



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/1811

Re: Property at 39D Powis Place, Aberdeen, AB25 3TS (“the Property”)

Parties:

Northwood (Aberdeen) Limited, 207-211 Rosemount Place, Aberdeen, AB25 2XS (“the Applicant”)

Mr Przemyslaw Zdybel, Mr Julia Matuszkiewicz, Flat G 1 Castlehill, Aberdeen, AB11 5FD; Flat G 1 Castlehill, Aberdeen, AB11 5FD (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of six hundred and sixty-nine pounds and sixty-five pence (£669.65) be made in favour of the Applicant and against the Respondents.

The Decision of the Tribunal was unanimous.

Background

1.This application is for a payment order in terms of Rule 111 of the Tribunal Rules of procedure and was first lodged with the Tribunal on 27th July 2021 and accepted by the Tribunal on 19 October 2021.

2.The Tribunal fixed a Case Management Discussion to take place on 26 November 2021 at 11. 30am.At that stage the Respondents attended and disputed the sums said to be lawfully due and a Hearing was fixed for 11th February 2022 at 10am.

3. At the Hearing on 11th February 2022 the Applicant was represented by Miss McPherson from the Applicant company and there was no appearance by or on behalf of the Respondents. The Tribunal was aware that the date of the hearing had been intimated to the Respondents by recorded delivery post and was satisfied that fair notice had been given of the Hearing date and that it was appropriate to proceed in the absence of the Respondents.

4. The Tribunal had sight of the application, a tenancy agreement, a rent statement letter, correspondence in relation to a deposit, invoices and an estimate by a painter and decorator, a check out report, a copy of an agreement between the Applicant and the property owner and correspondence between the Applicant's solicitor who had been previously instructed and the Housing and Property Chamber. In addition, the Applicant's previously instructed solicitor had lodged before the case management discussion a request to amend the sum they were seeking to include an invoice for legal fees in the sum of £238.68, taking the sum being requested to £1,123.65.

5. Miss McPherson confirmed that solicitor's fees were still being sought and the Tribunal noted that the application to amend the sum being requested had been intimated to the Respondents in advance of the case management discussion in terms of the Tribunal rules of procedure and the issue had been discussed at that time. The Respondents had not objected to the request to increase the sum sued for although they had suggested that the solicitor's fees had been unnecessary.

6. The Applicant company does not own the property but had entered into an agreement with the property owners to lease the property as landlords and the Respondents had rented the property during part of this period. They had entered into a tenancy agreement with the Applicant on 9th April 2018 and the tenancy had ended by the Respondents giving notice to leave for 30th December 2020.

7. The monthly rent payable at the property by the Respondents was £385 per month and a deposit was paid in the sum of £485. Cleaning costs and some rent arrears had been recovered from the deposit.

8. Miss McPherson indicated that there were outstanding rent arrears left by the Respondents arising from the tenancy in the sum of £430.97. The Respondents at the case management discussion had indicated that they had been advised to withhold rent by their guarantors as they had required to leave the property due to what they had described as a rodent infestation. They had lodged nothing to indicate any steps they had taken to withhold rent. Miss McPherson indicated at the Hearing that at a gas safety inspection in September 2020 an engineer had noticed bite marks in wires to the boiler. This had been reported and a pest control company had attended immediately. The Respondents had never raised the issue again and as far as Miss McPherson was concerned they had accepted responsibility for the rent arrears at one stage, offering to enter into a payment plan then not responding when contacted regarding this matter. Miss McPherson indicated that no rent had been paid by the Respondents after October 2020 although it was understood that they had continued to live at the property until the end of December 2020. There had been an issue with notice as only Mr Zdybel had given notice to leave, and the Applicant had not heard from the other Respondent until later but it was accepted that 30th December 2020 was the end of the notice period.

9. The Applicant was claiming costs for redecoration at the property and had lodged an estimate for £1300. Miss McPherson accepted that some of this work was not due to any damage caused by the Respondents who had stuck paper using tape on the walls of every room except the kitchen and bathroom at the property. The Applicant had apportioned 30% of the overall decoration costs to the damage caused by the Respondents sticking paper and tape on the walls and the rest of the work which was to be done would mean that after the damaged walls were painted white, the ceilings would be painted the same colour. The redecoration work had not been done as the landlord could not afford to do it and the property had been re-tenanted without this work being done. When asked Miss McPherson indicated that it was thought that 30% of the overall cost of redecoration would be attributable to the damage to the walls caused by the Respondents.

