



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/22/0214

Re: Property at 41 Innerwood Road, Kilwinning, KA13 7DX (“the Property”)

Parties:

Felt Properties Ltd, 27 Old Gloucester Street, London, WC1N 3AX (“the Applicant”)

Mrs Lyndsey McAllister, Mr David McGill, 23 Muirfield Place, Killwinning, KA13 6NL; 23 Muirfield Place, Killwinning, KA13 6NL (“the Respondents”)

Tribunal Members:

Alison Kelly (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the amount of £6700 should be made.

Background

The Applicant lodged an application on the 24th January 2022 under Rule 66 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking an order for payment.

Lodged with the application were:

1. Tenancy Agreement
2. Rent Statement
3. Repairs Invoice

The Tribunal issued a Direction directing the Applicants to lodge an invoice with a breakdown of costs for each part of the work undertaken. An invoice was lodged in those terms.

Case Management Discussion

The CMD took place by teleconference. The Applicants were represented by Miss Taiwo, Company secretary and Miss Goosetree. The First Respondent and Second Respondent each represented themselves.

The Chairperson introduced everyone and explained the purpose of a CMD in terms of Rule 17.

The Respondents each confirmed that they accepted that the rent arrears at the end of the tenancy were £1725.

The Chairperson asked Miss Goosetree what had happened to the £400 deposit mentioned in the tenancy agreement. She said it had been recovered and deducted from the repairs cost. The Chairperson noted that this deduction had not been mentioned in the repairs invoice and asked Miss Goosetree if the sum being sought for repairs was now £4975 rather than £5375. She confirmed that it was.

Both Respondents confirmed that they disputed the sum being sought for repairs.

Miss Goosetree confirmed that there had not been a check in inventory, and there had not been a check out inventory.

As there were disputed issues of fact the Tribunal decided that the case required to proceed to a Hearing.

The issues to be decided are:

- a) Was the repair work necessary
- b) Is the cost reasonable

The case was adjourned to a Hearing.

Hearing

The Hearing took place by teleconference. The Applicants were represented by Miss Taiwo, Company secretary and Miss Goosetree. The First Respondent did not dial in to the conference call. The Second Respondent represented himself.

The Chairperson introduced everyone and explained the purposes of a Hearing.

The Chairperson established from The second Respondent, with the assistance of the Clerk, that the papers with the date of the Hearing had been served on him at 23 Muirfield Place, Kilwinning, KA13 6NL. He does not live there, but they were forwarded on to him by his seventeen-year-old son. His son lives with The First Respondent, who is his mother, and the Second Respondent therefore assumed that this was the First Respondent's address.

The Clerk confirmed that the Royal Mail Track and Trace website did not state that the copy for The First Respondent had been served on her. The Second Respondent said that the First Respondent suffered from anxiety issues. The Clerk confirmed that there was no telephone number or email address on the system for the First Respondent.

The Tribunal explained to the parties who were present that the Tribunal had an overriding objective in terms of the Rules to act justly. Given that the First Respondent had participated in the CMD, that there was no conclusive proof that notice of the hearing had been served on her, that the First Respondent said that she suffered from anxiety issues, and that the claim was for a substantial sum the determination of which would rely on an assessment of credibility and reliability, the Tribunal considered that in terms of the overriding objective there was no alternative but to adjourn the Hearing to a later date to give the First Respondent an opportunity to participate.

A fresh Hearing was scheduled for 18th August 2022 at 10am by teleconference.

On 15th July 2022 the Applicant lodge further submissions and some photographs.

On 11th August 2022 the First respondent sent an email to the Tribunal advising that she would not be participating in the Hearing on 18th August 2022.

On 17th August 2022 at 14.56 the second Respondent sent an email to the Tribunal advising that he had a hospital appointment on 18th August 2022 that he had forgotten about and asked for an adjournment of the hearing. The Tribunal sent him an email later that afternoon asking him for evidence of the appointment and also advising that the hearing would still call on 18th August 2022. No response was received from him.

