

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/CV/22/0434

Re: Property at 13 Dale Drive, Motherwell, ML1 4ND (“the Property”)

Parties:

Craig Hall, 202 Mansfield Rd, Edinburgh, Lothian, EH14 7JX (“the Applicant”) per his agents, Clarity Simplicity Limited, 34, Woodlands Road, Glasgow, G3 6UR (“the Applicant’s Agents”)

Mr Jordan James Bain and Ms Courtney McLellan residing formerly at 13 Dale Drive, Motherwell, ML1 4ND (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Eileen Shand (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 sum of TEN THOUSAND SEVEN HUNDRED AND TWENTY TWO POUNDS (£10,722.00.00) Sterling be granted

Background

1. By application received between 14, February 2022 and 30 March 2022 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for payment of rent arrears and damages arising from a tenancy between the Parties. The Application comprised statements of rent of £4,277.15 due and owing to 17 November 2021, statement of damages amounting to £2,585.00 with supporting vouchers for some of the damages, photographs of the condition of the Property and copy tenancy agreement. The Application also sought interest at the judicial rate of 8% per annum. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 5 July 2022 at 10.00 am by telephone conference. The CMD was intimated to the Parties and, in particular, was served on the Respondents by Sheriff Officer at the Property on 24 May 2022. Prior to the CMD, the Applicant’s Agents amended the Application by increasing the rent

due to £7,027.15 and the damages sought to £7,042.00, submitting a statement in respect of the latter.

2. The CMD took place on 5 July 2022 at 10.00 am by telephone. The Applicant did not take part and was represented by Ms. Young of the Applicant's Agents. The Respondents did not take part and were not represented. They did not submit any written representations. The Tribunal adjourned the CMD to a later date for proof of the sums sought.

Adjourned CMD

3. The adjourned CMD took place on 11 October 2022, having been intimated to the Respondents by advertisement. The Applicant did not take part and was represented by Ms. Young of the Applicant's Agents. The Respondents did not take part and were not represented. They did not submit any written representations.
4. Prior to the adjourned CMD, the Applicant's Agents submitted further information in respect of damages claimed as caused by the Respondents. This information comprised:
 - i) Invoice for final payment of £610.00 from Hardie Property Services dated 12/07/22 for works detailed as *"completion of internal works - completion of conservatory/sun room - removal of car from garage area - repair garage fascia board to make water tight - repair/adjust garage doors to allow access - tidy up garden, deweed and power wash slabs"*;
 - ii) Quotes for £5,220.00 from Hardie Property Services both dated 08 /06/2022 and 12/07/22 for works detailed as *"partial refurb of 2 bedroom property"* and including items for damage to kitchen fittings and furnishings which could be attributed to tenant damage beyond wear and tear. However, the quotes also include works which appear to be improvements such as *"remove damaged joist x 2 at rear corner of garage due to water ingress - replace damaged joists x 2 - remove damaged roof felt around perimeter of fascia - replace felt to ensure water tight... removal of electrical appliances and electrical goods - strip up of all laminate and carpets, including underlay...remove damaged wet wall backing boards on splashback and replace with new more modern - - remove pvc from double glazed windows - replace sun room ceiling with pvc chrome strip ceiling boards...strip off all wallpaper in various rooms - patch and fill holes in walls - - supply and fit new carpets to bedrooms and staircase, includes new underlay - supply and fit new laminate to living room, front door and kitchen - supply and fit new vinyl to bathroom - supply and fit new interlink smoke alarms and heat sensor - check sockets and switches to ensure working order"*.
 - iii) Statement of all works detailing the following:
 - i) *"Skip Hire x3 for clearing high volume rubbish from external property £432"*
 - ii) *Clearance of all rubbish to the outside of the property including garage at the direction of Local Council. ...£350"*
 - iii) *Partial Refurb of 2 bedroom property quotation with full breakdown of works dated 08/06/22 £5,220.00"*

- iv) *Further breakdown dated 12th July 2022 in relation to final works completed to repair and replace areas of the property as a result of Tenant damage £610.00*
 - v) *Repairs to garage as a result of Tenants failure to maintain in accordance with quote dated 12th July 2022 £1,200 Total £7,812”*
5. The information was discussed at the CMD and, whilst the Tribunal accepted an element of damage which, on the balance of probabilities was caused by the Respondents, there appeared to be some duplication of works such as clearing out of the garage and double counting of costs. Further, the photographic evidence lodged previously, whilst showing the Property in a poor condition in respect of household detritus, did not appear to show significant damage as suggested by the quotes.
6. With reference to the rent sought, the Tribunal noted that the Applicant’s position is that the Respondents remained in the Property until May 2022, notwithstanding that there is a rent statement indicating that they vacated in November 2021.
7. The CMD was adjourned further for the Applicant or the Applicant’s Agents to provide:
- i) The instruction to the Hardie Property Services in respect of the work to be carried out;
 - ii) Further evidence, if any, of the extent of the tenant damage for which the Respondents are liable in terms of the tenancy agreement;
 - iii) Receipted invoices for the sums paid out by the Applicant in respect of tenant damage.
 - iv) If available, a copy of the check-in and check -out inventory at the start and end of the tenancy.