10. The Applicant was claiming £54 for a call out charge incurred when the Respondents advised that the heating was not working. Miss McPherson indicated that the Applicant had tried to talk to the Respondents on the phone to give advice on this issue, but this had not been successful. A gas engineer had been called out and they had been advised that the heating was not working because the boiler had been switched off and needed to be reset. She indicated that the Respondents had had a smart meter installed without permission and that this was a breach of clause 31 of the tenancy agreement in that they were altering a fixture without permission of the landlord. She understood that whoever had attended to do this had switched off the boiler and this was why the Respondents had understood that the heating was not working. The information on this had come from someone else and Miss McPherson could not say if the tenants had been required to have the smart meter installed by a utility company or if they had chosen to do so without permission.

11. The final cost which was being claimed was £238.68 in solicitors' fees. Miss McPherson indicated that Northwood (Aberdeen) Ltd had not lodged an application to the Tribunal themselves previously and she had taken advice from a solicitor which was their usual procedure. It was pointed out that clause 9 of the tenancy agreement indicated that reasonable legal costs for recovery of rent arrears might be claimed and that the application covered more than rent arrears. Miss McPherson pointed to an email dated 8th November 2021 from the solicitor previously instructed by the Applicant which appeared to suggest that the legal fees invoice was for recovery of rent arrears.

12. Miss McPherson was asked why she had not approached the guarantors for the sums being requested and indicated that in respect of the damage and gas call out charge they had proceeded against the tenants as they felt that they had been directly responsible for these costs. As far as the outstanding rent was concerned, she understood that the guarantors had apparently advised the Respondents to withhold rent, so she did not think it appropriate to approach them for payment of either the rent arrears or the solicitor's fees.

13. The Tribunal felt it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

14 The Applicant entered into a tenancy agreement at the property with the Respondents between 9th April 2018 and 30th December 2020.

15. The Applicant had authority to enter into this agreement by virtue of a management and leasing agreement they entered into with the property owners in 2015, which agreement was in place until March 2021.

16. The monthly rent payable by the Respondents at the property in terms of the tenancy agreement was £385.

17. Rent arrears accrued at the property amounting to £430.97 after deduction of sums obtained from the deposit paid by the Respondents towards the rent arrears.

18. The Applicant instructed a solicitor to recover the sums due in unpaid rent, prepare a Tribunal application and appear at the case management discussion and these costs amounted to £ 238.68 including VAT.

19. The Respondents put up sticky tape and paper on the walls of some rooms at the property during the tenancy but the work required for redecoration of these areas has not been carried out and the property has been re let without this being done.

20. A gas engineer required to attend the property and reset the boiler and the Applicant was charged for this call out.

21. Six hundred and sixty-nine pounds and sixty-five pence is lawfully due to the Applicant by the Respondents in relation to rent arrears accrued during the tenancy and reasonable legal fees incurred to recover the unpaid rent in terms of clause 9 of the tenancy agreement.

Reasons for Decision

22. The Tribunal was satisfied that the rent arrears were lawfully due by the Respondents to the Applicant and that the Applicant had instructed a solicitor to recover the unpaid rent and prepare an application to the Tribunal and attend at the tribunal case management discussion, not ever having been required to prepare and lodge an application to the Tribunal before, and it seemed reasonable that they instructed a solicitor in these circumstances. The fees claimed appeared reasonable and the tenancy agreement allowed for such a claim for costs in recovering unpaid rent.

The Tribunal took the view that the request for apportioned decoration costs was premature as the work had not yet been carried out and it was not possible to quantify the amount of work required as a result of the sticking up of paper and tape on the walls by the Respondents, given there was no final invoice produced and the property had been re let without the work in the redecoration estimate being carried out. No order was made in relation to that claimed cost for these reasons. The Tribunal was not satisfied that the Respondents had breached clause 31 of the tenancy agreement by having a smart meter fitted without permission as there was no information available as to whether the Respondents had been required to do this by a utility company or had chosen to have a new meter installed without permission. It was clear that someone, possibly the gas engineer who was fitting the smart meter, had switched off the boiler and this had given the Respondents cause to believe the heating was

not working and the call out had been made as a result. On the basis of this information the claim for this cost was refused.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of six hundred and sixty-nine pounds and sixty-five pence (£669.65) be made in favour of the Applicant and against the Respondents.

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.

Valerie Bremner

11.02.2022

Legal Member/Chair

Date