



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/22/0435

Re: Property at 3 Carment Drive, Stevenston, KA20 3LD (“the Property”)

Parties:

Miss Jocelyn Leadbetter, 0/2 148 Gallowhill Road, Paisley, PA3 4UD (“the Applicant”)

Ms Samantha Chapman, 18 Sommerville Drive, Stevenson, KA30 3PA (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of Five thousand one hundred and twenty four pounds and sixty nine pence (£5124.69) Sterling

Background

- 1 By application dated 15 February 2022, the Applicant sought an order for payment in the sum of £5,124.29 against the Respondent. In support of the application the Applicant provided:-
 - (i) Short Assured Tenancy Agreement between the parties dated 11 April 2017;
 - (ii) Inventory dated 9 May 2017; and
 - (iii) Spreadsheet outlining costs claimed together with supporting receipts and photographs.
- 2 By Notice of Acceptance of Application the Legal Member of the Tribunal, with delegated powers from the Chamber President, determined that there were no grounds to reject the application. A Case Management Discussion was therefore

assigned for 10 May 2022, to take place by teleconference due to the ongoing restrictions arising from the Covid-19 pandemic.

- 3 The application paperwork was served upon the Respondent by Sheriff Officers. The paperwork contained notification of the date and time of the Case Management Discussion together with instructions for joining the teleconference.

Case Management Discussion

- 4 The Case Management Discussion took place on 10 May 2022. The Applicant was personally present and represented by Ms McMillan as agent for her solicitor
- 5 The Legal Member explained the purpose of the Case Management Discussion. She noted that the application paperwork had been served upon the Respondent by Sheriff Officers, with details for joining the case conference. Accordingly the Legal Member was satisfied that the notification requirements had been complied with and determined to proceed with the Case Management Discussion in her absence.
- 6 Ms McMillan advised that the Respondent sought the order for payment in the sum of £5124.29. There had been no response from Respondent following service of the proceedings. Ms McMillan made reference to the vouchings that had been uploaded to support the Applicant's claim. Photos had been produced outlining the damage caused to the property by the Respondent.
- 7 The Legal Member then asked questions of the Applicant. She confirmed that the tenancy had ended on 22 June 2019 however the Respondent had failed to hand back the keys. The Applicant had visited the property on 24th June 2019 and had noted significant damage to the property. Photographs were taken at that point. She had returned on Tuesday 25th June and noted further damage caused by the tenant, namely the removal of the kitchen sink and damage to the kitchen sink unit. The Police had been called. The Applicant advised that she had originally been told to make a claim on her insurance, however when that was unsuccessful she had sought legal advice and brought proceedings before the Tribunal. The Applicant advised that the damage went far beyond fair wear and tear, it was deliberate and wilful damage by the Respondent. She explained that she had engaged contractors to carry out the repairs including a plumber to replace the shower and repair the bathroom, a joiner to replaced skirting boards that had been removed and an electrician to sort out wiring that had been tampered with by the Respondent. The Applicant had carried out some decorating herself, but had to engage contractors to replace carpets. She confirmed that there was still work to be done including replacing the decking, however she had been furloughed which had prevented the repairs from proceeding.

- 8 The Applicant queried whether she could claim for future costs that may fall due. The Legal Member confirmed that any order could only be in relation to costs incurred to date, however it would be open to the Applicant to bring a further application before the Tribunal if she wished and once the extent of the costs were known.

Findings in Fact

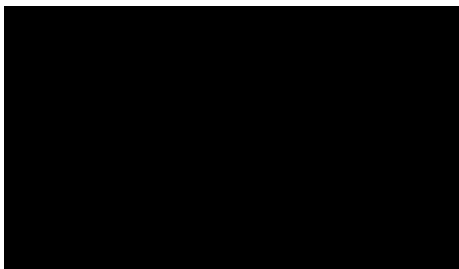
- 9 The parties entered into a Short Assured Tenancy Agreement which commenced on 10 May 2017.
- 10 In terms of Clause 10.4 of the said Tenancy Agreement the Respondent agreed to take reasonable care of the property.
- 11 In terms of Clause 14.6 of the said Tenancy Agreement the Respondent agree to pay the costs of any repair required as a result of damage caused wilfully or negligently by the Respondent, anyone living with her or her visitors.
- 12 The tenancy between the parties ended on 22 June 2019.
- 13 The property suffered damage as a result of the wilful or negligent acts of the Respondent, anyone living with her or her visitors. In particular items were removed including the electric shower, kitchen sink, skirting boards and other fittings and damage was caused to bathroom and kitchen units, electrical wiring and walls.
- 14 The Applicant has incurred costs to date of £5124.69 repairing said damage and replacing the removed items.
- 15 The tenancy deposit was applied to outstanding rent arrears at the end of the tenancy.
- 16 The Respondent is liable to pay the sum of £5124.69 to the Applicant under the terms of the Tenancy Agreement between the parties.
- 17 Despite repeated requests the Respondent has refused or delayed to make payment of the sum due.

Reasons for Decision

- 18 The Tribunal was satisfied that it could make a determination of the application at the Case Management Discussion and that to do so would not be detrimental to the parties. The Respondent had been given the opportunity to enter the proceedings but had chosen not to do so.
- 19 Based on its findings in fact, the Tribunal was satisfied that the Respondent was liable to pay the sum of £5124.69 in terms of the Tenancy Agreement between the parties. The Tribunal accepted the evidence of the Applicant that the Respondent had a contractual obligation to make payment of any costs incurred by the Applicant in repairing damage caused willfully or negligently by the Respondent or those living or visiting with her, and that the costs incurred by the Applicant were justifiable and vouched for. It was clear from the photographs produced and the description of the damage caused that it went far beyond fair wear and tear and could be reasonably assumed to be a result of the deliberate acts of the occupants. There was nothing before the Tribunal to contradict the position put forward by the Applicant.
- 20 The Tribunal therefore made an order for payment against the Respondent in the sum of £5124.69.

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.



Legal Member/Chair

10/05/2022

Date