broken during the term of the tenancy. The damage caused went beyond fair wear and tear.
- 29 A bathroom tile was broken during the term of the tenancy. The damage caused went beyond fair wear and tear.
- 30 At the start of the tenancy, four window keys were present in the property. At the end of the tenancy, only one window key was present in the property.
- 31 As a result of the Respondent's failure to comply with her obligations under the said tenancy agreement the Applicant required to engage contractors at the end of the tenancy to undertake carpet cleaning at a cost of £70.

- 32 As a result of the Respondent's failure to comply with her obligations under the said tenancy agreement the Applicant required to engage contractors to remove items belonging to the Respondent from the property at the end of the tenancy at a cost of £170.
- 33 As a result of the Respondent's failure to comply with her obligations under the said tenancy agreement the Applicant required to engage a contractor to undertake works at the property including the removal of items left by the Respondent, cleaning, removing the laminate flooring and stair mats at a cost of £236.61.
- 34 As a result of the Respondent's failure to comply with her obligations under the said tenancy agreement the Applicant required to redecorate the rooms within the property at a cost of £715.
- 35 As a result of the Respondent's failure to comply with her obligations under the said tenancy agreement the Applicant required to engage a contractor to repair the vertical blinds and bathroom tile at a cost of £30.
- 36 The Applicant required to replace three window keys at the property which were not present at the end of the tenancy at a cost of £6.60.
- 37 The Applicant further required to replace carpets in the property which had been removed by the Respondent at a cost of £313.85 for the replacement carpets and underlay and £82.94 for fitting.
- 38 The legal test to apply in determining what costs are due to the Applicant is that of "betterment", in that the landlord cannot end up, either financially or materially, in a better position that she was at the start of the tenancy, having allowed for fair wear and tear.
- 39 It is reasonable to expect a painted wall to have an average life expectancy of six years.
- 40 The property was repainted at the commencement of the tenancy in May 2018.
- 41 The Applicant is therefore entitled to the sum of £357.50 in respect of the redecoration.
- 42 It is reasonable to expect carpets to have a life expectancy of ten years.
- 43 The carpets were replaced at the commencement of the tenancy in May 2018.
- 44 The Applicant is therefore entitled to the sum of £277.75 in respect of the replacement carpets.

- 45 The total sum due to the Applicant by the Respondent in respect of the claim for damages is £1148.46.
- 46 The deposit of £495 was repaid to the Applicant following the termination of the tenancy.
- 47 The Respondent has made payments totalling £220 to the Applicant since the termination of the tenancy.
- 48 The Respondent is therefore due to make payment to the Applicant in the sum of £1779.46.

Reasons for Decision

- 49 The Tribunal determined the application having considered the documentary evidence and the evidence from the parties at the Hearing. The Tribunal was satisfied that it had sufficient information upon which to make a decision on the application.
- 50 The Tribunal noted the concerns expressed by the Respondent regarding her ability to participate in the proceedings. However the Tribunal could not ignore the fact that there had been three Case Management Discussions in advance of the Hearing which the Respondent had attended. She had been given direction by the Legal Member on three occasions to assist her in presenting her case and had been urged to seek external help if she required assistance. The Tribunal was satisfied that she had therefore been given a fair hearing and had been provided with the opportunity to properly put forward her defence to the application. Ultimately it appeared to the Tribunal that she was simply not in a position to refute the evidence put forward by the Applicant which, in the view of the Tribunal, was credible and robust.
- 51 There was no dispute between the parties regarding the arrears of rent, nor the replacement and cleaning of carpets within the property and the removal of items. The Tribunal was therefore content, having regard to the terms of the tenancy agreement between the parties and the evidence put forward by the Applicant in the form of a rent statement and check in and check out inventories, that a sum in relation to these items were due by the Respondent.
- 52 The Tribunal noted the Respondent's admission that she had undertaken works at the property without the Applicant's consent, including the removal of the carpet and installation of laminate flooring. The Tribunal could therefore conclude that the Applicant was entitled to the costs of removing the laminate flooring and reinstating the carpet. The Tribunal was further satisfied that the damage to the paint work throughout the property was likely a result of the Respondent and her fellow occupiers having not taken due care and it could be reasonably assumed that the condition of some of the walls as evidenced by the photographs produced by the Applicant was a result of persons

smoking within the property, in contravention of the terms of the tenancy agreement. The Tribunal could not accept that the damage was due to smoke blowing back into the property from the front door, where the Respondent claimed to have smoked. The Tribunal was also satisfied that the costs sought by the Applicant in this regard were not excessive, having taken the view that the sum of £715 for repainting an entire house was reasonable.

- 53 Similarly the Tribunal was satisfied that a sum in relation to the replacement of the window keys, repair of the bathroom tile and repair of the blinds was due to the Respondent by the Applicant. The Tribunal did not accept the Respondent's version of events and did not accept that the sums sought by the Applicant in respect of these items were excessive. The Tribunal also preferred the Applicant's evidence regarding the extent of cleaning required at the end of the tenancy, which was supported by the photographic evidence produced. The Respondent had herself conceded that the photographs were an accurate record of the condition of the property at the end of the tenancy.
- 54 The Tribunal did note the lack of specification in respect of some of the costs sought by the Applicant, specifically in relation to the works undertaken by Janice Richardson. The Applicant had referred to costs incurred by herself in respect of items she had purchased, and costs incurred by Janice Richardson. However it was not clear who had purchased what, and what sums were due. On that basis the Tribunal restricted the sums relating to the works undertaken by Janice Richardson to the sum the Applicant had paid directly to her, namely £951.61.
- 55 In determining the application the Tribunal has also reflected in any costs awarded the betterment principle in that the landlord cannot be financially or materially better off at the end of the tenancy. This has been taken into account in the Tribunal's findings in fact and law in respect of the cost of the replacement carpets and repainting. The Tribunal did note the Applicant's willingness to deduct a sum in respect of fair wear and tear from the sum claimed, in fulfilment of this principle, however the Tribunal did not agree with the extent of her calculation in that respect which was lacking in specification.
- 56 The Tribunal therefore made an order in the sum of £1779.46 against the Respondent in favour of the Applicant, reflecting the deduction of both the deposit of £495 and the sums already paid to the Applicant by the Respondent.
- 57 Finally the Tribunal considered the time to pay application which had been made by the Respondent. The Respondent had offered payments of £20 per fortnight and appeared to have showed good faith by making payments to the Applicant in advance of the Hearing. The Tribunal acknowledged that the Applicant had previously indicated she would accept the offer in respect of the increased sum sought for the arrears and damages. The Tribunal therefore considered it would be reasonable to make a time to pay direction requiring payment at the rate of £20 per fortnight.

58 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

15th October 2021

Legal Member/Chair

Date