Further Adjourned CMD

8. The further adjourned CMD took place on 19 December 2022. The Applicant did not take part and was represented by Ms. Young of the Applicant’s Agents. The Respondents did not take part and were not represented. They did not submit any written representations.
9. Prior to the further adjourned CMD, the Applicant’s Agents submitted further information. This information comprised:
- i) Copy of 3 invoices issued by Hardie Property Services for £2,610.00, £2,000.00 and £610.00 and so totalling £5,220.00;
 - ii) Copy of 3 invoices from Fraser Waste Management for skip hire and garden clearance dated April 22 each for £144.00;
 - iii) Copy of the Applicant’s bank statements demonstrating sums paid of £2,610, £2,000, £610.00 and £782.00;
 - iv) Copy of remittance from Jewel Homes for repairs detailing £350.00 for garden and garage clearance, £144.00 for skip hire and £288.00 reimbursement to Jewel Homes for skip hire, the total of which is £782.00;
 - v) Copy of letter from Applicant confirming instruction to Peter Hardie;

- vi) Copy of inventory at start of Respondents' tenancy showing Property in good condition and
- vii) Copy of Check Out form from Jewel Homes noting Property in poor condition.

10. The information was discussed at the CMD with Ms. Young explaining the invoices further to the Tribunal as far as she was able to do so.

11. Ms. Young advised the Tribunal that the sum sought in respect of damages is £7,812.07 and the sum sought in respect of rent due and owing is £7,780.00 to the 30 April 2022. The Tribunal noted that the invoices as lodged amounted to £6,002.00. Ms. Young explained that the increased sum related to further work carried out but accepted that this had not been vouched for.

12. With regard to the damage itemised in the damages claim, the Tribunal noted that, although claims had been made in respect of works carried out to the garage, there was no mention of the garage in the tenancy agreement nor mention of it in either the letting agent's check in or check out reports.

13. Ms. Young agreed with the Tribunal that there was no further information which could assist and submitted that there was sufficient evidence on the balance of probability to support the Applicant's claim and submitted that the Order as requested should be granted.

14. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussionincluding making a decision" and so adjourned to consider all of the information before it and to make its decision.

Evidence before the Tribunal and Findings in Fact

15. The evidence before the Tribunal was the Application with supporting documents, the further written information lodged on behalf of the Applicant and the submissions made at the CMDs.

16. The Respondents had made no written representations and so the Tribunal had no reason to dispute the evidence before it.

17. The Tribunal made the following findings in fact:

- i) There was a private residential tenancy agreement of the Property between the Parties which commenced on 30 May 2019 at a monthly rent of £550.00;
- ii) The Applicant's letting agents, Jewel Homes, carried out an inspection of the Property before the tenancy commenced at which the Property was noted to be in good condition;
- iii) The Applicant's letting agents, Jewel Homes, prepared a detailed report of their inspection which included photographs of the Property;
- iv) The Property was let as unfurnished;

- v) The Respondents fell into rent arrears in or around October 2019 which arrears continued to accrue throughout the period of the tenancy;
- vi) The Applicant raised proceedings for possession of the Property based on the rent arrears and a statutory Notice to Leave was sent to the Respondents requiring them to leave the Property on 28 November 2021;
- vii) The Respondents, or one of them, remained in the Property until May 2022;
- viii) Rent arrears continued to accrue until May 2022 at which time rent due and owing by the Respondents to the Applicant was £7,780.00;
- ix) In terms of the tenancy agreement both Respondents are liable for the rent due and owing;
- x) In terms of the tenancy agreement at Clause 17, the Respondents were obliged to take reasonable care of the Property, to take reasonable steps to ensure that the fittings and fixtures were kept clean and to refrain from causing damage to the walls of the Property;
- xi) In terms of the tenancy agreement at Clause 18, the Respondents were obliged to keep the fittings and fixtures in the same condition as they accepted them at the commencement of the tenancy, fair wear and take excepted;
- xii) In terms of the tenancy agreement at Clause 21, the Respondents were prohibited from vandalising or causing damage to the Property;
- xiii) In terms of the tenancy agreement at Clause 25, the Respondents were obliged to keep the Property and its contents in good, clean, tenantable order and repair.
- xiv) In terms of the tenancy agreement at Clause 25, the Respondents were obliged further to replace or repair or, at the option of the Landlord, to pay the reasonable cost of repairing or replacing any contents which are destroyed or damaged where this was caused wilfully or negligently;
- xv) In terms of the tenancy agreement at Clause 42, the Respondents were obliged to keep the Property in good and clean condition and were obliged to pay for any cleaning that may be required to reinstate the Property to the same order that was provided at the beginning of the tenancy;
- xvi) On 15/02/2022, North Lanarkshire Council as regulatory waste authority for the Property, having received complaints of the condition of the external parts of the Property, carried out a visit and noted that there was a significant accumulation of black bags, containing food waste, a trailer parked at the driveway filled with unknown and other household items dumped at the rear / side garden of the Property, all of which were liable to provide harbourage for vermin;
- xvii) North Lanarkshire Council gave notice that these accumulations of domestic refuse was likely to constitute a Statutory Nuisance in terms of Section 80 of the Environmental Protection Act, 1990;
- xviii) Following North Lanarkshire Council's correspondence, the Applicant's letting agents, Jewel Homes, arranged for the external parts of the Property to be cleared by hire of 3 skips from Frasers Waste Management Ltd at a cost of £144.00 per skip and a clearance cost of £350.00;
- xix) The Applicant made payment of the cost of the skip hire and the clearance cost in the sum £782.00;