Second Hearing

The Hearing took place by teleconference on 18th August 2022.. The Applicants were represented by Miss Taiwo, Company secretary and Miss Goosetree. Neither respondent joined the call.

Miss Goosetree opposed a further adjournment of the Hearing. The Tribunal expressed sympathy with her position. The Tribunal explained again, however, that the Tribunal had an overriding objective in terms of the Rules to act justly. The claim was for a substantial sum the determination of which would rely on an assessment of credibility and reliability, and the Second Respondent had said that he was opposing the claim. The manner in which the Second Respondent had sought the adjournment was far from satisfactory, but the Tribunal considered that in terms of the overriding objective there was no alternative but to adjourn the Hearing to a later date.

Third Hearing

The Hearing took place by teleconference on 28th October 2022. The Applicants were represented by Miss Taiwo, Company secretary and Miss Goosetree. Neither respondent joined the call.

The Tribunal considered the overriding objective. Given that two previous hearings had been adjourned due to non-attendance the Tribunal did not consider it would be just to the Applicant to adjourn again.

Miss Goostree confirmed that the tenancy had commenced on 21st June 2019 and ended on 17th December 2021. Clause 37 of the Tenancy Agreement allowed the Applicant to recover sums they had expended on bringing the property back to a lettable condition.

The Chairperson confirmed that it had been agreed at the CMD that the rent arrears were £1725. It had also been agreed that the sum sought by the Applicant that the sum they were seeking for repairs was £4975, being the total of the invoice dated 9th February 2022 rendered by Evan Moore, Handyman For Hire less the deposit of £400.

Miss Goostree called Mr Moore as a witness. He confirmed that he was a handyman who had been working in that field in Scotland for 12 years. He had been doing the job for 20 years in total. He used to be a corgi registered gas installer but had not renewed the registration due to cost. He worked almost exclusively for landlords.

Mr Moore said that when he attended the property it was in a sorry state, and everything needed doing. He spoke to the items on his invoice.

He explained he had to clear all the rubbish from the property and had filled a skip. There were several fridges and freezers, and all the carpets had to be lifted and disposed of due to being soiled with dog urine.

He said it had taken two men a full day to clear all the dog faeces from the back garden, the garden was laid with black stones, and it had been a very unpleasant task.

Mr Moore said that the Respondents had installed a false wall in the living room to hold their TV. He had had to use an angle grinder to remove the nails from the brickwork. He said that the wiring was dangerous, and he had had to get an electrician in to check it over and make it safe.

Mr Moore said that two doors were missing and had to be replaced, and one door was beyond repair and had to be replaced. He had made good the door frames as dogs had caused damage by chewing.

Mr Moore said that he had replaced missing smoke/heat alarms and replaced all the carpets. He had repaired floorboards and patched holes.

Mr Moore said that the entire property had to be repainted. He said that the property is a fairly large four bedroom semi detached ex council house, and also has living room, kitchen and bathroom and two large cupboards.

The Tribunal asked Mr Moore how he had priced the job. He said that he did not have an hourly rate and he assessed each job and gave it a price.

Mr Moore concluded his evidence and Miss Goosetree asked the Tribunal to grant an order.

Findings In Fact

1. The parties entered in to a tenancy agreement commencing 21st June 2019;
2. The tenancy came to an end on 17th December 2021;
3. The arrears of rent at the end of the tenancy amounted to £1725;
4. The Applicant received return of the deposit in the amount of £400;
5. The Applicant deducted the deposit amount from the repair costs sought;
6. Clause 37 of the Tenancy Agreement allows the Applicant to seek payment for repairs required;
7. Mr Moore carried out the work detailed in his invoice;
8. The costs charged by Mr Moore are reasonable.

Reasons For Decision

The Tribunal considered Mr Moore to be a credible and reliable witness. He gave his evidence in a straightforward manner and gave a good description of the state of the property and the work which was done to bring it back to a lettable standard.

The Tenancy Agreement allowed the Applicant to seek payment of those costs.

The Tribunal were satisfied that the sum sought by the Applicant was due by 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.

A. Kelly

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Legal Member/Chair

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28 October 2022
Date