



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

Chamber Ref: FTS/HPC/CV/21/2339

Re: Property at 11 Halliday Terrace, Lochmaben, Dumfries, DG11 1PG (“the Property”)

Parties:

Mrs Alison Proctor, Mr Phillip Proctor, 72 Cardoness Street, Dumfries, DG1 3AJ (“the Applicant”)

Mrs Louise Robertson, 1 Castle Street, Lochmaben, Dumfriesshire, DG1 1NY (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment be granted in the sum of £2,940 with interest at 4% per annum.

Background

This is an application under Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 71(1) of the Act in respect of a claim for payment of alleged rent arrears of £2,940.00.

The Tribunal had regard to the following documents:

1. Application received 28 September 2021;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 2 December 2019;
3. Rent Arrears Statement as at 24 September 2021;
4. Email from Richardson and Starling dated 22 November 2021;

5. Royal Mail Recorded Delivery tracking confirming service of Tribunal Direction on the Respondent 17 January 2022.

Preliminary Matters

The case called for a Hearing by conference call on 24 February 2022. The Applicant (Mr Proctor) participated and was represented by his Letting Agent Ms Thom. The Respondent participated and represented herself.

The Respondent had sought to lodge photographs and video evidence in respect of the alleged damp in the Property by emails sent after 5pm on 23 February 2022. She said that she had received some acknowledgements and also notifications that the files were too big. The tribunal noted that 4 covering emails had been received with no attachments.

The tribunal asked the Respondent why she had not complied with the Direction of 14 January 2022 which ordered her to lodge a written statement setting out her defence and also any documentary evidence to be relied upon by 2 February 2022. The Respondent said she had not received the Direction and thought that she just had to produce the evidence at the Hearing. She accepted that she had received the tribunal notification of the Hearing which had been sent to the same address and was dated 21 January 2022.

The Applicant's representative confirmed that they had not received the attachments either and that there should be no further delay in the proceedings.

The tribunal adjourned to consider the position and whether the Hearing could proceed without the documents the Respondent wished to rely upon. During the adjournment the tribunal ascertained that the Direction had been sent recorded delivery to the Respondent on 14 January and Royal Mail confirmed delivery on 17 January 2022. The tribunal decided that the Respondent had received notification of the requirement to lodge any productions by 2 February 2022 and had failed to do so. This had also been explained to the Respondent at the CMD which had taken place on 14 January 2022. The applicant's representative had confirmed to the Tribunal that this was also her recollection of events. In the circumstances the tribunal considered it was in accordance with the overriding objective to proceed with the Hearing without the documents the Respondent said she had tried to send to the tribunal. The tribunal considered that the only other option would have been to postpone the Hearing and that was not in accordance with the overriding objective as it would significantly delay matters, incur further time and cost to the Applicant through no fault on their part and the Respondent had been clearly ordered to lodge such documents by the Direction of 14 January 2022. The Respondent could give oral evidence in support of her case.

The tribunal reconvened and informed the Parties of its decision and that the Hearing would proceed without the documents. The tribunal explained the procedure to be followed when hearing evidence from the Parties.

Hearing

The tribunal heard evidence from Mr Proctor who confirmed the PRTA, rent and arrears. He also advised there had been no reports of damp by the Respondent until near the end of her tenancy by which time substantial arrears had already accumulated, that steps had been taken by Ms Thom to have the damp investigated and that the Respondent had failed to return phone calls from the contractor appointed to investigate as set out in the email from the contractor dated 22 November 2021. The Property had since been put on the market after putting in a new kitchen and redecoration works, and whilst the Home Report on it identified an area of higher than normal damp readings in the back bedroom it was not identified as needing immediate action and mould in the bathroom had been removed by cleaning and had been attributable to the way the property was lived in.

The Respondent had fallen behind in her rent and had been afforded the opportunity to pay up the arrears but she had failed to do so.

The tribunal afforded the Respondent the opportunity to ask Mr Proctor questions but she declined to do so.

The tribunal then heard evidence from the Respondent regarding the issue of damp. She asserted that she had brought this to the attention of Ms Thom on several occasions and had ultimately advised that she would not pay any further rent until the damp was rectified. She asserted that damp was present in the back bedroom, front bedroom, living room and bathroom. She had involved Adam Black of the Council's Landlord Registration Team who had inspected the Property and taken photographs of the damp. This had not happened however, until she was in the process of moving out of the property. She had asked him to send the documentation he had to the tribunal (which he had not done).

The Respondent confirmed that the rent outstanding was £2,940 and that she had not kept this in a separate account nor had she informed the Applicant that the rent was being retained.

After having heard the evidence of the Parties both were offered the opportunity to make submissions.

Mr Proctor made submissions to the effect that the tribunal should grant the order sought. He submitted that Mrs Robertson had missed rent payments from an early stage in the tenancy and had said this was because she had lost her job. She had not fulfilled a repayment arrangement and only raised the issue of damp late on in her tenancy. He had attended to repairs requests timeously throughout the tenancy and had tried to do what was right.

The Respondent submitted that she should not have to pay the outstanding rent due to the damp conditions in the Property. She had stopped paying rent earlier in her tenancy because she lost her job, but had later declined to pay because of the damp conditions which she alleged were not remedied.

The Tribunal then considered the documentary evidence it had received from the Parties and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 2 December 2019;
2. The monthly rent was £480;
3. As at the date of lodging the application the Respondent was in arrears of rent in the sum of £2,940;
4. The Respondent did not notify the Applicant that she was retaining rent due to damp conditions in the Property;
5. The Respondent has not retained the rent arrears;
6. The Respondent raised the issue of damp with Ms Thom in or around August 2021;
7. The Applicant appointed Richardson and Starling to investigate the allegations of damp. The Respondent failed to respond to the contact made by Richardson and Starling on 10, 15, 16 and 20 September 2021.

Decision and Reasons

The tribunal did not accept the Respondent's evidence that she had made a number of complaints during the course of her tenancy with Applicant in respect of damp and accepted the Applicant's evidence that she had only complained towards the end of her tenancy. In any event, she accepted that she had not told the Applicant that she was retaining the rent due to the damp and she had not kept the retained rent in a separate account.

It was clear to the tribunal from the rent statement lodged that the Respondent had been paying rent intermittently and this was not consistent with her explanation that she was refusing to pay rent until the damp was rectified. Her last payment of rent was made in July 2021. This was consistent with the Applicant's evidence that the damp issue was only raised towards the end of the tenancy and not before.

The tribunal did not accept the Respondent's evidence as to the extent of damp in the Property and accepted and preferred the evidence of Mr Proctor that there was only a higher than normal reading in one part of the Property.

The tribunal considered that the Applicant had taken reasonable steps to investigate the Respondent's complaint of damp by appointing Richardson and Starling. The Respondent had failed to return calls from Richardson and Starling to arrange to inspect the Property.

The tribunal considered that the Respondent had not made out any legal basis upon which to withhold and/or not pay the rent.

The tribunal was satisfied that in the circumstances the Applicant was due the outstanding rent from the Respondent and granted the order sought.

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.

A Strain

24 February 2022

Legal Member/Chair

Date