- xx) Following the removal of the Respondents from the Property, the Applicant's letting agents, Jewel Homes, carried out an inspection of the Property on 29 May 2022 at which the Property was noted to be in a poor condition;
- xxi) The Applicant's letting agents, Jewel Homes, prepared a written report of their inspection and took photographs of the Property;
- xxii) From the said written report, the condition of the Property was that there was a major amount of rubbish outside of the Property, including a trailer and car, that furniture and rubbish had been left behind in all rooms, that there was damage and marks to the walls throughout, that there was damage to doors and door handles, the splashboard in the kitchen and kitchen wall units had been damaged and the bathroom required to be deep cleaned;
- xxiii) The photographs provided by Jewel Homes reflected that furniture and rubbish had been left behind in all rooms and that cleaning was required;
- xxiv) There were no photographs of the outside of the Property or the kitchen;
- xxv) The Applicant contacted Peter Hardie of Hardie Property Services on 30th May 2022 to provide a quotation for works to the Property;
- xxvi) Mr. Hardie provided a quote headed "partial refurbishment of 2 bedroom property" dated 8 June 2022 for the works noted on the Jewel Homes report of 29 May 2022 and also for additional works not noted in that report which additional works included extensive works to a garage, removal and replacement of flooring and floor coverings throughout the Property and the replacement of the sun room ceiling;
- xxvii) The Applicant instructed Mr. Hardie to carry out all of the works for which he had quoted;
- xxviii) The extent of the works instructed by the Applicant exceeded the works noted in the Jewel Homes report of 29 May 2022;
- xxix) The cost of the full works carried out by Mr. Hardie amounted to £5,220.00;
- xxx) The Applicant made payment of £5,220.00 to Mr. Hardie.

Issues for the Tribunal

18. The issues for the Tribunal are:

- i) to what extent, if any, are the Respondents liable for the damages claim requested by the Applicant and
- ii) to what extent, if any, are the Respondents liable for the claim for rent due and owing as requested by the Applicant.

Decision of the Tribunal and Reasons for the Decision

19. With regard to the claim for damages, the Tribunal accepted that the terms of tenancy agreement obliged the Respondents to take reasonable steps to maintain in the Property in a good and clean condition and held the Respondents liable for wilful or negligent damage caused and for the cost of repair, replacement and cleaning if they failed in these responsibilities. The Tribunal accepted that the standard of proof is the balance of probabilities.

20. The Tribunal accepts that the Respondents are liable for the costs of £782.00 of the external clearance carried out in response to the North Lanarkshire Council letter.
21. With regard to the remainder of the Applicant's claim, the Tribunal had no evidence of damage to the Property other than that as noted in Jewel Homes inspection report of 29 May 2022 with photographs. Accordingly, the Tribunal took the view that it could only be satisfied that the liability of the Respondents was limited to the works as noted in the Jewel Homes inspection report of 29 May 2022.
22. With reference to the quote and invoices provided by Mr. Hardie, the Tribunal assesses the cost of this damage as being £300.00 for damaged kitchen splashback, £180.00 for damaged doors and handles, £230.00 for damaged wall décor and £1,000.00 for removal of furnishings and rubbish. No specific costs were given for replacement kitchen units and the labour attributed to these works.
23. The Tribunal had no evidence of damage to the garage, of damage to the flooring which required full replacement or of damage to the sun room. Accordingly, the Tribunal could not be satisfied that the full extent of the works which Mr. Hardie had carried out fell to the responsibility of the Respondents.
24. No detail was given to the Tribunal for costs over and above the external clearance costs and the invoices issued by Mr. Hardie.
25. Accordingly, the Tribunal determined that the Respondents liability as proved by the Applicant is £1,710.00
26. With regard to the rent claimed as due and owing, the Tribunal was satisfied that the Respondents are liable for the full amount of rent due to the end of May 2022 which amounts to £7,780.00.
27. The Tribunal, therefore, made an Order in the sum of £10,722.00, being the total of £782.00, £1,710.00 and £7,780.00.

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.

Karen Moore

Legal Member/Chair

19 December 2022

Date